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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
IN ITS COMMERCIAL DIVISION

COMM ARBITRATION PETITION (L) NO.31108 OF 2026

Gravit-Onsite-JV, India ... Petitioner

Vs.

1. The Municipal Corporation of Greater Mumbai
2. Chief Engineer (Sewerage Operation)
3. ICICI Bank ... Respondent

ATUL GANESH KULKARNI

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Mr. Vishwajit P. Sawant, Senior Advocate with Mr. Nikhil Patil, and Mr. Prabhakar M. Jadhav for the Petitioner.

Mr. Anoop Patil with Ms. Pooja Yadav i/by Komal Punjabi for the Respondent.

CORAM : AMIT BORKAR, J.

RESERVED ON : OCTOBER 21, 2026.

PRONOUNCED ON : OCTOBER 23, 2026

JUDGMENT:

1. By the present Petition filed under Section 9 of the Arbitration and Conciliation Act, 1996, the Petitioner seeks an order of injunction against Respondent Nos. 1 and 2, restraining them, either by themselves or through their servants, agents, officers, representatives or any other person acting on their behalf,



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from invoking the deed of counter guarantee dated 25 November 2022, bearing No. 0393NDLG0015826, or receiving any payment under it, to the extent of Rs. 43,40,400/-.

**2.** According to the Petitioner, the facts which have led to the filing of the present Petition are as follows. In November 2017, the Respondents invited bids by issuing Tender No. 7100104937. The Petitioner participated in the tender in collaboration with an Australian liner manufacturer and supplier, namely, M/s. Nuflow Technologies 2000 Pty, and its bid was accepted. On 10 May 2018, Respondent No. 2 issued a Letter of Acceptance in favour of the Petitioner., on 22 May 2018, the Petitioner furnished a bank guarantee bearing No. 5009IBGIS180392 for an amount of Rs. 43,40,400/- towards the Contract Deposit. The said bank guarantee was valid till 31 May 2026. On 28 June 2018, Respondent No. 3 issued a work order in favour of the Petitioner for an amount of Rs. 19,90,99,935/- for carrying out pipeline work of 1,725 metres. The work was required to be completed by 31 May 2021. It is the case of the Petitioner that, on 22 May 2018, it furnished a bank guarantee for an amount of Rs. 67,90,400/-, which was valid till 31 May 2026. The Petitioner commenced the work on 1 October 2018. However, by a letter dated 29 March 2019, the Respondents informed the Petitioner that the trial section lining carried out by M/s. Nuflow Technologies 2000 Pty had failed. According to the Petitioner, the work was delayed due to the COVID-19 pandemic and the Russia-Ukraine war. On 27 January 2022, the Respondents informed the Petitioner that the results of the trial lining and the samples were found to be in



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accordance with the technical specifications of the tender. The Respondents requested the Petitioner to commence the rehabilitation work. Subsequently, by a communication dated 18 April 2022, the Respondents informed the Petitioner that the Competent Authority had approved the extension of the contract period from 31 May 2021 to 31 December 2023. The Petitioner states that the work could not be completed within the extended period because traffic and ward permissions were not received in time.

**3.** On 30 November 2023, the Respondents issued a show-cause notice to the Petitioner regarding the delay in completing the work and called upon it to submit its reply. On 15 February 2024, the Petitioner submitted its reply, explaining the difficulties faced by it while carrying out the work. The Petitioner requested the Respondents to treat 146 days as non-working days and extend the completion period by 146 days, that is, from 31 December 2023 to 25 May 2024. It is stated that, on 12 February 2024, a letter was issued extending the period for completing the balance work till 25 December 2023. The Petitioner states that, by a communication dated 9 January 2025, it informed the Respondents that excavation of concrete roads could not be carried out because of the prohibitory directions issued by Respondent No. 1. The Petitioner states that, on 26 May 2025, it suggested the use of an alternative technology for completing the balance work, under which there would be no need to dig pits. The Petitioner sought permission to adopt the said technology. However, on 14 August 2025, the Respondents rejected the request to carry out the work



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without excavating the concrete roads by using the alternative technology., on 30 October 2025, the Petitioner requested the Respondents to obtain approval from the Municipal Commissioner for excavating the concrete roads and digging pits so that the work could be completed. On 25 February 2026 and 4 May 2026, the Petitioner informed the Respondents that it was ready and willing to complete the balance work in accordance with the terms of the contract and the 2017 Schedule of Rates. The Petitioner stated that the necessary materials were available in its stock and that it could complete the remaining work within the next six months. The Petitioner states that it had furnished a bank guarantee bearing No. 5009IBGIS180392 dated 22 May 2018 for an amount of Rs. 43,40,400/- towards the Contract Deposit, which was valid till 31 January 2027. In these circumstances, apprehending that the Respondents would wrongfully terminate the contract and invoke the bank guarantee, the Petitioner has approached this Court by filing the present Petition.

**4.** Mr. Vishwajit Sawant, learned Senior Advocate appearing for the Petitioner, submits that the Petitioner apprehends that the Respondents are taking steps to terminate the contract and invite a fresh tender for completing the balance work. He submits that, if the contract is terminated, the Respondents will invoke the deed of counter guarantee dated 25 November 2022, bearing No. 0393NDLG0015826, to the extent of Rs. 43,40,400/-. According to him, the delay in carrying out the lining work was caused by the Respondents and by circumstances which were beyond the control of the Petitioner. These included the failure to grant ward and



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traffic permissions in time. He submits that the progress of the work was affected by the COVID-19 pandemic during 2020 and 2021 and by the war between Russia and Ukraine, which resulted in a shortage of materials required for the lining work. The Petitioner had informed the Respondents about these difficulties from time to time.

**5.** Learned Senior Advocate submits that the Respondents did not grant permission to excavate the concrete roads and dig pits required for completing the work. According to him, the Petitioner was always willing to complete the work and had requested permission to use an alternative technology which would not require excavation of the concrete roads. However, the Respondents rejected that request. He submits that the Respondents had extended the contract period on two occasions after taking into consideration the difficulties faced by the Petitioner in carrying out the work. In these circumstances, according to him, there has been no fundamental breach of the contract on the part of the Petitioner. Learned Senior Advocate submits that the work has remained stopped because Respondent No. 1 has not granted permission to excavate the concrete roads, as those roads are still within the defect liability period. He contends that Respondent Nos. 1 and 2 are responsible for the delay caused on this account. According to him, the Petitioner furnished the bank guarantee on the understanding that the necessary permissions would be granted by Respondent No. 1 in time, enabling it to complete the work. Since the Respondents failed to grant such permissions, they should not be permitted to



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invoke the deed of counter guarantee dated 25 November 2022, bearing No. 0393NDLG0015826, to the extent of Rs. 43,40,400/-. He submits that the bank guarantee is affected by fraud because, when the tender was issued in 2018, the roads forming part of the project were not covered with concrete.

6. Mr. Sawant, learned Senior Advocate appearing for the Petitioner submits that where an injunction is sought to restrain invocation of a bank guarantee before termination of the contract, the usual requirements of establishing fraud or irretrievable injury need not be satisfied. He submits that the Petitioner has not committed any breach of the contract.

7. Without prejudice to the above submissions, learned Senior Advocate submits that the Petitioner had addressed letters dated 26 May 2025, 30 October 2025, 25 February 2026 and 4 April 2026 to the Respondents. Through these letters, the Petitioner brought the actual facts and difficulties to their notice and requested their intervention for resolving the issues. However, the Respondents did not take any steps to consider the difficulties pointed out in those communications. He submits that the Petitioner has complied with the dispute resolution clause contained in the contract, which provides for the settlement of disputes.

8. On the other hand, Mr. Anoop Patil, learned Advocate appearing for the Respondents, opposes the Petition. He submits that the present Petition filed under Section 9 of the Arbitration and Conciliation Act, 1996 (hereinafter referred to as "the Act"), is



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misconceived, is an abuse of the process of law and is not maintainable either in law or on the facts of the case. According to him, the Petition deserves to be dismissed at the outset for the reasons stated in the following submissions, apart from other grounds. Learned Advocate for the Respondents first raises an objection regarding the maintainability of the Petition, as the Petitioner seeks an injunction against the invocation and encashment of the deed of counter guarantee dated 25 November 2022, bearing No. 0393NDLG0015826, for an amount of Rs. 43,40,400/-. He submits that the law laid down by the Supreme Court repeatedly recognises that a bank guarantee is an independent contract between the bank and its beneficiary. Its enforcement does not depend upon the decision of disputes arising out of the main contract between the contractor and the beneficiary. According to him, a Court can restrain the invocation of an unconditional bank guarantee only in two exceptional situations. The first is where there is egregious fraud connected with the guarantee, which affects its very foundation. The second is where special equities exist because invocation of the guarantee would cause irretrievable injustice or harm which cannot be compensated by payment of damages. He submits that the Petitioner has failed to establish either of these exceptional circumstances in the present case.

**9.** Learned Advocate submits that the Petitioner's allegations regarding delay in obtaining permissions and the nature of the road surfaces relate only to disputes arising out of the main contract. Such disputes cannot be treated as egregious fraud.



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According to him, the Petitioner has neither pleaded nor established any facts showing that fraud was committed in issuing or invoking the guarantee. He relies upon Clause 1.9.1 of Section 11 of the Technical Specifications and submits that, under the contract, the responsibility for obtaining all necessary permissions rests with the contractor. He relies upon Serial No. 1 of Section 8, relating to the Bill of Quantities, under which the contractor is responsible for obtaining permissions from the ward office, Road Department, Traffic Police Department and other concerned authorities. He submits that the Petitioner cannot rely upon the alleged absence of permissions to prevent the Respondents from invoking the guarantee.

**10.** Learned Advocate for the Respondents submits that the Petitioner has failed to establish that invocation of the guarantee would cause irretrievable injustice. According to him, any financial loss suffered by the Petitioner on account of invocation of the guarantee can be calculated in monetary terms. The Petitioner can claim such loss and seek its determination in the arbitration proceedings which it proposes to initiate. Since the contract provides for arbitration to resolve disputes between the parties, the alleged financial loss cannot be treated as irretrievable harm. He submits that the present Petition is an attempt by the Petitioner to avoid the consequences of its contractual obligations and prevent the Respondent Corporation, which is a public body, from protecting its financial interests against the Petitioner's continued failure to complete the work.



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**11.** Learned Advocate next submits that the Petitioner has suppressed material facts regarding its own failure to perform the contract and has placed an incorrect picture before this Court. According to him, the Petitioner has failed to properly disclose that, despite the contract period of 24 months, excluding the monsoon period, commencing in 2018, and several extensions granted up to December 2024, only a small part of the work has been completed. He submits that the Petitioner has relied upon the Part Completion Certificate dated 18 November 2025 in a manner which suggests that the Respondents have accepted and approved its work. However, according to him, the Petitioner has not disclosed that the proposed certificate records that the work was terminated because of the Petitioner's defaults. He contends that the Petitioner has presented the facts selectively to obtain interim relief from this Court.

**12.** Learned Advocate for the Respondents submits that the Petitioner's claim that it was always ready and willing to complete the work is incorrect. According to him, the official records show long periods during which no work was carried out, even when the necessary permissions were available. He submits that the Petitioner is relying upon incomplete facts to obtain an unfair advantage. He points out that, between October 2018 and May 2021, the Petitioner was awarded two other works in addition to the work involved in the present Petition. According to him, the Petitioner failed to complete those works as well, despite extensions granted at its request. Both those contracts were eventually terminated with the approval of the Competent



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Authority. He submits that, in both cases, the bank guarantees furnished by the Petitioner were forfeited in accordance with the terms and conditions of the respective contracts. He relies upon these circumstances to contend that the Petitioner's failure to complete the present work cannot be explained only by the difficulties relating to permissions or other external circumstances.

**13.** Learned Advocate for the Respondents lastly submits that the Petitioner has failed to establish a prima facie case for grant of interim relief and that the balance of convenience is in favour of the Respondents. He points out that the work concerns the rehabilitation of an important public infrastructure project, namely, a sewerage rising main. According to him, the failure of the Petitioner to complete the work has already caused a delay of several years and has affected public interest. If an injunction is granted, the Respondent Corporation would be prevented from taking necessary steps to complete the remaining work through another contractor or by other appropriate means. It would be deprived of the financial security available to it under the contract. He submits that the likely loss to public funds and the public at large would be much greater than any monetary loss which the Petitioner may claim to suffer due to invocation of the guarantee. On these grounds, he seeks dismissal of the Petition.

## REASONS AND FINDINGS:

**14.** I have heard Mr. Vishwajit Sawant, learned Senior Advocate appearing for the Petitioner, and Mr. Anoop Patil, learned Advocate appearing for the Respondents. The main question which needs to



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be considered is whether the Petitioner has made out a case for stopping the Respondents from invoking the guarantee for Rs. 43,40,400/-.

**15.** At the beginning, it needs to be made clear that merely because a party approaches the Court under Section 9 of the Arbitration and Conciliation Act, 1996, fearing some action by the other party, an injunction cannot be granted as a matter of course. The Court has to see what action is apprehended, what the concerned document says, what material is produced and what harm may be caused if protection is not granted. Where the prayer is to stop invocation of a bank guarantee, the special legal principles applicable to such guarantees have to be kept in mind. The dispute about performance of the main contract and the obligation to make payment under an independent guarantee are two different matters. Normally, both cannot be treated as the same.

**16.** Mr. Sawant has argued that where an injunction is asked for before the contract is terminated, the Petitioner is not required to establish fraud or irretrievable injury in the usual manner. I am unable to accept this argument. Merely because the contract has not been terminated, the legal restrictions on stopping an unconditional bank guarantee do not disappear. The Court must look at the nature of the document and the conditions written in it. If the document creates an independent obligation to make payment when a demand is made, the party seeking an injunction must establish a recognised reason for stopping that payment. Merely saying that the main contract may be terminated does not



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create a separate exception to this rule.

**17.** In *U.P. State Sugar Corporation v. Sumac International Ltd.,* (1997) 1 SCC 568, the Supreme Court has explained that the Court can normally interfere with an unconditional bank guarantee only in exceptional circumstances. One such circumstance is fraud of a serious nature which affects the foundation of the guarantee. The other is where payment under the guarantee would result in irretrievable harm or injustice. The harm must be of such an exceptional kind that it can justify interference with the guarantee and with the normal course of commercial dealings. The same principles were explained again in *Himadri Chemicals Industries Ltd. v. Coal Tar Refining Company,* (2007) 8 SCC 110, and *Gujarat Maritime Board v. Larsen & Toubro Infrastructure Development Projects Ltd.,* (2016) 10 SCC 46. The Supreme Court has made it clear that a dispute relating to the main contract is not enough to stop payment under an independent bank guarantee.

**18.** The reason for applying these principles is that a bank guarantee is given as financial security to the person in whose favour it is issued. If the person who has furnished the guarantee is permitted to stop its invocation merely by raising a dispute about the performance of the main contract, the very purpose of taking the guarantee would be lost. This does not mean that the beneficiary can act against the conditions of the guarantee or that the Court can never examine a case of fraud. It only means that there must be convincing material to show that the case falls within a recognised exception before payment can be stopped. In



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*Standard Chartered Bank v. Heavy Engineering Corporation Ltd.* (2020) 13 SCC 574, the Supreme Court has explained that a clear case of fraud, irretrievable injustice or special equities must be pleaded and prima facie established by strong evidence before the Court normally interferes with invocation of a guarantee made according to its terms.

**19.** The principles explained by the Supreme Court in Kuldip Singh, are relevant to the apprehension raised by the Petitioner about the future action of the Respondents. In paragraph 6 of that judgment, the Supreme Court explained that a quia timet action is preventive in nature. It is taken to prevent a wrong which is feared to happen in future, before it takes place. Such relief cannot be granted merely because a person fears that some injury may happen later. The Court must be satisfied that the apprehended wrong is real enough and that preventive protection is justified in the circumstances. In paragraph 8, the Supreme Court observed:

> "In case of a future nuisance, a mere possibility of injury will not provide the plaintiff with a cause of action unless the threat be so certain or imminent that an injury actionable in law will arise unless prevented by an injunction."

**20.** The Court held:

> "but a strong case of probability that the apprehended mischief will in fact arise must be shown by the plaintiff."

**21.** The above judgment dealt with an apprehended nuisance and not with a dispute relating to a bank guarantee. Therefore, the subject matter of that case was different. However, the principle that a preventive injunction requires a real and sufficiently



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immediate threat is relevant to the present matter. This judgment does not support the argument of the Petitioner that the usual legal restrictions on granting an injunction against a bank guarantee will not apply because invocation is feared before termination of the contract.

**22.** I shall now examine the actual Deed of Counter Guarantee, because its conditions are important for deciding whether the Petitioner can get the relief which it is asking for. The document placed before the Court shows ICICI Bank Limited as the Guarantor and Bank of Baroda as the Lender. The Petitioner, GRAVIT ONSITE JV INDIA, is described as the Borrower. The document states that the Borrower has obtained credit facilities from the Lender and that the counter guarantee relates to the amounts outstanding under those facilities. Thus, from the document, it appears that the counter guarantee forms part of the financial arrangement between the two banks in connection with the credit facilities given to the Petitioner. According to the conditions of this document, it is not a guarantee directly given by the Petitioner to the Municipal Corporation. Clause (a) of the Deed of Counter Guarantee states that the Guarantor will be responsible for paying the outstanding amounts under the credit facilities if those amounts become payable, are incurred or are paid by the Lender. Clause (b) states that the Lender can claim those amounts from the Guarantor and that the Guarantor must repay the Lender within two business days, subject to the conditions and limits mentioned in the deed. More importantly, Clause (d) states that the Guarantor shall pay the amount “without any demur and



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forthwith on demand by the Lender for any amount due and payable by the Guarantor". Clause (e) states that payment must be made without referring the matter to the Borrower and even if the Borrower has raised a dispute against the Lender. These conditions show that the obligation of the Guarantor under this document is intended to operate separately from the disputes which the Borrower may have against the Lender. The deed states that the Guarantor will be liable as a principal debtor and not merely as a surety. These conditions have to be kept in mind while considering the request made by the Petitioner. The Court cannot proceed on the assumption that payment under the counter guarantee must be stopped until every dispute relating to the municipal contract is finally decided.

**23.** The Fourth Schedule mentions three bank guarantees issued by Bank of Baroda in favour of MCGM. The first entry refers to bank guarantee No. 5009IBGIS180392 for Rs. 43,40,400/-, where MCGM is shown as the beneficiary. The other two entries mention guarantees for Rs. 67,90,400/- and Rs. 72,61,700/-. Thus, the amount of Rs. 43,40,400/- claimed in the present Petition corresponds with one of the underlying bank guarantees mentioned in the schedule. However, the document which the Petitioner wants to prevent from being invoked is the Deed of Counter Guarantee issued by ICICI Bank in favour of Bank of Baroda. Both documents are connected with each other, but they remain separate documents and their conditions are separate. This difference between the two documents is important for deciding the relief asked for by the Petitioner. MCGM is shown as the



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beneficiary under the bank guarantee issued by Bank of Baroda. Bank of Baroda, on the other hand, is shown as the Lender and beneficiary under the counter guarantee issued by ICICI Bank. The Petition seeks to stop Respondent Nos. 1 and 2 from invoking the Deed of Counter Guarantee or receiving payment under it. However, the material placed before the Court does not show that either of these Respondents is the Lender who is entitled to make a demand under that deed. It does not explain how an order passed against Respondent Nos. 1 and 2 would prevent Bank of Baroda from making a demand under its separate arrangement with ICICI Bank. If the actual grievance of the Petitioner is that MCGM may invoke the underlying bank guarantee, then that grievance has to be examined with reference to the conditions of that particular guarantee and the relief sought against the concerned party. The two documents cannot be treated as though they are one and the same document.

**24.** The Fourth Schedule mentions 31 May 2026 as the expiry date and claim date of the underlying bank guarantee for Rs. 43,40,400/-. The counter guarantee states that it will remain valid until the earlier discharge contemplated under the deed or the stated expiry date of 31 May 2026. On the other hand, the Petitioner claims that the bank guarantee was valid until 31 January 2027. However, the documents placed before the Court do not contain any amendment or renewal showing that this particular counter guarantee was extended beyond 31 May 2026. This difference in the dates is important. If the Petition is being decided after 31 May 2026, the Petitioner must show from the



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operative document that the guarantee for which protection is sought is still valid or that its validity has been extended. From the material available, the Petitioner's statement that the guarantee was valid until 31 January 2027 does not establish that the counter guarantee was extended up to that date.

**25.** Even if the case of the Petitioner is considered on the assumption that the concerned guarantee is still valid, the allegation of fraud made by it does not satisfy the legal requirement. Mr. Sawant submits that there is fraud because the roads forming part of the project were not covered with concrete when the tender was issued in 2018. Even if this fact is accepted, it would mainly relate to the conditions in which the rehabilitation work had to be done and the permissions which were required for completing that work. This fact alone does not show that fraud was committed when the bank guarantee or the counter guarantee was obtained. It does not show that the person asking for payment is knowingly taking advantage of any fraud which affects the very foundation of the guarantee.

**26.** Merely using the word “fraud” is not enough. The Court has to see the facts on which the allegation is based and whether those facts are connected with the guarantee whose invocation is sought to be stopped. There must be material to show fraud of an exceptional nature. An ordinary dispute about the duties and responsibilities of the parties under the main contract cannot be treated as such fraud. No such material has been shown through the submissions or documents placed before the Court. Therefore, at this stage, the Petitioner's argument that the guarantee is



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affected by fraud cannot be accepted. The explanation given by the Petitioner for the delay in completing the work has to be considered separately. Mr. Sawant submits that the lining work could not be completed because the Respondents did not grant ward and traffic permissions in time. He relies upon the COVID-19 pandemic during 2020 and 2021, the war between Russia and Ukraine, the resulting shortage of materials required for the lining work and the refusal to permit excavation of concrete roads which were within the defect liability period. According to him, these difficulties were not within the control of the Petitioner and the Respondents were informed about them from time to time.

**27.** These submissions may be relevant for deciding who was responsible for the delay and what should be the result of the alleged breach of contract. It will be necessary to examine whether permissions were obtained in time, whether excavation was permitted, whether the required materials were available and how the outside circumstances affected the progress of the work. The two extensions of time relied upon by the Petitioner may be relevant for deciding whether the Respondents accepted that some difficulties existed and what effect those extensions had upon the obligations of the parties. However, these circumstances, by themselves, do not establish that invocation of the bank guarantee would amount to fraud or would cause irretrievable injustice.

**28.** The Respondents rely upon Clause 1.9.1 of Section 11 of the Technical Specifications and Serial No. 1 of Section 8 of the Bill of Quantities. According to them, it was the contractor's responsibility to obtain permissions from the ward office, Road Department,



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Traffic Police Department and other concerned authorities. The Petitioner disputes that it was responsible for obtaining the particular permission required for excavating the concrete roads. Its case is that the Respondents themselves did not permit the necessary excavation and rejected its proposal to use alternative technology.

**29.** From the material available, it is not necessary to finally decide which party was responsible for each period of delay. Such a decision would require the Court to examine the complete contract conditions, the exact permissions required, the correspondence exchanged between the parties and the circumstances in which the work remained incomplete. Even if the explanation of the Petitioner is accepted for the limited purpose of considering this Petition, the dispute would still relate to the performance of the main contract. Such a dispute does not automatically give a ground for stopping an independent financial guarantee. The Petitioner can establish its contractual rights in the appropriate proceedings. However, the mere existence of this dispute is not sufficient to stop payment under the counter guarantee.

**30.** Mr. Sawant has relied upon the documents at pages 417 to 424 and submitted that they show that the Petitioner was always ready and willing to perform its part of the contract. According to the Petitioner, its letters dated 26 May 2025, 30 October 2025, 25 February 2026 and the letter stated to be dated 4 April 2026 show that it repeatedly requested the Respondents to intervene and permit completion of the remaining work. The Petitioner states



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that the necessary materials were available in its stock and that the remaining work could be completed within six months. These communications are relevant because they show that the Petitioner was expressing its willingness to complete the remaining work and was asking the Respondents to resolve the difficulties. They cannot be ignored. However, the fact that such letters were written does not finally prove that the Petitioner was in a position to complete the work within the original period or the extended period. It does not prove that the entire delay was caused by the Respondents. The readiness and willingness of the Petitioner have to be considered along with the work completed, the dates fixed for completion under the contract, the permissions required, the progress of the work and the reasons why the remaining work could not be completed. These letters support the case put forward by the Petitioner. But, without material, they do not establish the exceptional circumstances which are required for stopping invocation of the guarantee.

**31.** The Respondents have relied upon the long period during which the work remained incomplete, even after the original contract period and the extensions granted. They have referred to the Part Completion Certificate dated 18 November 2025 and submitted that it records that the work was terminated because of the defaults of the Petitioner. They rely upon the alleged failure of the Petitioner to complete two other contracts, the termination of those contracts and the forfeiture of the guarantees furnished in those matters. These allegations cannot be treated as final proof that the Petitioner committed a breach of the present contract



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merely because the Respondents have made such allegations. Failure to complete another contract has to be kept separate from the question whether the Petitioner committed a breach of the contract involved in this Petition. The present contract must be examined on the basis of its own conditions and the evidence relating to it. At the same time, the submission of the Respondents that the work has remained incomplete for a long period is relevant. The Petitioner accepts that some work is still remaining and seeks time to complete it. Therefore, the dispute is not about whether the entire work has been completed. The real dispute is why the remaining work is still incomplete and which party should bear the consequences of the delay. These questions may have important consequences under the contract. However, they do not, by themselves, decide whether the counter guarantee can be invoked. I am not recording any final finding that the Petitioner alone is responsible for the delay. I am only holding that this disputed question of responsibility cannot,, justify the injunction sought in the present Petition.

**32.** The submission of the Petitioner that it was ready and willing to complete the work must be considered with reference to the time available for completing it. The work order was issued in June 2018, the work commenced in October 2018 and the original date for completion was 31 May 2021. According to the Petitioner, the contract period was extended up to 31 December 2023. However, difficulties prevented completion of the work. The later letters were written during 2025 and 2026, when the remaining work was still pending. These dates show that the dispute



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continued for a long period even after the original date for completion had passed. They do not, by themselves, prove that the Petitioner alone caused the delay. However, they do not establish that the Respondents are acting fraudulently merely because they intend to terminate the contract or invite a fresh tender for completing the remaining work. Whether the termination is justified and whether the Petitioner is entitled to time are matters which can be decided in the appropriate contractual or arbitral proceedings.

**33.** The Petitioner submits that the Respondents extended the contract period twice after accepting the difficulties faced by it. This submission needs to be considered. An extension may show that the employer knew about some difficulties or was willing to give additional time to the contractor. However, merely because an extension was granted, it does not mean that the employer accepted responsibility for every delay or gave up its rights under the contract. The effect of each extension will depend upon the conditions on which it was granted and the circumstances existing at that time. The material placed before the Court does not establish that, by granting these extensions, the Respondents agreed that the Petitioner would be protected against invocation of the guarantee in every situation. Therefore, the extensions granted by the Respondents cannot, by themselves, be treated as a sufficient ground for stopping invocation of the guarantee.

**34.** I shall now consider the submission of the Petitioner that it followed the procedure for settlement of disputes provided under the contract. The contract document provides that a dispute



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arising out of the contract may be referred, within seven days, to a committee constituted by the concerned Additional Municipal Commissioner. The committee is required to give its decision in writing within sixty days. An appeal against the committee's order may be filed before the Municipal Commissioner within seven days. Thereafter, the Municipal Commissioner is required to constitute a committee and give written notice of its decision within ninety days after being requested to do so. Clause 74, which is titled “Arbitration and Jurisdiction”, provides that disputes which remain unresolved may be referred to arbitration in the circumstances stated in that clause. The arbitration is to be conducted by a sole arbitrator in accordance with the Arbitration and Conciliation Act, 1996. The clause provides that, if possible, the work under the contract should continue during the arbitration proceedings. It states that payment due to the contractor should not be withheld unless such payment is the subject matter of the arbitration proceedings.

**35.** The letters written by the Petitioner requesting the Respondents to intervene are relevant because they show that the Petitioner brought its grievances to their notice. However, merely writing these letters does not establish that the Petitioner followed every stage of the dispute resolution procedure provided under the contract. The material placed before the Court does not show that the disputes were referred to the specified committee within the prescribed period, that the appeal procedure was completed or that a decision was given or arbitration was commenced in accordance with Clause 74. It is not necessary to hold that failure



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to complete every stage of the dispute resolution procedure automatically prevents a party from applying under Section 9. In appropriate circumstances, the Court has power to grant interim protection under the Act, including before or during arbitration. However, when the Petitioner relies upon its compliance with the contract to support its request for protection, the actual requirements of the dispute resolution clause must be examined. From the material available, the letters written by the Petitioner do not, by themselves, establish that the entire procedure for settlement of disputes under the contract has been followed.

**36.** The clause providing for continuation of the work, wherever possible, must be understood in its proper meaning. It shows that the parties intended that the work should not ordinarily stop merely because a dispute had arisen between them. Their rights could be decided through the agreed procedure while the work continued, wherever such continuation was possible. However, this clause does not mean that the employer must allow the contractor to continue the work indefinitely without considering the progress made or the other conditions of the contract. At the same time, the employer cannot ignore genuine difficulties faced by the contractor. The rights and obligations of both parties have to be examined under the contract. This provision supports the need to resolve the dispute through the agreed procedure, but it does not automatically give the Petitioner a right to stop invocation of the guarantee.

**37.** The statement of the Petitioner that it was always willing to complete the remaining work is not sufficient to establish



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irretrievable injustice. According to the Petitioner, the required materials are available in its stock and the remaining work can be completed within six months, provided the necessary permissions are granted. On the other hand, the Respondents point out that the work relates to a sewerage rising main, which is an important part of public infrastructure. According to them, the delay has already continued for several years and an injunction would prevent the Corporation from taking steps to get the remaining work completed through another contractor.

**38.** This submission of the Respondents has to be considered. A public authority responsible for maintaining essential infrastructure cannot be compelled to allow the work to remain pending indefinitely merely because the contractor offers to complete it at a later date. At the same time, the fact that the project concerns public infrastructure does not give the Respondents a right to act contrary to the contract or the law. The rights of both parties have to be considered according to the applicable conditions of the contract.

**39.** The balance of convenience must therefore be considered along with the nature of the guarantee and the injury claimed by the Petitioner. The Respondents have an interest in completing the rehabilitation work and protecting the financial security available to them under the contract. The Petitioner, on the other hand, wants to prevent wrongful invocation of the financial security and protect its contractual rights. However, the Petitioner has not shown that payment under the counter guarantee would make it impossible for it to pursue its contractual claims or that any loss



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caused by such payment could not be compensated through appropriate legal proceedings. If an independent guarantee is stopped without establishing the recognised legal grounds, the financial security on which the banks and the beneficiary rely would be affected. In these circumstances, the balance of convenience does not support the grant of the injunction sought by the Petitioner.

40. The allegation of irretrievable injustice has to be considered separately from an ordinary financial loss. The Petitioner fears that an amount of Rs. 43,40,400/- may be paid under the concerned guarantee. Payment of this amount may cause financial difficulty to the Petitioner. However, financial difficulty or payment of an amount which is disputed does not,, amount to irretrievable injustice. The Petitioner has not placed any material to show that, if the amount is paid, and it ultimately succeeds in arbitration, it would become impossible to recover that amount. It has not shown that the Respondents or the concerned beneficiary would be unable to meet a lawful claim for repayment. Merely saying that the amount may be paid before the contractual dispute is finally decided is not enough. The Petitioner must show that the injury would be of such an exceptional nature that it could not be properly remedied later. No such material has been placed before the Court.

41. The argument of the Petitioner that invocation must be stopped because the contract has not yet been terminated cannot be accepted as a general rule. Whether a guarantee can be invoked depends upon the conditions of that particular document. If the



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guarantee states that termination of the contract or some other event must take place before a demand can be made, that condition must be fulfilled. However, if the document provides for an independent demand for payment in the circumstances stated in it, the Court cannot add a condition which is not written in the document.

**42.** The copy of the Deed of Counter Guarantee placed before the Court provides for payment on demand, subject to its conditions and limits. It states that payment is to be made without referring the matter to the Borrower and even if disputes exist between the Borrower and the Lender. The material placed before the Court does not establish that termination of the municipal contract is a necessary condition for making a demand under this counter guarantee.

**43.** I am unable to accept the argument that the absence of permissions, rejection of the alternative technology and the proposed termination, when considered together, amount to special equities which are sufficient to stop invocation of the guarantee. These circumstances may be relevant for deciding whether the Respondents are justified in terminating the contract, whether the Petitioner is entitled to time and whether it can claim compensation for the difficulties faced by it. However, the question whether the termination is justified is different from the question whether the guarantee is valid or whether a demand for payment under it can lawfully be made. Unless the conditions of the guarantee make termination a necessary requirement for payment, the two questions cannot be treated as one. No material has been



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placed before the Court to show that the conditions of the counter guarantee prohibit a demand merely because the main contract is still in dispute.

**44.** There is one more difficulty regarding the nature of the action which the Petitioner apprehends. The Petitioner states that it fears that the Respondents will terminate the contract and invite a fresh tender. The Respondents rely upon the long delay in completing the work and contend that the contract has already been terminated because of the defaults of the Petitioner. The submissions refer to a Part Completion Certificate dated 18 November 2025. However, the actual termination order has not been reproduced in the material available for consideration. Therefore, from the documents before the Court, it is not possible to give a definite finding about the exact date of termination or whether a final termination order had been issued. This uncertainty does not help the Petitioner on the main question. Whether termination is likely to take place or has already taken place, the Petitioner must still establish a recognised legal ground for stopping the guarantee. The requirements of fraud or irretrievable injustice cannot be avoided merely by describing the Petition as one seeking preventive relief.

**45.** In *Kuldip Singh*, paragraph 8, the Supreme Court held that the mere possibility of future injury is not enough and that a strong probability of the apprehended harm must be shown. In the present case, the correspondence between the parties and the continuing dispute show that there is a serious disagreement regarding completion of the work and the consequences of the



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delay. The material may show that the Petitioner has reasons to apprehend action under the contract. However, it does not establish that the proposed invocation of the counter guarantee would be fraudulent or would cause irretrievable injury. Even if it is accepted that the apprehension of the Petitioner regarding invocation is real, it must separately satisfy the legal requirements applicable to injunctions against an independent bank guarantee. Those requirements have not been satisfied in the present case.

46. The documents placed before the Court create one more difficulty for the Petitioner. The counter guarantee shows ICICI Bank as the Guarantor and Bank of Baroda as the Lender. MCGM is shown as the beneficiary of the underlying bank guarantees mentioned in the Fourth Schedule. However, the prayer in the Petition seeks an injunction against Respondent Nos. 1 and 2 in relation to invocation of the Deed of Counter Guarantee. The material does not establish that either Respondent No. 1 or Respondent No. 2 is the party entitled to demand payment under that deed. Further, no amended or renewed document has been placed before the Court to show that this particular counter guarantee continued to remain valid after its recorded expiry date of 31 May 2026. These are important difficulties which cannot be ignored when the Court is asked to stop payment under a particular financial document. An order of the Court must relate to the actual rights and obligations created by that document and must operate against the party which is entitled to exercise the relevant right.



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47. For these reasons, I find that the Petitioner has failed to establish a case for granting an injunction under Section 9 of the Arbitration and Conciliation Act, 1996.

48. The Petition is accordingly dismissed. There shall be no order as to costs.

49. This decision is limited to the request of the Petitioner for interim protection against invocation of the specified counter guarantee. The rival claims regarding delay in completing the work, responsibility for non-completion, validity of termination and the Petitioner's claim for time or compensation shall be decided in the appropriate proceedings on the basis of the material placed before the competent forum.

(AMIT BORKAR, J.)



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