



2026:DHC:4699



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

Reserved on: 20th May, 2026
Pronounced on: 25th May, 2026

+ O.M.P.(I) (COMM.) 218/2026 & I.A. Nos. 14254/2026 &
14255/2026

KALPATARU PROJECTS INTERNATIONAL LIMITED

.....Petitioner

Through: Mr. Dayan Krishnan, Sr. Advocate
with Dr. Sunil Mittal, Mr. Malak
Bhatt, Mr. Anu Tiwari, Mr. Prithviraj
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versus

JSW INFRASTRUCTURE LIMITED

.....Respondent

Through: Mr. Darpan Wadhwa, Sr. Advocate
with Mr. Nakul Mohta, Ms. Misha
Rohatgi Mohta, Mr. Amer Vaid and
Ms. Sneha Menon, Advocates
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CORAM:**HON'BLE MS. JUSTICE MINI PUSHKARNA****JUDGMENT****MINI PUSHKARNA, J.**

1. The present petition has been filed under Section 9 of the Arbitration and Conciliation Act, 1996 ("Arbitration Act"), seeking *inter alia* relief for staying, restraining and injuncting the respondent from acting upon, giving effect to or enforcing the Letter dated 07th May, 2026, issued by the respondent, in so far as the said Letter seeks to levy liquidated damages



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against the petitioner for the period which was validly extended by the respondent earlier, without levy of liquidated damages. There is a further prayer to restrain the respondent from initiating any coercive steps against the petitioner, including, invoking the Bank Guarantee dated 18th July, 2025.

2. As per the case put forth by the petitioner, the present dispute arises out of a Contract Agreement dated 14th September, 2023 entered between the parties pursuant to the Letter of Intent dated 19th January, 2022 and Purchase Order dated 05th February, 2022, for execution of 131 Km Iron Ore Slurry Pipeline Project in the State of Odisha, wherein, the petitioner was required to complete the works within a stipulated period of 24 months, i.e., by 18th January, 2024. However, the work could not be completed within the original timeline on account of various circumstances. Thus, respondent issued Amendment no. 1 dated 27th December, 2023, whereby, the completion date was extended till 31st May, 2026, without levy of any liquidated damages.

3. Subsequently, three other Amendment Letters were issued by the respondent, and on 07th May, 2026, the respondent issued the Amendment No. 5 to the Purchase Order, whereby, substantial work was descoped from the petitioner's scope and the contract price was reduced from Rs. 240 crores to 123.20 crores, amounting to a reduction of nearly 50%. The said unilateral amendment was accompanied by a covering letter directing the petitioner to complete the balance work by 31st May, 2026, and simultaneously threatening risk purchase. In the same communication, the respondent also reserved rights to levy damages for alleged delay upto 31st May, 2026.

4. Thereafter, the respondent issued a Formal Notice of Risk Purchase



dated 15th May, 2026 invoking Clause 21 of the Contract Agreement, by way of which the respondent alleged that the petitioner has completed only 47% of the agreed contractual scope and further called upon the petitioner to forthwith remedy and/or rectify the default.

5. As per the petitioner, since the respondent failed to fulfil its obligations, the petitioner terminated the Contract Agreement *vide* its Letter dated 18th May, 2026.

6. Since the respondent is now seeking to invoke risk purchase, threaten levy of liquidated damages against the petitioner, and invoke the Bank Guarantee, the present petition has come to be filed.

7. On behalf of the petitioner, following submissions have been made:

7.1 The Amendment No. 1 dated 27th December, 2023 made by the respondent to the Purchase Order dated 05th February, 2022, explicitly states that liquidated damages charges would not be applicable for validity extension of the Purchase Order.

7.2 The said Amendment No. 1 dated 27th December, 2023 clearly evinces that the respondent itself understood and accepted that the delay in completion of the project was not attributable to the petitioner. Thus, the respondent categorically excluded liquidated damages for the entire extended period till 31st May, 2026.

7.3 Having granted extension of time upto 31st May, 2026 without levy of liquidated damages, the respondent is estopped from subsequently alleging that the very same delay was attributable to the petitioner. The respondent cannot resile from its earlier position on liquidated damages and now subsequently seek to revive liquidated damages for the same period by alleging contractor's default.



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7.4 This Court in the case of *Union of India Versus Chenab Construction Joint Venture, 2010 SCC OnLine Del 996*, has held that when an extension is granted to a contractor for completion of the contract without levy of liquidated damages, it is quite clear that the extension is not on account of any fault of the contractor.

7.5 Hindrances continued to persist at respondent's part and remained unresolved throughout the extended period even till the date of termination by the petitioner, as a result of which the petitioner's ability to execute the project was severely hampered and completion within the stipulated timelines was rendered impossible.

7.6 Once the respondent itself agreed not to levy any liquidated damages till 31st May, 2026, and descope the balance work even before the end of the tenure of the Contract Agreement, shows it is not entitled to levy of any liquidated damages. Thus, respondent ought to be restrained from encashing the Bank Guarantee dated 18th July, 2025 in the garb of unquantified liquidated damages.

7.7 The Supreme Court in the case of *Jindal Steel and Power Limited and Another Versus Bansal Infra Projects Private Limited and Others, 2025 SCC OnLine SC 1041*, has held that invocation of a bank guarantee would render the prayers in a petition under Section 9 of the Arbitration Act infructuous, and interim order restraining encashment must be maintained.

7.8 The respondent cannot rely upon the Minutes of the Meeting ("MoM") dated 04th September, 2025, wherein, it was noted that the petitioner was required to mobilise adequate manpower machinery and resources. The MoM dated 04th September, 2025 was never accepted and signed by the petitioner.



7.9 The submission of the respondent based on Clause 14.1.4 of the contract to deny and negate the claims of the petitioner as cost overrun is fundamentally misplaced and contrary to the contract.

8. *Per contra*, on behalf of the respondent, it has been submitted as follows:

8.1 The petitioner is liable to pay liquidated damages for delay in completion, and for incomplete and poor quality of work. Any extension granted by the respondent for completion of work shall not affect the right of the respondent to levy liquidated damages.

8.2 The petitioner cannot resist the levy of liquidated damages. In the present case, the petitioner having not completed the work, having terminated the contract before the due date and there being deficiency in the quality of work, the respondent is entitled to levy liquidated damages.

8.3 No injunction can be granted restraining the invocation of unconditional and irrevocable Bank Guarantee, which has been invoked by the respondent on 19th May, 2026, on account of the non-completion of work by the petitioner.

8.4 Injunction against the invocation of an unconditional Bank Guarantee cannot be granted except in a situation of egregious fraud or irretrievable injury, and in the present case fraud is not even pleaded.

9. Having heard learned counsels appearing for the parties, it is to be noted that while considering a petition under Section 9 of the Arbitration Act, this Court does not adjudicate upon the *inter se* disputes between the parties. The Court is only required to consider whether the petitioner has made out a *prima facie* case for securing interim orders.

10. It is to be noted that the contractual relationship between the parties



arises out of Letter of Intent dated 19th January, 2022, Purchase Order dated 05th February, 2022, and the Contract Agreement dated 14th September, 2023, whereby, the respondent appointed the petitioner for laying 131 Kms. length of Iron Ore Slurry Pipeline in the State of Odisha. The total contract value was Rs. 240 crores and the completion schedule was 24 months from 19th January, 2022.

11. In the present case, on 27th December, 2023, the respondent extended the completion date of work upto 31st May, 2026. The said extension was accepted and acted upon by the petitioner. However, subsequently *vide* Letter dated 04th February, 2025, the petitioner submitted a claim for extended stay cost and submitted a claim of Rs. 50.47 Crores. The same was rejected by the respondent on 20th February, 2025. Subsequently, from 07th July, 2025, the petitioner stopped the work.

12. The respondent by its communications dated 18th November, 2025, 20th April, 2026, 30th April, 2026 and Notice of Risk Purchase dated 15th May, 2026, informed the petitioner that since the petitioner had abandoned the work site and had completely stopped the work, the project was severely impacted and that the respondent was reserving its right to recover damages and would, in accordance with the terms of the Contract, proceed to have the remaining work completed through an alternate source at the cost and risk of the petitioner.

13. Accordingly, the respondent *vide* the impugned Letter dated 07th May, 2026, descope the petitioner's work and issued a revised purchase order.

14. The petitioner by various communications attributed the delay to the respondent and subsequently by Letter dated 18th May, 2026, the petitioner issued a notice of termination to the respondent, thereby, terminating the



Contract.

15. This Court notes that the petitioner has relied upon Amendment No. 1 dated 27th December, 2023, whereby, the time for completion was extended to 31st May, 2026, to submit that the respondent had agreed not to levy any Liquidated Damages (“LD”). However, it is to be noted that the said document by which extension was granted itself clearly mentions, “*LD applicable: YES*”. Further, the said document also clearly stipulates that the amendment is only for extending the validity period upto 31st May, 2026, with stipulation that, “*LD charges will not be applicable for validity extension of this existing order*”.

16. Thus, a *prima facie* reading of the aforesaid Amendment Letter shows that the amendment is only for the purposes of extending the validity period and that the LD charges will not be applicable for validity extension. Moreover, the purpose of grant of extension to a contractor is that the work under the contract is duly executed by the contractor under the extended period. Thus, if the petitioner were to complete the work within the extended period upto 31st May, 2026, no liquidated damages were liable to be imposed upon the petitioner for the extended period upto 31st May, 2026.

17. However, in the present case, the petitioner did not complete the work and terminated the Contract before the extended due date. Further, it has also come on record that the petitioner stopped the work on 07th July, 2025. Thus, the work is substantially incomplete, and disputes have arisen between the parties, wherein, both plead that the other party is responsible for the delay in execution of the work. All disputes and claims regarding the cause of delay in execution of the work and the respective liabilities and responsibility of the parties, would be subject matter of trial and would be



adjudicated in the arbitration proceedings.

18. However, for the purposes of the present case, this Court has to assess as to whether a *prima facie* case has been established by the petitioner for grant of an interim relief in its favour.

19. This Court is of the *prima facie* view that the extension of time for completion of the Contract without liquidated damages entailed execution of the work by the petitioner. In the absence of completion of the work and in view of the various disputes between the parties as regards execution of the work and termination of the contract by the petitioner, it cannot *prima facie* be said that the respondent would be barred from imposing liquidated damages.

20. Clause 18 of the Contract Agreement dated 14th September, 2023 between the parties itself stipulates imposition of liquidated damages in the following manner:

“xxx xxx xxx

18. LIQUIDATED DAMAGES

18.1 Time is the essence of this Agreement. If the Contractor fails to execute the Works within the time period stated in Clause 5 herein, then the Contractor shall be liable to pay to JSW, Liquidated Damages ("LD") as per the following rates on the basic Contract Price, for such time which shall elapse between the agreed date of completion of the Works and the date on which the Works are actually completed:

18.1.1 For Delay in Completion-

If the Contractor fails to complete the Works within the Completion Schedule or any extension granted to it by JSW, then the Contractor shall be liable for payment of LD amounting to 0.5% (half percent) of the basic Contract Price per week of delay for first 4 (four) weeks, thereafter 1% (one percent) of the basic Contract Price per week of delay, subject to the maximum of 7.5 % (seven point five percent) of the basic Contract Price.

18.1.2 For Quality of Work/Pipeline Laying Performance (Annexure-G):

In case of poor quality of work/non-compliance of quality of work as per relevant specifications/drawings (Annexure-G), the work shall be rejected outright and Penalty/LD shall be levied subject to maximum of 7.5% (seven point five percent) of the basic Contract Price.

18.2 Cumulative Liquidated Damage for Delay In Completion of Work & Poor Quality of Work /Pipeline Laying Performance (Annexure-G):



The cumulative Liquidated Damages for delay in completion of work and poor quality of work /Pipeline Laying Performance (Annexure-G) shall not exceed 10% (ten percent) of basic Contract Price.

- 18.3 Any extension granted by JSW for the completion of Works, for reasons not attributable to JSW, shall not affect the right of JSW to levy LD, at its discretion, which shall be determined in consultation with the Contractor.
- 18.4 Any of the above LD's arising out of this Agreement can be settled in part or in whole against the Performance Bank Guarantee, the Retention Money and/or against any amount payable to the Contractor by JSW. In case such amount is insufficient, Contractor shall forthwith pay the deficient amount within 15 (fifteen) days of written notice given by JSW. The applicability of LD for delay in completion of Works shall be determined after completion Works and until the LD determination is completed, JSW shall not withheld any amount from Contractor's RA Bills towards LD for delay.
- 18.5 The Parties hereto agree that the aforementioned Liquidated Damages are an agreed genuine pre-estimate of costs and the compensation contemplated and cannot be challenged on the ground of being unreasonable. Payment or deduction of Liquidated Damages shall in no way relieve the Contractor from carrying out the Works and discharging all its other obligations under the Agreement.
- 18.6 The aforesaid provisions relating to imposition of Liquidated Damages are without prejudice and notwithstanding to any other rights or remedies available to JSW under this Agreement.

xxx xxx xxx”

21. Perusal of the aforesaid clause and in particular Clause 18.3 clearly shows that the contract stipulates in categorical terms that any extension granted by the respondent for the completion of the works, for reasons not attributable to the respondent, shall not affect the right of the respondent to levy liquidated damages.

22. Besides, issue as regards levy of liquidated damages is a matter, which involves evidence and construction of the terms and conditions of the contract and the correspondence between the parties, which would have to be essentially decided by the learned Arbitrator. However, on *prima facie* consideration, it cannot be said that the respondent is not entitled to levy liquidated damages.



23. Even otherwise, the respondent would also remain entitled to claim damages and to prove and recover actual loss and damage suffered by it on account of termination of the contract by the petitioner. Whether or not the respondent is entitled to any damages would again be subject matter of adjudication before the learned Arbitrator. However, it cannot be said at this *prima facie* stage that the respondent is not entitled to recover any damages from the petitioner.

24. In this view of the matter, no injunction can be granted by this Court against recovery of damages by the respondent. The issue whether the respondent is entitled for recovery of damages or whether the recovery of damages by the respondent is in accordance with law and terms and conditions of the contract, shall be subject matter of the adjudication before the Arbitral Tribunal.

25. As regards the issue raised by the petitioner regarding invocation of the Bank Guarantee, it is to be noted that the Bank Guarantee dated 18th July, 2025 is unconditional and irrevocable. The relevant Clause of the said Bank Guarantee is reproduced as under:

“xxx xxx xxx

By this guarantee, We, the guarantor hereby irrevocably and unconditionally guarantee and bind ourself, our successors and assign to pay to the Purchaser, its successors without recourse, an amount upto Indian Rupees 15,61,58,592/- (Indian Rupees Fifteen Crore Sixty One Lacs Fifty Eight Thousand Five Hundred Ninety Two only) within 15 (fifteen) working days from the date of receipt of written demand, without demur or protest, and not withstanding any difference between the Purchaser and the Seller, after receipt of a letter signed by the authorized representative of the Purchaser stating failure on part of Seller to fulfil his obligation in accordance with the terms of the Contract.

xxx xxx xxx”

26. A plain reading of the said Bank Guarantee dated 18th July, 2025 shows that the same is unconditional and irrevocable in nature. The Bank



Guarantee clearly stipulates that within 15 working days from the date of receipt of written demand, without demur or protest, and notwithstanding any difference between the parties, i.e., the petitioner and respondent herein, the bank shall make payment under the Bank Guarantee. Thus, if the respondent invokes the Bank Guarantee on the ground that the petitioner herein has failed to fulfil its obligation in terms of the contract, the bank has irrevocably and unconditionally guaranteed payment of the amount under the Bank Guarantee.

27. Furthermore, it is evident that the Bank Guarantee dated 18th July, 2025 is an advance payment Bank Guarantee. In this regard reference may be made to Clause 15.1 of the Agreement dated 14th September, 2023 between the parties, which stipulates submission of advance payment guarantee, in the following manner:

“xxx xxx xxx

15.1 Advance Payment Guarantee: The Contractor shall submit an Advance Bank Guarantee for an amount equivalent to ten percent (10%) of the Contract Price within 7 (seven) days from date of execution of this Agreement. The amount equivalent ten percent (10%) of Contract Price shall be paid to the Contractor as an advance payment within 30 (thirty) days after the receipt of the Advance Bank Guarantee from the Contractor. The Advance Bank Guarantee shall be for equivalent amount of the advance paid. The advance payment shall be reduced in proportion to the value of work executed by the Contractor as certified by JSW. The total value of Advance Bank Guarantee shall be reduced every 3 months in proportion to the value of Works executed by Contractor as certified by JSW

xxx xxx xxx”

28. Thus, it is apparent that the Advance Bank Guarantee was furnished by the petitioner to secure the advance payment made by the respondent to the petitioner under the Contract. The advance so paid was liable to be progressively recovered and adjusted against the value of the work executed by the petitioner.



29. This Court takes note of the submission made by learned Senior Counsel appearing for the respondent that the petitioner having stopped the work and not completing the same, a substantial portion of the advance paid by the respondent remains unadjusted and unrecovered. The very purpose of an Advance Bank Guarantee is to protect the respondent in precisely such a situation.

30. It is well established that a Bank Guarantee is not concerned with the underlying dispute between the parties and that the beneficiary is entitled to realise the guarantee irrespective of any pending dispute. A Bank Guarantee is a separate contract, which obligates the bank to pay the guaranteed amount on demand. The disputes between the parties under the main contract, is no ground for issuing an order of injunction or to restrain the enforcement of a Bank Guarantee. Further, an injunction against the invocation of an unconditional Bank Guarantee cannot be granted except in a situation of egregious fraud or irretrievable injury.

31. Thus, in the case of *Gujarat Maritime Board Versus Larsen and Toubro Infrastructure Development Projects Limited and Another, (2016) 10 SCC 46*, the Supreme Court held as follows:

“xxx xxx xxx

12. An injunction against the invocation of an absolute and an unconditional bank guarantee cannot be granted except in situations of egregious fraud or irretrievable injury to one of the parties concerned. This position also is no more *res integra*. In *Himadri Chemicals Industries Ltd. v. Coal Tar Refining Co. [Himadri Chemicals Industries Ltd. v. Coal Tar Refining Co., (2007) 8 SCC 110]*, at para 14 : (SCC pp. 117-18)

“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.”

xxx xxx xxx”

(Emphasis Supplied)

32. Likewise, in the case of *U.P. State Sugar Corporation Versus Sumac International Limited*, (1997) 1 SCC 568, the Supreme Court held as follows:

“xxx xxx xxx

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.”

This Court set aside an injunction granted by the High Court to restrain the realisation of the bank guarantee.



xxx xxx xxx

15. Our attention was invited to a number of decisions on this issue — among them, to *Larsen & Toubro Ltd. v. Maharashtra SEB* [(1995) 6 SCC 68] and *Hindustan Steel Workers Construction Ltd. v. G.S. Atwal & Co. (Engineers) (P) Ltd.* [(1995) 6 SCC 76] as also to *National Thermal Power Corpn. Ltd. v. Flowmore (P) Ltd.* [(1995) 4 SCC 515] The latest decision is in the case of *State of Maharashtra v. National Construction Co.* [(1996) 1 SCC 735 : *JT* (1996) 1 SC 156] where this Court has summed up the position by stating: (SCC p. 741, para 13)

“The rule is well established that a bank issuing a guarantee is not concerned with the underlying contract between the parties to the contract. The duty of the bank under a performance guarantee is created by the document itself. Once the documents are in order the bank giving the guarantee must honour the same and make payment ordinarily unless there is an allegation of fraud or the like. The courts will not interfere directly or indirectly to withhold payment, otherwise trust in commerce internal and international would be irreparably damaged. But that does not mean that the parties to the underlying contract cannot settle the disputes with respect to allegations of breach by resorting to litigation or arbitration as stipulated in the contract. The remedy arising ex contractu is not barred and the cause of action for the same is independent of enforcement of the guarantee.”

The other recent decision is in *Hindustan Steelworks Construction Ltd. v. Tarapore & Co.* [(1996) 5 SCC 34 : *JT* (1996) 6 SC 295]

xxx xxx xxx”

(Emphasis Supplied)

33. In the present case, fraud is not even pleaded by the petitioner. Further, with respect to irretrievable injury, the petitioner has pleaded financial and commercial hardship. However, mere pleading of financial or commercial hardship or distress, does not meet the threshold for irretrievable injury or injustice, which is attracted only when restitution is impossible in law. However, no such case has been made out by the petitioner in the present case.

34. In this regard, reference may be made to the judgment of this Court in



the case of *Black Gold Resources Private Limited Versus International Coal Ventures Pvt. Ltd. and Another*, 2025 SCC OnLine Del 9231, wherein, while relying upon the judgment of the Supreme Court in the case of *Dwarikesh Sugar Industries Limited Versus Prem Heavy Engineering Work (P) Ltd. and Another*, (1997) 6 SCC 450, it has been held as follows:

“xxx xxx xxx

88. Irretrievable injustice, as an exception to the rule of non-interference with invocation/encashment of unconditional bank guarantee, is not fulfilled by mere pleading of loss or financial hardship. Any party who furnishes a PBG is at the risk of suffering its encashment, however, such a party also always has the legal remedy to sue for recovery due to wrongful encashment. Therefore, what the petitioner needed to prove was that it would be impossible for it to recover the PBG amount, if later the Arbitral Tribunal found the issue in its favour, as also observed by the Hon'ble Supreme Court in *Dwarikesh Sugar Industries Ltd. v. Prem Heavy Engineering Works (P) Ltd.*, especially in paragraph No. 22, which reads as under:—

“22. The second exception to the rule of granting injunction, i.e., the resulting of irretrievable injury, has to be such a circumstance which would make it impossible for the guarantor to reimburse himself, if he ultimately succeeds. This will have to be decisively established and it must be proved to the satisfaction of the court that there would be no possibility whatsoever of the recovery of the amount from the beneficiary, by way of restitution.”

xxx xxx xxx”

(Emphasis Supplied)

35. The judgment relied upon by the petitioner in the case of *Jindal Steel and Power Limited (Supra)* is distinguishable and not applicable in the present case. In the said case, the Supreme Court accepted the established legal position that Courts should refrain from interference with invocation of Bank Guarantees. However, since the *ad interim* order was in force for a long period and Arbitral Tribunal was constituted, and petition under Section 9 of the Arbitration Act was part-heard at the stage of final



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arguments, the Supreme Court did not interfere with the *ad interim* stay granted. Thus, the said judgment cannot be read as a precedent for proposition that in a petition under Section 9 of the Arbitration Act, invocation of Bank Guarantee ought to be stayed.

36. Reliance by the petitioner on the judgment of *Chenab Construction Joint Venture (supra)* is also misplaced. The observation made therein with regard to extension of time granted for completion of work without levy of liquidated damages, was in a petition under Section 34 of the Arbitration Act, wherein, evidence in that regard had been led before the learned Arbitrator. However, in the present case the stage for leading evidence on the said issue, is yet to come.

37. In view of the foregoing discussion, no case is made out for exercise of jurisdiction by this Court in the present proceedings.

38. Needless to state, nothing contained herein shall be construed as an expression of any opinion on the merits of the dispute that may be referred to the Arbitral Tribunal. The observations made herein are solely for the purpose of deciding the present petition.

39. The present petition is accordingly dismissed, along with the pending applications.

**MINI PUSHKARNA
(JUDGE)**

MAY 25, 2026/au/ak