2026:DHC:5740

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Date of decision: 16th JULY, 2026

IN THE MATTER OF:

\+ **O.M.P.(I) (COMM.) 240/2026 & I.A. 15938/2026**

M/S VISHAL INFRASTRUCTURE LTD. AND M/S OJSC EURO - ASIAN CONSTRUCTION CORPORATION EVRASCON (JV)
.....Petitioner

Through: Mr. Sandeep Sethi, Sr. Advocate with Mr. Sonal Kumar Singh, Mr. Ratik Sharma, Ms. Muskan Agarwal, Mr. Parth Sindhwani, Mr. Yashvardhan Singh Gohil, Advs.

versus

CHIEF ENGINEER (CONST)-I, NORTH WESTERN RAILWAY, JAIPUR & ORS ......Respondents

Through: Mr. Siddhartha Shankar Ray, CGSC with Mr. Vanshul Pali, GP, Ms. Sonali Modi, Ms. Ayushika Mishra, Ms. Riya Verma, Advocates for R-1.
Mr. Kuber Dewan, Ms. Neeharika Aggarwal, Mr. Kaustubh Srivastava, Advs. for Respondent No.2 - ICICI Bank Ltd.

CORAM:
HON'BLE MR. JUSTICE SUBRAMONIUM PRASAD

JUDGMENT

1. The present Petition under Section 9 of the Arbitration and Conciliation Act, 1996 (*hereinafter referred to as the* "**Arbitration Act**") has been filed by the Petitioner for restraining the Respondent No. 1 from invoking and/or encashing the Bank Guarantees bearing (i) Bank Guarantee bearing No. 0002NDLG00146423 for an amount of INR 6,22,00,000/- (Indian Rupees Six Crores Twenty-Two Lakhs only) (ii) Bank Guarantee

bearing No. LOBG801512208822 for an amount of INR 2,24,71,610/- (Indian Rupees Two Crores Twenty-Four Lakhs Seventy-One Thousand and Six Hundred and Ten only) (iii) Bank Guarantee bearing No. 009GT02223630006 for an amount of INR 5, 76,85,000/- (Indian Rupees Five Crores Seventy Six Lakhs Eighty Five Thousand only) (iv) Bank Guarantee bearing No. 022BG07253380004 for an amount of INR 3,00,00,000/- (Indian Rupees Three Crores only) till the adjudication of disputes by contractually stipulated dispute resolution methods under the EPC Agreement.

2. Shorn of unnecessary details, the facts necessary for adjudication of the present Petition are as follows:

a) It is stated that the Respondent invited bids for the "Major Upgradation of Jodhpur Railway Station of North Western Railway on Engineering, Procurement and Construction (EPC) Mode" (*hereinafter referred to as the* "**Agreement**") on 15.06.2022. It is stated that the Petitioner was declared the successful bidder and a Letter of Acceptance ("**LOA**") was issued on 29.09.2022 for an accepted amount of Rs.474,52,20,348.13/-.

b) Thereafter, the parties executed the Agreement on 14.07.2023. It is stated that the Petitioner duly furnished Performance Security equivalent to 3% of the aforementioned contract price i.e. Rs.14,23,56,610/- and commenced its obligation on the appointed date i.e. 29.07.2023, with a scheduled completion date of 13.07.2026.

c) It is stated that, alleging unexplained delays, Petitioner's failure to achieve milestones, inadequate deployment of resources, and non-compliance with its contractual obligations, the Respondent issued a Notice dated 13.05.2026 bearing No. LECPL/MUJSNWR/JU/2025-26/1846, intimating its intention to terminate the Agreement on the ground that the Petitioner's alleged defaults had adversely affected the execution and progress of the Project.

d) Apprehending that the proposed termination would result in the invocation of various bank guarantees and the initiation of other coercive measures, the Petitioner approached this Court by filing OMP (I) COMM. 220/2026. The said Petition came up for hearing on 26.05.2026, when the learned Counsel appearing for the Petitioner contended that the communication dated 13.05.2026 also sought to impose liquidated damages amounting to Rs.47,75,00,000/-, being the maximum permissible amount equivalent to 10% of the Contract value and, thereby, necessitating urgent interim protection. Opposing the grant of interim protection learned Counsel appearing for the Respondent contended that Article 24 of the Agreement, which governs the dispute resolution mechanism, mandates that disputes be referred to a Dispute Adjudication Board ("**DAB**"). He further stated that only after the said resolution mechanism is exhausted could the Petitioner approach this Court by filing an Application under Section 9 of the Arbitration Act. The abovementioned Petition was disposed of with the following directions:

> "*7. At this stage, after making submissions for some time, learned counsel appearing on behalf of the parties submit that they are ad idem that the Dispute Resolution Process contemplated under the Agreement, commencing from the stage of the DAB, may continue in accordance with the contractual mechanism and that the parties shall remain at liberty to take recourse to such further remedies as may be available to them under the Agreement.*
>
> *8. The parties further agree that,* ***till such time as the DAB renders its decision with respect to the disputes between the parties, Communication No. JU/Const.-/74-W-20/2025-26/PMS/JU/Pt-VII dated 12.05.2026 and Communication No. LECPL/MUJSNWR/JU/2025-26/1845 dated 13.05.2026, insofar as they pertain to imposition of liquidated damages amounting to Rs. 47.75 Crores, shall not be acted upon.***
>
> *9. Accordingly, the present Petition, along with pending Application(s), if any, stands disposed of in the aforesaid terms.*" (emphasis supplied)

e) After passing of the abovementioned Order, the Respondent terminated the Agreement by issuing a Termination Notice dated 29.05.2026. In the said Notice it is stated that despite issuing various default notices, the Petitioner has not shown any substantial improvement in the work progress and completion of milestones during the cure period. The Termination Notice further states that the overall performance of the Contractor continues to remain unsatisfactory and despite repeated directions, notices, review meetings, and instructions issued by the Authority/Authority's Engineer from time to time, no marked improvement in the pace of execution has been observed at site.

f) The Petitioner has, therefore, approached this Court once again by filing the instant Petition under Section 9 of the Arbitration Act for restraining the Respondent from invoking and encashing the following Bank Guarantees till the adjudication of disputes by contractually stipulated dispute resolution methods under the EPC Agreement:

i. Bank Guarantee bearing No.0002NDLG00146423 for an amount of INR 6,22,00,000/-;

ii. Bank Guarantee bearing No.LOBG801512208822 for an amount of INR 2,24,71,610/-;

iii. Bank Guarantee bearing No.009GT02223630006 for an amount of INR 5,76,85,000/-;

iv. Bank Guarantee bearing No.022BG07253380004 for an amount of INR 3,00,00,000/- .

3. Learned Senior Counsel appearing for the Petitioner has taken this Court through various terms of the Agreement. He states that Clause 1.2.1(w) of the Agreement provides that the damages payable by either Party to the other of them, are mutually agreed genuine pre-estimated loss and damage likely to be suffered and incurred by the Party entitled to receive the same and are not by way of penalty. Thereafter, he has drawn the attention of this Court to Clause 7.3 of the Agreement which deals with the Appropriation of Performance Security which provides that upon occurrence

of a Contractor Default, the Authority shall be entitled to encash and appropriate from the Performance Security the amounts due to it as Damages for the Contractor Default. Learned Senior Counsel for the Petitioner has, thereafter, drawn the attention of this Court to Clause 10.3.2 and 10.3.3 of the Agreement which provides that if the Contractor fails to achieve any project milestone or the Scheduled Completion Date within a period of 30 days from the date set forth in Schedule – 1 of the Agreement, it shall pay damages to the Authority in a sum calculated at the rate of 0.05% of the contract price for delay of each day and the total amount of damages shall not exceed 10% of the Contract price.

4. Learned Counsel for the Petitioner also contends that the terms of Bank Guarantee stipulates how the Bank Guarantee can be invoked. He states that the terms of the Bank Guarantee indicate that only an officer not below the rank of Chief Engineer can invoke the Bank Guarantee.

5. *Per contra*, learned Counsel for the Respondent contends that there are valid reasons for termination of the contract. He states that the Bank is bound to honour the invocation of the Bank Guarantee in terms of the guarantee given by the Bank. He states that the Bank Guarantee can be stayed only under very limited circumstances and this case does not fall in those parameters.

6. Heard the learned Counsels for the parties and perused the material on record.

7. Petitioner has given performance guarantees and the relevant clauses of the Bank Guarantees provide that the Bank unconditionally and irrevocably guarantee the due and faithful performance of the Contractor's obligation in accordance with the Agreement and that the Bank Guarantee

can be invoked on mere first written demand and without any demur, reservation, contest or protest and without any reference to the Contractor.

8. The law related to the invocation of the bank guarantee has been crystallised by the Apex Court times without number. It is well settled that an irrevocable bank guarantee constitutes an independent contract between the guarantor bank and the beneficiary. Such bank guarantees ordinarily provide that the guarantor shall, on demand and without demur, make payment to the beneficiary. They further stipulate that the beneficiary shall be the sole judge of whether, and to what extent, any amount has become recoverable from the respondent or whether the respondent has committed a breach of the terms and conditions of the underlying agreement. The guarantees also make it clear that the beneficiary's right to recover any amount from the guarantor shall neither be affected nor suspended by any dispute raised by the respondent regarding its liability, or by the pendency of any proceedings before a Tribunal, Arbitrator, or Court in relation to such disputes.

9. The Apex Court in U.P. State Sugar Corpn. v. Sumac International Ltd., **(1997) 1 SCC 568**, has held as under:

> "***11***. *These bank guarantees which are irrevocable in nature, in terms, provide that they are payable by the guarantor to the appellant on demand without demur. They further provide that the appellant shall be the sole judge of whether and to what extent the amount has become recoverable from the respondent or whether the respondent has committed any breach of the terms and conditions of the agreement. The bank guarantees further provide that the right of the purchaser to recover from the guarantor any amount shall not be affected or suspended by reason of any*

disputes that may have been raised by the respondent with regard to its liability or on the ground that proceedings are pending before any Tribunal, Arbitrator or Court with regard to such dispute. The guarantor shall immediately pay the guaranteed amount to the appellant-purchasers on demand.

12. The law relating to invocation of such bank guarantees is by now well settled. When in the course of commercial dealings an unconditional bank guarantee is given or accepted, the beneficiary is entitled to realize such a bank guarantee in terms thereof irrespective of any pending disputes. The bank giving such a guarantee is bound to honour it as per its terms irrespective of any dispute raised by its customer. The very purpose of giving such a bank guarantee would otherwise be defeated. The courts should, therefore, be slow in granting an injunction to restrain the realization of such a bank guarantee. The courts have carved out only two exceptions. A fraud in connection with such a bank guarantee would vitiate the very foundation of such a bank guarantee. Hence if there is such a fraud of which the beneficiary seeks to take advantage, he can be restrained from doing so. The second exception relates to cases where allowing the encashment of an unconditional bank guarantee would result in irretrievable harm or injustice to one of the parties concerned. Since in most cases payment of money under such a bank guarantee would adversely affect the bank and its customer at whose instance the guarantee is given, the harm or injustice contemplated under this head must be of such an exceptional and irretrievable nature as would override the terms of the guarantee and the adverse effect of such an injunction on commercial dealings in the country. The two grounds are not necessarily connected, though both may coexist in some cases. In

the case of U.P. Coop. Federation Ltd. v. Singh Consultants and Engineers (P) Ltd. [(1988) 1 SCC 174] which was the case of a works contract where the performance guarantee given under the contract was sought to be invoked, this Court, after referring extensively to English and Indian cases on the subject, said that the guarantee must be honoured in accordance with its terms. The bank which gives the guarantee is not concerned in the least with the relations between the supplier and the customer; nor with the question whether the supplier has performed his contractual obligation or not, nor with the question whether the supplier is in default or not. The bank must pay according to the tenor of its guarantee on demand without proof or condition. There are only two exceptions to this rule. The first exception is a case when there is a clear fraud of which the bank has notice. The fraud must be of an egregious nature such as to vitiate the entire underlying transaction. Explaining the kind of fraud that may absolve a bank from honouring its guarantee, this Court in the above case quoted with approval the observations of Sir John Donaldson, M.R. in Bolivinter Oil SA v. Chase Manhattan Bank [(1984) 1 All ER 351] (All ER at p. 352): (at SCC p. 197)

> *"The wholly exceptional case where an injunction may be granted is where it is proved that the bank knows that any demand for payment already made or which may thereafter be made will clearly be fraudulent. But the evidence must be clear both as to the fact of fraud and as to the bank's knowledge. It would certainly not normally be sufficient that this rests on the uncorroborated statement of the customer, for irreparable damage can be done to a bank's credit in the relatively brief time which must elapse between the granting of such an*

injunction and an application by the bank to have it charged.”

__13__. The same question came up for consideration before this Court in Svenska Handelsbanken v. Indian Charge Chrome [(1994) 1 SCC 502] . This Court once again reiterated that a confirmed bank guarantee/irrevocable letter of credit cannot be interfered with unless there is established fraud or irretrievable injustice involved in the case. Irretrievable injury has to be of the nature noticed in the case of Itek Corpn. v. First National Bank of Boston [566 Fed Supp 1210] . On the question of fraud this Court confirmed the observations made in the case of U.P. Coop. Federation Ltd. [(1988) 1 SCC 174] and stated that the fraud must be that of the beneficiary, and not the fraud of anyone else.”

(emphasis supplied)

10. Similarly, the Apex Court in <u>Himadri Chemicals Industries Ltd. v. Coal Tar Refining Co.</u>, **(2007) 8 SCC 110,** has held as under:

“__10.__ The law relating to grant or refusal to grant injunction in the matter of invocation of a bank guarantee or a letter of credit is now well settled by a plethora of decisions not only of this Court but also of the different High Courts in India. In U.P. State Sugar Corpn. v. Sumac International Ltd. [(1997) 1 SCC 568] this Court considered its various earlier decisions. In this decision, the principle that has been laid down clearly on the enforcement of a bank guarantee or a letter of credit is that in respect of a bank guarantee or a letter of credit which is sought to be encashed by a beneficiary, the bank giving such a guarantee is bound to honour it as per its terms irrespective of any dispute raised by its customer. Accordingly this Court held that the courts should be slow in granting an order of injunction to restrain the

realisation of such a bank guarantee. It has also been held by this Court in that decision that the existence of any dispute between the parties to the contract is not a ground to restrain the enforcement of bank guarantees or letters of credit. However, this Court made two exceptions for grant of an order of injunction to restrain the enforcement of a bank guarantee or a letter of credit: (i) fraud committed in the notice of the bank which would vitiate the very foundation of guarantee; and (ii) injustice of the kind which would make it impossible for the guarantor to reimburse himself.

11. Except under these circumstances, the courts should not readily issue injunction to restrain the realisation of a bank guarantee or a letter of credit. So far as the first exception is concerned i.e. of fraud, one has to satisfy the court that the fraud in connection with the bank guarantee or letter of credit would vitiate the very foundation of such a bank guarantee or letter of credit. So far as the second exception is concerned, this Court has held in that decision that it relates to cases where allowing encashment of an unconditional bank guarantee would result in irretrievable harm or injustice to one of the parties concerned. *While dealing with the case of fraud, this Court in U.P. Coop. Federation Ltd. v. Singh Consultants and Engineers (P) Ltd. [(1988) 1 SCC 174] held as follows: (SCC p. 197, para 53)*

> *The fraud must be of an egregious nature such as to vitiate the entire underlying transaction.*

(emphasis supplied)

While coming to a conclusion as to what constitutes fraud, this Court in the above case quoted (at SCC p. 197, para 54) with approval the observations of Sir John Donaldson, M.R. in Bolivinter Oil SA v. Chase

Manhattan Bank [(1984) 1 WLR 392 : (1984) 1 All ER 351 (CA)] , All ER at p. 352g-h which is as follows:

> *"The wholly exceptional case where an injunction may be granted is where it is proved that the bank knows that any demand for payment already made or which may thereafter be made will clearly be fraudulent. But the evidence must be clear, both as to the fact of fraud and as to the bank's knowledge. It would certainly not normally be sufficient that this rests on the uncorroborated statement of the customer, for irreparable damage can be done to a bank's credit in the relatively brief time which must elapse between the granting of such an injunction and an application by the bank to have it discharged."*

(emphasis supplied)

12. *In Svenska Handelsbanken v. Indian Charge Chrome [(1994) 1 SCC 502] it has also been held that a confirmed bank guarantee/irrevocable letter of credit cannot be interfered with unless there is established fraud or irretrievable injustice involved in the case. In fact, on the question of fraud, this decision approved the observations made by this Court in U.P. Coop. Federation Ltd. v. Singh Consultants and Engineers (P) Ltd. [(1988) 1 SCC 174]*

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14. *From the discussions made hereinabove relating to the principles for grant or refusal to grant of injunction to restrain enforcement of a bank guarantee or a letter of credit, we find that the following principles should be noted in the matter of injunction to restrain the encashment of a bank guarantee or a letter of credit:*

> ***(i) While dealing with an application for injunction in the course of commercial dealings, and when an unconditional bank guarantee or letter of credit is given or accepted, the beneficiary is entitled to realise such a bank guarantee or a letter of credit in terms thereof***

irrespective of any pending disputes relating to the terms of the contract.

(ii) The bank giving such guarantee is bound to honour it as per its terms irrespective of any dispute raised by its customer.

(iii) The courts should be slow in granting an order of injunction to restrain the realisation of a bank guarantee or a letter of credit.

(iv) Since a bank guarantee or a letter of credit is an independent and a separate contract and is absolute in nature, the existence of any dispute between the parties to the contract is not a ground for issuing an order of injunction to restrain enforcement of bank guarantees or letters of credit.

(v) Fraud of an egregious nature which would vitiate the very foundation of such a bank guarantee or letter of credit and the beneficiary seeks to take advantage of the situation.

(vi) Allowing encashment of an unconditional bank guarantee or a letter of credit would result in irretrievable harm or injustice to one of the parties concerned.”

(emphasis supplied)

11. Petitioner has not brought out any case of fraud or that the bank guarantee has been invoked by the Respondent outside the contract for which the guarantor is not liable. In view of the settled principle of law, injunction in the present case cannot be granted for the bank guarantees. If and when the matter is referred to arbitration and is placed before the DAB and if the DAB is not able to adjudicate the dispute, the matter will be

referred to arbitration and it is open for the Petitioner to claim damages if bank guarantee has not been invoked.

12. The second contention raised by the learned Senior Counsel appearing for the Petitioner is that the bank guarantee has not been invoked in terms of the contract. According to the learned Senior Counsel for the Petitioner, the bank guarantee could have been invoked only by an officer not below the rank of Chief Engineer. He states that the bank guarantees have been invoked by an officer who is below the rank of Chief Engineer. He draws the attention of this court to the communication dated 29.05.2026 issued by the Respondent herein to the HDFC Bank to contend that invocation of bank guarantee has been done by an officer of the rank of Assistant Financial Adviser/Const. and not by an officer of the rank Chief Engineer, as mandated in the Agreement. He placed reliance on the Judgment of the Apex Court in Hindustan Construction Co. Ltd. v. State of Bihar, **(1999) 8 SCC 436**, to buttress his argument.

13. Learned Counsel appearing for the Respondent has handed-over documents which contains the details of invoked bank guarantees. A perusal of the said documents shows that bank guarantees have been invoked by an officer of the rank of Chief Engineer only.

14. It is further pertinent to mention that a Coordinate Bench of this Court while deciding OMP (I) COMM. 220/2026 had only restrained the Respondents from imposing liquidated damages. There is no order restraining invocation of Bank Guarantees though the same was also sought for in the said petition.

15. In the opinion of this Court, there is no ground for grant of injunction under Section 9 of the Arbitration Act on the invocation of the Bank Guarantees in the facts of the present case.

16. Accordingly, the Petition is dismissed. Pending applications, if any, are also dismissed.

SUBRAMONIUM PRASAD, J

JULY 16, 2026
Rahul/JR