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

% Judgement reserved on: **19.11.2026**
Judgement delivered on: **26.11.2026**

\# **CNR No. DLHC010494902026**

\+ O.M.P.(I) (COMM.) 478/2026 & I.A. 29182/2026

TATA PROJECTS LIMITED .....Petitioner

versus

YAMUNA INTERNATIONAL AIRPORT PRIVATE LIMITED & ORS.
.....Respondents

Advocates who appeared in this case:

For the Petitioner : Mr. Rajshekhar Rao, Senior Advocate alongwith Mr. Aayush Jain, Mr. Arjit Oswal, Mr. Yashwant Gaggan and Mr. Ajay Sabharwal, Advocates.

For the Respondents : Mr. Ramji Srinivasan, Senior Advocate alongwith Mr. Paritosh Budhiraja, Mr. Rajesh Prasad, Ms. Kanika Arora, Ms. Shefali, Ms. Larika Khandelwal, Ms. Dishti Sharma, Mr. Rishi Raj Deswal, Mr. Abhinav Akash and Mr. Anuj Maheshwari, Advocates for YIAPL/ R-1.
Mr. Vishal Talsania, Mr. Nitin Tambwekar and Mr. Seshatalpa Sai Bhandaru, Advocates for R-3.
Mr. O.P. Gaggar and Mr. Sachindra Karn, Advocates for Union Bank/R-4. Mr. Yash Kotak, Standing Counsel for State Bank of India

CORAM:
HON'BLE MR. JUSTICE TUSHAR RAO GEDELA

J U D G E M E N T

TUSHAR RAO GEDELA, J.

1. The present petition has been filed under Section 9(1)(i) of the Arbitration

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and Conciliation Act, 1996 (hereinafter referred to as *"the Act"*) seeking the following prayers:

> *"(a) pass an ad-interim injunction, and an injunction pending the arbitral proceedings, restraining Respondent No. 1, its officers, agents and assigns from invoking, issuing or acting upon any invocation notice under, encashing, receiving payment under and/or appropriating the BGs set out in paragraph 2 above (including any extension or replacement of them), whether on account of claims settled under the Settlement Agreement dated 25.02.2026 or otherwise, and directing Respondent Nos. 2 to 4 not to release any payment under the BGs to Respondent No. 1;*
>
> *(b) in the event any BG has been encashed before this Petition is heard, direct Respondent No. 1 to restitute the entire encashed amount forthwith, with interest from the date of encashment, by re-depositing it with the concerned Respondent bank so that the BG is restored, or alternatively by depositing it with the Registrar General of this Hon'ble Court; pending the arbitral proceedings;*
>
> *(c) without prejudice to prayer (b), direct that any amount realised under any BG be kept in a separate interestbearing escrow account or deposited with this Hon'ble Court, and restrain Respondent No. 1 from appropriating, utilising, transferring or encumbering such amount pending the arbitral proceedings; or, in the alternative, direct Respondent No. 1 to furnish security for an equivalent amount, with the proceeds remaining subject to final accounting and to restitution witl1 interest, financing costs, bank charges and guarantee commission in terms of the arbitral award;*
>
> *(d) restrain Respondent No. 1 from demanding replenishment of the Performance Security under Clause 1.10.8, or treating its non-replenishment as a Contractor Event of Default, pending the arbitral proceedings;*
>
> *(e) direct status quo to be maintained in respect of the BGs until the constitution of the arbitral tribunal;*
>
> *(f) pass such other or further orders as this Hon'ble Court may deem fit and proper in the facts and circumstances of the case."*

BRIEF FACTS:

2. Respondent no.1, *i.e.,* Yamuna International Airport Private Limited awarded the petitioner, Tata Projects Limited, two EPC Contracts dated 08.06.2022 (hereinafter collectively referred to as "*the Contracts*") for Phase 1 of the Noida International Airport, namely: (i) Terminal and Associated Works

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(Contract No. YIAPL/2022/06/Projects/04) for a contract sum of Rs.1892.42 Crore (hereinafter referred to as "*EPC-1 Package*") and (ii) Airside, Landside, Utilities and Associated Works (Contract No. YIAPL/2022/06/Projects/05) for a Contract Sum of Rs.2689.60 Crore (hereinafter referred to as "*EPC-2 Package*"), with the time for completion being 900 days from the Notice to Proceed, *i.e..,* 23.11.2024. During the execution of the Contracts, disputes arose between the petitioner and respondent no.1, with the petitioner seeking claims of Rs.1,112.87 Crore, while respondent no.1 seeking Rs.436.72 Crore. The petitioner and respondent no.1 sought to bring quietus to the said disputes by executing a Settlement Agreement dated 25.02.2026 (hereinafter referred to as "*the SA*"), which culminated into a one time settlement amount of Rs.500 Crore to be paid by respondent no.1 to the petitioner as per the terms of the SA.

3. During the currency of and under the terms of the Contracts as also the SA, the petitioner furnished various Bank Guarantees, including Performance Bank Guarantees, Advance Bank Guarantees and Retention Bank Guarantees (hereinafter referred to as "*BG*", "*PBG*", "*ABG*" and "*RBG*", respectively) issued by the State Bank of India, IDBI Bank Limited and Union Bank of India, *i.e.,* proforma respondents no.2 to 4. The details of the said Bank Guarantees are reproduced hereunder:

BG No.	*BG Start Date*	*Validity Date*	*BG Amount (INR)*	*Bank Name*	*BG Type*
1731322BG0000579	*07-Jun-22*	*30-Sep-27*	*94,62,10,675*	*SBI*	*PBG*
1731322BG0000581	*08-Jun-22*	*30-Sep-27*	*1,34,47,99,325*	*SBI*	*PBG*
230126IBGA00003	*25-Jan-23*	*30-Apr-26*	*28,38,63,202*	*IDBI Bank*	*ABG*
230126IBGP00348	*22-Sep-23*	*31-Dec-26*	*1,07,36,89,074*	*IDBI Bank*	*RBG*

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230126IBGP00349	*22-Sep-23*	*31-Dec-26*	*83,39,86,519*	*IDBI Bank*	*RBG*
49580GI1D0011326	*16-Feb-26*	*31-Dec-26*	*1,00,00,00,000*	*Union Bank*	*ABG*

4. Pertinently, under the SA, the deadline for the completion of the milestone KPM-04 was extended by 614 days to 31.07.2026 with a further grace period of 60 days till 29.09.2026, however, the petitioner failed to adhere to the said timeline of KPM-04 under the SA. As such, respondent no.1 proceeded to encash the BG Nos.1731322BG0000579, 1731322BG0000581 & 49580GIID0011326 for a total amount of Rs.329.10 Crore, while BG Nos.230126IBGP00348 & 230126IBGP00349 are yet to be invoked and encashed. So far as BG No.230126IBGA00003 is concerned, that already stands expired.

5. Aggrieved by the encashment of the BGs and apprehending the invocation and encashment of the two RBGs by respondent no.1, the petitioner has approached this Court with the present petition under Section 9 of the Act, seeking restitution of the amounts already encashed and restricting respondent no.1 from invoking and encashing the RBGs yet not encashed, pending initiation of arbitration proceedings.

CONTENTIONS OF THE PETITIONER:

6. Opening for the petitioner, Mr. Raj Shekhar Rao, learned senior counsel while giving a brief background of the dispute submitted as under:

6.1. Learned senior counsel would submit that the total project cost, which is the subject matter of the present petition, cumulatively, was Rs.4,582.02 Crore. He would submit that on account of outstanding payments, disputes had arisen whereby the petitioner had raised claims of approximately Rs.1,112.87 Crore and respondent no.1 had raised counter-claim to the extent of Rs.436.72 Crore. In order to amicably resolve the

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said issues, parties had entered into the SA dated 25.02.2026 whereby and whereunder the petitioner agreed to complete the remaining works by 31.07.2026 extendable upto another 60 days on the assurance that the respondent would release Rs.500 Crore in various tranches as per the timelines provided in the said Settlement Agreement.

6.2. He would submit that while the respondent was to release a sum of Rs.200 Crores to the petitioner unencumbered, however, it released only Rs.100 Crores. He submitted that the respondent did not release any further amounts. He submitted that between June 2026 till October 2026, the petitioner spent from its own pocket a sum of Rs.167.68 Crores while there was no necessity to do so as per the SA. He submitted that while the respondent has unlawfully invoked and encashed three bank guarantees (two PBGs and one ABG) on the false ground of delay in adhering to the schedule drawn up in the SA, all this while the respondent retained the remaining sum from the petitioner which was to be released from time to time. According to learned senior counsel, the respondent cannot, on the one hand refrain from release of the lawful dues and on the other falsely claim that the petitioner has not complied with the milestones in the SA.

6.3. Apart from the above, learned senior counsel would also submit that rather than releasing the remaining Rs.100 Crores out of the first tranche of Rs.200 Crores, the respondent unlawfully and illegally encashed the ABG worth Rs.100 Crores. He would submit that apart from the encashment of Rs.100 Crores ABG, the respondent went ahead and encashed PBGs worth Rs.229 Crores too. This was without any notice to the petitioner. He submitted that this financial deprivation forced the petitioner to infuse funds worth Rs.167.68 Crores from its own pocket leaving the petitioner cash strapped and unable to adhere to the timelines

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prescribed in the SA. His contention was that once the respondent itself violated the conditions of the SA and deprived the petitioner of the requisite funds, it cannot be heard to raise the bogey of the petitioner missing out the milestones. That apart, learned senior counsel would contend that apart from the financial deprivation the unlawful encashment of PBGs and ABG led to great financial distress, disabling the petitioner from completing the works within the stipulated timelines.

6.4. Yet another contention raised by the learned senior counsel was in respect of the terms of the SA. He would contend that once the SA crystallized the release of amounts to the extent of Rs.500 Crore worth of remaining works, the respondent no.1 cannot justify or seek invocation of BGs worth Rs.549 Crore in all.

6.5. In order to establish *malafide* and illegality on the part of the respondent, learned senior counsel would refer to the ABG of Rs.100 Crore furnished by the petitioner only and only in respect of the SA, which too was encashed by the respondent. In order to substantiate the aforesaid contention, learned senior counsel referred to the ABG in question. Learned senior counsel submitted that in terms of the SA, the petitioner requested for release of an *ad-hoc* advance of Rs.100 Crores, however, respondent no.1 insisted that the petitioner furnish a bank guarantee to secure the proposed advance. He would submit that it was only on that count that the ABG of Rs.100 Crores was furnished by the petitioner. He would submit that this ABG was to be released/returned back to the petitioner once the ad-hoc advance was fully recovered. He would submit that the said advance was in fact fully recovered by the respondent yet it unlawfully retained the ABG and fraudulently invoked and encashed the same on 09.10.2026.

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6.6. Further in the aforesaid context, learned senior counsel would submit that while respondent no.1 in its e-mail dated 22.03.2026 admitted that the ABG was in respect of the one time settlement in terms of the SA, however, refused to return on a completely unrelated pretext that there was unsecured advance of Rs.180 Crores and that it had become an "audit issue" for respondent no.1. He would contend that the said ABG was conditional as incorporated by reference the letter dated 14.02.2026 of respondent no.1 acknowledging that "*bank guarantee shall be enforceable and invocable at the sole discretion of YIAPL in the event of non-recovery of the advance*". Thus, the encashment of this ABG after having adjusted the entire *ad-hoc* advance of Rs.100 Crores distinctly established *malafide*.

6.7. Referring to the said ABG, particularly Clause 5, which stipulated that the ABG "*shall remain in full force and effect till 31.05.2026 or until the expiry of 28 days from the date which the full amount of the Advance Payment shall have been repaid, whichever is earlier*", learned senior counsel would submit that clearly the ABG was deemed to have expired within 28 days of the recovery of the advance sum of Rs.100 Crores. Yet, contrary to the understanding and the SA, respondent no.1 wrongly and illegally encashed the same.

6.8. Learned senior counsel had emphasized the aforesaid submissions and contentions solely to demonstrate to this Court the illegality, high handedness and the *malafide* behind the actions of the respondent no.1. Learned senior counsel emphatically urged that the wrong done or the illegality committed by respondent no.1 ought to be rectified and a positive mandatory direction be passed against the respondent no.1 to deposit the same before this Court or release it to the petitioner in order to

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complete the remaining works as per the SA. For the proposition that such directions can be passed by this Court, he referred to and relied upon the judgement of ***UP State Cooperative Federation Ltd. v. Singh Consultants and Engineers****, (1988) 1 SCC 174* (para 28).

6.9. In order to demonstrate that the actions of the respondent of encashment of BGs is completely wrongful and illegal, learned senior counsel referred to Clause 1.10.8 of the Conditions of Contract which permit invocation of Performance Security as "damages, if applicable" only upon the occurrence of a Contractor Event of Default or the failure of the contractor to perform its obligations. He would contend that this Clause cannot be read in isolation from Clause 44.2 which prescribes various circumstances in which respondent no.1 may have a remedy to the Performance Security furnished by the petitioner. Inviting attention to Clause 44.2.2, learned senior counsel would submit that respondent no.1 was necessitated to first issue a preliminary notice identifying the specific Contractor Event of Default within items 1.11 to 1.22 of Part A to Schedule 7 which may be alleged to have occurred. Learned senior counsel strenuously emphasized that no such notice was issued under Clause 44.2 by respondent no.1 while invoking and encashing the ABG of Rs.100 Crore furnished purely against the ad-hoc advance payment of Rs.100 Crore which was already recovered by the respondent. He urged that the illegality of action is established by the undeniable fact that while the ABG of Rs.100 Crore was encashed on 09.10.2026, a purported preliminary notice was claimed to have been issued by respondent no.1 on 12.10.2026. However, intriguingly according to learned senior counsel the communication dated 12.10.2026 did not even identify any event of default of the contractor amongst the items of Part A to Schedule 7.

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6.10. Thus, according to learned senior counsel, the encashment of ABG worth Rs.100 Crore furnished under the SA is clearly illegal, unlawful, *malafide* and needs to be restituted by the respondent no.1.

6.11. The other limb of the argument of Mr. Rao, learned senior counsel was with respect to the non-entitlement to encash or appropriate Rs.329.10 Crores of BG. He would submit that under Clause 2 of the SA dated 26.02.2026, respondent no.1 was entitled only to impose liquidated damages (hereinafter referred to as "*LD*") for KPM-04 (completion of the project) only if the petitioner failed to achieve the KPM-04 within 60 days after 31.07.2026 i.e. by 29.09.2026. This too was at the reduced rate of 0.15% of the Contract sum per week. He would forcefully contend that under no circumstances, respondent no.1 could encash a sum of Rs.329.10 Crore for a delay, if at all, from 29.09.2026 to 09.11.2026. He also emphasized that in terms of the SA, LD could not have been imposed if the petitioner was entitled to a further extension in terms of the provisions of the Contract. He would submit that the SA itself also clearly prescribed that it was in addition to the terms of the Contract and thus, the entitlement of the petitioner to seek extension of time was still saved and available under the Contract itself. Thus, even on that count too, the BGs, that too worth Rs.329.10 Crore could not have been encashed at all. This action of respondent no.1 is completely contrary to the established canons of Contractual Law and violative also of the terms of the SA.

6.12. In addition to the aforesaid, learned senior counsel, while assuming without admitting respondent no.1's case that the delay is attributable to the petitioner and that the LD was to be levied from the revised KPM-04 *i.e.,* 31.07.2026, contended that the respondent no.1 would be entitled only to Rs.64.45 Crores as LD. In support of his submission, learned

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senior counsel relied on the following calculations:

Contract Sum (INR) (A)	***Rate of Liquidated Damage (B)***	***Liquidated Damages per Week (INR) (C)***	***Alleged Delay (in Weeks) (D)***	***Maximum Liquidated Damages (INR) (E)***
		(C)= Ax xB/100		
4,236.1 crores (including taxes)	*0.15% of the Contract Sum per week*	*6.35 crores*	*10.14 weeks****	*64.45 crores*

****Assuming calculation from 31.07.2026 (Revised KPM-04 Date) until 09.10.2026 (Date of Encashment)*

6.13. According to learned senior counsel, the aforesaid calculations are based on the documents executed between the parties and therefore, invocation and encashment of BGs aggregating to Rs.329.10 Crore is wholly disproportionate. He emphatically urged that this fact gathers significance since respondent no.1 till date has failed to communicate the calculations or the basis on which it has appropriated Rs.329.10 Crore. According to him, this would amount to "unjust enrichment".

6.14. Learned senior counsel would submit that the stand taken by respondent no.1 is wholly inconsistent. While in the reply respondent no.1 contends that the BGs were encashed in exercise of respondent no.1's express contractual right under Clause 1.10.8, however, in letter dated 06.11.2026, respondent no.1 has claimed that Rs.229.09 Crores has been encashed under the Clause 1.10.8 and so far as ABG of Rs. 100 Crores is concerned, respondent no.1 categorically put the stand that the said ABG has been encashed on account of huge advances to the tune of Rs.120 Crores which were extended and of which Rs.21 Crores still remain outstanding. According to learned senior counsel, the only conclusion that

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can be withdrawn is, of a clear admission by respondent no.1 that the encashment of BGs is not towards "damages" in terms of Clause 1.10.8. It was emphatically urged that there was no occasion for respondent no.1 to encash the said ABG as it was already recovering the advance amount from the RA Bills of the petitioner. As a matter of fact, it is stated that between September 2025 to August 2026, respondent no.1 had already recovered Rs.144 Crore (approximately) from the bills of the petitioner.

6.15. Learned senior counsel next argued that the invocation of the ABG worth Rs.100 Crore is not only illegal and wrongful but amounts to double recovery by respondent no.1. He would contend that the documentary trail clearly indicates that the ABG was furnished only on account of the terms of the SA and against the release of an *ad-hoc* advance of Rs.100 Crore. Once the said sum was recovered by the respondent no.1, ordinarily, the said ABG ought to have been released to the petitioner. On the one hand, respondent no.1 advanced only a sum of Rs.100 Crore against the first tranche of Rs.200 Crores, on the other the respondent no.1 instead of releasing Rs.100 Crores more in terms of the SA, encashed the ABG of Rs.100 Crores, resulting in double recovery by respondent no.1. According to learned senior counsel, under such circumstances, it does not lie in the mouth of the respondent no.1 to falsely contend non-adherence to the timelines specified in the SA by depriving the petitioner of necessary and requisite funds.

6.16. He would submit that contrary to the clear understanding of the parties that the *ad-hoc* advance of Rs.100 Crores was being released against an ABG pending the signing of the SA, despite the recovery of the *ad-hoc* advance, respondent no.1 illegally and unlawfully encashed the ABG. He referred to a number of exchanges between the parties, copies

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whereof were furnished over the Bench to indicate the clarity of understanding between the parties whereunder respondent no.1 necessarily had to release the ABG of Rs.100 Crore back to the petitioner once the *ad-hoc* advance payment of Rs.100 Crore was recovered. Contrary to the said understanding respondent no.1 under the said correspondences made certain false pretexts to retain and direct the petitioner to extend the said ABG from time to time. All this correspondence and the submission were put forward by learned senior counsel solely to demonstrate and establish not only illegality and unlawfulness of the action of the respondent no.1 but also to demonstrate the *malafide* behind such actions. It is in these circumstances that learned senior counsel would urge that not only the encashment of Rs.329.10 Crore was unlawful and illegal, more particularly, the encashment of the ABG of Rs.100 Crore is completely bereft of any justification whatsoever. He urged that it is this action which tantamount to irretrievable injury and constitutes special equity based whereon this Court may pass suitable directions against respondent no.1 to deposit Rs.100 Crores in this Court or restitute the same to the petitioner in order to enable it to complete the remaining works.

6.17. In order to establish a higher pedestal of strong *prima-facie* case, learned senior counsel would refer to a number of correspondences exchanged between the parties in relation to the remaining works to be executed in terms of the SA. Some of such instances are recorded hereunder:

(a) Respondent no.1's emails dated 18.02.2026 and 27.02.2026, seeking modifications to Immigration and BOI facilities at Pier L2 and Headhouse L0 without issuing a Change Order;

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(b) Petitioner's letter dated 06.07.2026 informing respondent no.1 that the petitioner had executed additional works beyond the original scope of the Contracts according to respondent no.1's instructions; and

(c) Petitioner's letter dated 10.0.2026 objecting to respondent no.1's proposal to recover the cost of false ceiling work in General Offices 12 and 13 at OBW, from its RA bills.

6.18. Predicated on the above instances learned senior counsel would stoutly urge that contrary to the provisions of the SA to freeze the balance works to those upto 31.12.2025, the respondent no.1 required the petitioner to complete the aforementioned extra works which caused immense delay which was squarely attributable to the respondent no.1 alone. Thus, according to him, attributing delay solely to the petitioner and then falsely invoke BGs on such frivolous and unjustified basis clearly contributes to a strong prima facie case in favour of the petitioner.

6.19. As the last limb, learned senior counsel would submit that the petitioner undeniably has, so far as EPC-1 Package is concerned, achieved 93.5% completion and so far as EPC-2 Package is concerned, achieved 95.1% completion. So far as the value of works executed under each package is concerned, learned senior counsel would submit that out of Rs.1686 Crores for EPC-1 Package works worth Rs.1543.6 Crores have been achieved and for EPC-2 Package out of Rs.2428.9 Crores works worth Rs.2249.10 Crores have been achieved. Thus, according to learned senior counsel the impression sought to be given by respondent no.1 as if petitioner has miserably failed to adhere to the timelines is demonstrably erroneous, incorrect and vexatious. He would emphatically submit that the petitioner being an entity of high repute has in fact, achieved all major

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milestones under EPC-1 Package and EPC-2 Package. In that, the Aerodrome License was received from DGCA on 06.03.2026; Provisional Airport Completion Certificate issued by Noida International Airport Limited; inauguration of Airport on 28.07.2026 and the commercial operations having commenced on 15.06.2026. In short, learned senior counsel by referring to the afore-noted submissions would contend that such unlawful and illegal actions of encashment of bank guarantees in such circumstances are demonstrably illegal, unlawful and *malafide*. Such actions clearly constitute "special equities" tantamounting to irretrievable injustice providing necessary reasons and justifications for this Court to pass interim protective directions as prayed for.

6.20. Learned senior counsel relied on the Supreme Court's judgement in ***Hindustan Steelworks Construction Ltd. v. Tarapore & Co.*** reported in *(1996) 5 SCC 34* (para 16) as well the judgement of a Division Bench of this Court in ***Hindustan Construction Co. Ltd. v. National Hydro Electric Power Corporation Ltd.*** reported in *(2020) SCC Online Del 1214* (para 21)

CONTENTIONS OF RESPONDENT NO.1

7. Mr. Ramji Srinivasan, learned senior counsel at the outset strenuously urged that a Court while exercising powers under Section 9 of the Act, has a highly limited and circumscribed power to grant injunctive relief, particularly in cases where such injunctive relief is sought against invocation of bank guarantees. He would submit it is trite that a BG is an independent contract between the bank and the beneficiary of such BG and has no nexus or relation even remotely, to the contract between two parties. He would emphasize that Courts would be loath to interfere with such invocation and it is not within the jurisdiction of a Court to interdict such action premised on a dispute in the realm

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of contractual terms executed between the parties. The Court, in such circumstances, according to him, can or may interfere only if it is a case of an established egregious fraud or irretrievable injustice to one of the parties to the Contract. According to learned senior counsel, the BGs which have been invoked are unequivocal and unconditional. Petitioner has not pleaded egregious fraud, which leaves only irretrievable injustice. Learned senior counsel would stoutly contend that even if the case of the petitioner is believed in its entirety, then too, no such case of irretrievable injustice is at all made out. Given such background, he would submit as under:

7.1. Learned senior counsel would, while referring to the correspondences relied upon by the petitioner, contend that it is an admitted case of the petitioner itself that the timelines/schedule provided in the SA have not been adhered to. Learned senior counsel does not dispute the facts leading to execution of the SA, however, contends that it was the petitioner which conducted the survey of the remaining works and post such evaluation had assured of completing the remaining works by 31.07.2026. It was on such assurance, that an *ad-hoc* advance of Rs.100 Crores was released by respondent no.1. Contrary to what was urged by the petitioner, learned senior counsel would contend that the release of the balance amounts in various tranches upto Rs.500 Crores was subject to achieving milestones prescribed in the SA. Having regard to the undisputed and admitted delays and failure in achieving such milestones, there was no contrary obligation on the respondent no.1 to release any amounts at all. Yet, at the insistence and assurance of the petitioner, respondent no.1 further extended the timeline by another 60 days i.e. upto 29.09.2026. He further submitted that the respondent no.1 infact released a total amount of Rs.243 Crore. However, despite repeated extensions, the

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petitioner miserably failed to adhere to the timelines and complete the project. He would submit that even till date the project is lying incomplete and petitioner has not been able to comply with any of the timelines specified in the SA.

7.2. In the aforesaid context, learned senior counsel would contend that it is the abject non-adherence to the timelines prescribed in the SA that gave justifiable reasons and entitlement to respondent no.1 for encashment of ABGs and PBGs which cumulatively fell within the ambit of "Performance Security". Referring to the definitions clause of the Contract, learned senior counsel would insist that performance security would collectively imply PBG, ABG, RBGs and parent company guarantee and any other form of security in accordance with the Contract.

7.3. In order to substantiate the right and entitlement of respondent no.1 to invoke and encash performance security which includes PBGs, ABGs and RBGs, learned senior counsel referred to Clause 1.10.8 which consciously used the words "Performance Security" as opposed to individual reference to PBGs, ABGs or RBGs. In other words, learned senior counsel would contend that Clause 1.10.8 of the Contract provided respondent no.1 with an overarching authority and entitlement across the Contract as also the SA to invoke and encash Performance Security upon occurrence of a Contractor Event of Default and more importantly, the failure by the Contractor to perform its obligations to the satisfaction of the employer. Thus, according to learned senior counsel, the invocation of all or any of the Performance Security is solely within the contractual terms and cannot be questioned by the petitioner on the anvil of some disputes regarding performance of the Contract or the SA. He would urge that Clause 44 of the Contract is a separate remedy which enures to the

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benefit of respondent no.1 in the event of occurrence of a Contractor's Event of Default. Thus, the action taken by the respondent no.1 cannot be assailed by the petitioner in the manner stated in the petition, muchless could it object to such invocation on the grounds of irretrievable injustice. According to learned senior counsel, the entire issue is in respect of monetary loss which can be compensated, if at all, by the learned Arbitral Tribunal, if and when constituted.

7.4. Referring to the judgement of the Supreme Court in ***UP State Sugar Corporation v. Sumac International Ltd.,*** *(1997) 1 SCC 568,* learned senior counsel would submit that the ratio laid down therein is clearly predicated on the proposition laid down in ***Itek Corpn. V. First National Bank of Boston*** *[566 Fed supp 1210], i.e.* irretrievable injury has to be of the nature noticed in ***Itek Corpn.*** (*supra*). He would submit that if the assertions of the petitioner are examined and scrutinized in the context of the aforesaid judgement, no egregious fraud, muchless, a case for irretrievable injustice is at all made out.

7.5. He would strenuously contend that once Schedule 3 and 4 of the SA i.e., the milestones prescribed therein are not adhered to, and that too admittedly, there is no question or possibility of further release of funds.

7.6. Referring to the notice dated 23.09.2026 issued by the respondent no.1 to the petitioner 6 days before the deadline of extension of 60 days' period, i.e. 29.09.2026, learned senior counsel would submit that the non-adherence and failure to complete the balance works was being raised time to time and even as late as on 23.09.2026. He would contend that the previous correspondences as also the afore-referred correspondence clearly indicate the abject failure of petitioner to comply with the timelines. It was also simultaneously informed that advances of

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approximately Rs.121 Crore continued to remain pending for recovery. Thus, the petitioner was kept informed of failure of deadlines.

7.7. Apart from the above, learned senior counsel draws attention of this Court to para 12 of the reply filed by respondent no.1 wherein it has been clearly stated that as of now the two remaining RBGs have not been invoked or encashed.

7.8. He relies on the judgement of the Supreme Court in ***BSES Ltd. (Now Reliance Energy Ltd) v. Fenner India Ltd. & Anr.***, *(2006) 2 SCC 728* (paras 28, 29, 30) and the judgement of a Division Bench of this Court in ***DLF Ltd. v. Leighton India Contractors Private Ltd. & Anr.***, *2021 SCC Online Del 3772* .

REJOINDER:

8. In rejoinder, Mr. Raj Shekhar Rao, learned senior counsel referred to the letter dated 20.08.2026 addressed by the petitioner to respondent no.1 which was in response to the letter dated 11.08.2026 of the respondent no.1 regarding recorded failure to achieve the commitments upto July 2026 of the petitioner. He would submit that the petitioner, in regard to the allegations of non-performance, referred to the contractual remedies available to it under the Contract to seek extension of time to conclude the work. He emphasized that *vide* the said response the petitioner had clearly and emphatically intimated respondent no.1 regarding various works which were impacted by access constraints, interface dependencies, outstanding determinations, pending Change Orders as also the extra works which were directed to be complied with by the petitioner though not forming part of the SA. According to him, a petitioner had clearly informed various reasons why *stricto sensu*, the timelines could not be complied with, which were purely at the instance and at the asking of the respondent no.1.

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9. While referring to the SA, learned senior counsel would submit that para 'G' clearly noted that it was the respondent no.1 which commissioned a Consultant for the purpose of independent assessment of objectively verifying the claims of the petitioner. It was only thereafter that the SA was executed. He also referred to para 2 of the SA to submit that the same envisaged no further extension of time to petitioner beyond the revised KPM-04 except in accordance with the Contract. Thus, according to him though the timelines provided in the SA were strict, however, if there were a requirement of an extension of time, the petitioner was not precluded from seeking the same under the provisions of the Contracts. In order to support and substantiate the delay having occasioned on account of extra work directed by respondent no.1 and which was beyond the SA, learned senior counsel invited attention to para 6 wherein he stated that it was made clear that any changes, variations or instructions which may be communicated by either party after 31.12.2025 were excluded from the purview of the SA and were to be determined in accordance with the Contracts. Thus, having violated the terms of SA itself, respondent no.1 cannot place the blame on the petitioner for non-adherence with the timelines under the SA.

ANALYSIS AND CONCLUSIONS:

10. This Court has heard extensive and elaborate arguments of Mr. Raj Shekhar Rao and Mr. Ramji Srinivasan, learned senior counsel appearing for the parties, examined the records and considered the judgements relied upon.

11. Before this Court proceeds to examine the various contentions raised by the parties, it may be noted at the outset that the case set up by the petitioner does not relate to any allegation of egregious fraud and is restricted only to special equities. Thus, this Court would examine the controversy, restricting itself as to whether any special equities to the extent they qualify as "irretrievable injustice" indeed arise in the present petition. As to what

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constitutes irretrievable injustice or special equity and as to whether these terms are independent of each other or subsumed within each other is no more *res integra* in view of the judgement of the learned Division Bench of this Court in ***Vishal Infrastructure Limited vs. Chief Engineer***; *2026 SCC OnLine Delhi 5573* authored eruditely by my esteemed brother C Hari Shankar, J. The relevant paragraphs of ***Vishal Infrastructure*** (*supra*) referring to certain judgements of the Supreme Court, *in extenso*, are extracted hereunder:

> *"12. This, therefore, is not a case in which the encashment of the bank guarantee suffers from fraud, irreparable prejudice or special equities as would justify grant of an interlocutory and interdictory relief. In a case of an unconditional bank guarantee, a stay of invocation can be granted only in these circumstances, as held by the Supreme Court in* ***Svenska Handelsbanken v. Indian Charge Chrome Ltd.***[4]*, thus:*
>
> > *"53. On the question whether the High Court should, in a transaction between a banker and a banker, grant an injunction at the instance of the beneficiary of an irrevocable letter of credit restraining the issuing bank from recalling the amount paid under reserve from the negotiating bank acting on behalf of the beneficiary against a document of guarantee at the instance of the beneficiary this Court held that:*
> >
> > > *"[T]he High Court was wrong in granting the temporary injunction restraining the appellant bank from recalling the amount paid to the respondent bank. Courts usually refrain from granting injunction to restrain the performance of the contractual obligations arising out of a letter of credit or a bank guarantee between one bank and another. If such temporary injunctions were to be granted in a transaction between a banker and a banker, restraining a bank from recalling the amount due when payment is made under reserve to another bank or in terms of the letter of guarantee or credit executed by it, the whole banking system in the country would fail."*
> >
> > *54. In* ***U.P. Cooperative Federation Ltd. v. Singh Consultants & Engineers (P) Ltd.***[5] *the facts were: The appellant, a State Government enterprise, on or about 17-5-1983, entered into a contract with the respondent, a private limited company, for the supply and installation of a vanaspati manufacturing plant at a place in the district of Nainital. The contract bond contemplated*

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guaranteed performance of the work at various stages in accordance with the time schedule prescribed and provided for completion and commissioning of the plant after trial run by 15-5-1984. According to the appellant, the time was essentially and indisputably the essence of the contract.

* * *

58. The appellant then moved this Court and this Court through Sabyasachi Mukharji and Shetty, JJ. allowed the appeal; at page 1138 of the report Mukharji, J. observed as under:

> *"Under the terms agreed to between the parties, there is no scope of injunction. The High Court proceeded on the basis that this was not an injunction sought against the bank but against the appellant. But the net effect of the injunction is to restrain the bank from performing the bank guarantee. That cannot be done. One cannot do indirectly what one is not free to do directly. The respondent was not to suffer any injustice which was irretrievable. The respondent can sue the appellant for damages. There cannot be any basis in the case for apprehension that irretrievable damage would be caused, if any. his Lordship was of the opinion that this was not a case in which injunction should be granted. An irrevocable commitment either in the form of confirmed bank guarantee or irrevocable letter of credit cannot be interfered with except if a case of fraud or a case of a question of apprehension of irretrievable injustice has been made out. This is the well-settled principle of the law in England. This is also the well-settled principle of law in India. No fraud and no question of irretrievable injustice was involved in the case."*
>
> *(emphasis in original)*

The learned Judge at pp. 1141 and 1142 held as under:

> *"In order to restrain the operation either of irrevocable letter of credit or of confirmed letter of credit or of bank guarantee, there should be a serious dispute and a good prima facie case of fraud and special equities in the form of preventing irretrievable injustice between the parties; otherwise, the very purpose of bank guarantees would be negatived and the fabric of trading operation would be jeopardised. The commitments of the banks must be honoured free from interference by the courts; otherwise, trust in commerce internal and international would be irreparably damaged. It is only in exceptional cases, that is, in cases of fraud or in cases of irretrievable injustice that the court should interfere. This is*

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not a case where irretrievable injustice would be done by enforcement of the bank guarantee. This is also not a case where a strong prima facie case of fraud in entering into a transaction was made out. The High Court should not have interfered with the bank guarantee. The judgment and order of the High Court set aside. The order of the Civil Judge restored."

(emphasis in original)

59. Shetty, J. concurring with Mukharji, J. noticed the question involved at page 1143 of the report as under:

> *"Whether the obligation is similar to the one arising under a letter of credit? Whether the Court could interfere in regard to such obligation, and if so, under what circumstances? These are the questions raised in the appeal."*

The learned Judge at pp. 1144 to 1145 observed:

> *"The primary question for consideration is whether the High Court was justified in restraining the appellant from invoking the bank guarantees. The basic nature of the case relates to the obligations assumed by the bank under the guarantees given to the appellant. If under the law, the bank cannot be prevented by the respondent from honouring the credit guarantees, the appellant also cannot be restrained from invoking the guarantees. What applies to the bank must equally apply to the appellant. Therefore, the frame of the suit by not impleading the bank cannot make any difference in the position of law. Equally, it would be futile to contend that the court was justified in granting the injunction since it has found a prima facie case in favour of the respondent. The question of examining the prima facie case or balance of convenience does not arise if the court cannot interfere with the unconditional commitment made by the bank in the guarantees in question."*

(emphasis in original)

The learned Judge further at pp. 1145, 1146 and 1148 observed:

> *"The modern documentary credit had its origin from letters of credit. The letter of credit has developed over hundreds of years of international trade. It was intended to facilitate the transfer of goods between distant and unfamiliar buyer and seller. It was found difficult for a buyer to pay for goods prior to their delivery. The bank's letter of credit came to bridge this gap. In such transactions, the seller (beneficiary) receives*

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payment from the issuing bank when he presents a demand as per the terms of the documents. The bank must pay if the documents are in order and the terms of credit are satisfied. The bank, however, was not allowed to determine whether the seller had actually shipped the goods or whether the goods conformed to the requirements of the contract. Any dispute between the seller and the buyer must be settled between themselves. The Courts, however, in carving out an exception to this rule of absolute independence, held that if there has been a 'fraud in the transaction', the bank could dishonour beneficiary's demand for payment. The Courts have generally permitted dishonour only on the fraud of the beneficiary, not the fraud of somebody else.

In modern commercial transactions, various devices are used to ensure performance by the contracting parties. The traditional letter of credit has taken a new meaning. Stand-by letters of credit are also used in business circles. Performance bond and guarantee bond are also devices increasingly adopted in transactions. The Courts have treated such documents as analogous to letter of credit."

(emphasis supplied)

The learned Judge at pp. 1149 and 1150 again observed as under:

"Whether it is a traditional letter of credit or a new device, like performance bond or performance guarantee, the obligation of the bank appears to be the same. Since the bank pledges its own credit, involving its reputation, it has no defence except in the case of fraud. The nature of the fraud that the courts talk about is the fraud of an 'egregious nature as to vitiate the entire underlying transaction'. It is the fraud of the beneficiary, not fraud of somebody else. The bank cannot be compelled to honour the credit in such cases. In such cases, it would be proper for the bank to ask the buyer to approach the court for an injunction. The court, however, should not lightly interfere with the operation of irrevocable documentary credit. In order to restrain the operation of irrevocable letter of credit, performance bond or guarantee, there should be a serious dispute to be tried and there should be a good prima facie act of fraud."

(emphasis supplied)

The learned Judge at page 1150 observed:

"The sound banking system may, however, require more caution in the issuance of irrevocable documentary credits. It would be for the banks to safeguard themselves by other

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means, and, generally, not for the courts to come to their rescue with injunctions unless there is established fraud. The appeal must be allowed, and the order of the Civil Judge, restored."

(emphasis supplied)

60. We have referred to the observations of both Sabyasachi Mukharji as well as Shetty, JJ. in extenso to emphasise that in case of confirmed bank guarantees/irrevocable letters of credit, it cannot be interfered with unless there is fraud and irretrievable injustice involved in the case and fraud has to be an established fraud. The expression "to prevent irretrievable injustice" appears to have been taken from the decision of the Court of Appeal in England in the case of Elian and Rabbath (Trading as Elian & Rabbath) v. Matsas and Matsas[6]. The facts of that case were peculiar. The first defendant, a vessel, was chartered by Lebanese charterers for carriage of plaintiffs' cargo (consigned to Hungary) from Beirut to Rijeka. Discharge of the cargo was delayed at Rijeka and the shipowners exercised their lien on cargo in respect of demurrage due to delay in discharge of cargo. The third defendant-bank put up a guarantee in London in favour of the second defendants, who were first defendants' London agents, to secure release of cargo. There was a claim by Yugoslavians to distrain upon goods, involving the ship in further delay and master of the ship, on lifting original lien, immediately exercised another lien, in respect of extra delay. Original lien was raised when Hungarian buyers put up 2000 Pounds. Two years later the shipowners claimed arbitration with charterers to assess demurrage for which the first lien was exercised and claimed to enforce guarantee. Plaintiff claimed declaration that guarantee was not valid (as the original lien had been lifted) and an injunction to restrain shipowners or their agents from enforcing guarantee. The shipowners and their London agents as first and second defendants appealed against granting of injunction by Blain, J. It was held by the Court of Appeal that it was a special case in which court should grant injunction to prevent what might be irretrievable injustice. Lord Denning observed that although the shippers were not parties to the bank guarantee, nevertheless they had a most important interest in it. If the Midland Bank Ltd., paid under this guarantee, they would claim against the Lebanese Bank, who in turn would claim against the shippers. The shippers would certainly be debited with the account. On being so debited, they would have to sue the shipowners for breach of their promise express or implied to release the goods. Lord Denning posed the question: "Were the shippers to be forced to take that course?" Or can they short-circuit the dispute by suing the shipowners at once for an injunction? Lord Denning observed that it was a special case in which injunction should be granted and went on to observe that there was a prima facie ground for saying that the

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shipowners promised that, if the bank guarantee was given, they would release the goods. He further went on to observe that the only lien they had in mind at that time was the lien for demurrage. But would anyone suppose that the goods would be held for another lien in respect of extra delay. his Lordship observed that "it can well be argued that the guarantee was given on the understanding that the lien was raised and no further lien imposed, and that when the shipowners, in breach of that understanding imposed a further lien, they were disabled from acting on the guarantee". If we closely analyse the facts of that case, irretrievable injustice which was made the basis for grant of injunction really was on the ground that the guarantee was not encashable on its terms when the buyers had paid 2000 Pounds to lift the original lien.

61. Another matter came before this Hon'ble Court in ***General Electric Technical Services Company Inc. v. Punj Sons (P) Ltd.***[7]*. The facts of the case are as follows.*

* * *

68. On the question, whether the court was justified in restraining the bank from paying the appellant under the bank guarantee at the instance of Respondent 1, allowing the appeal of the appellant-company, this Court held as under:

> *"In the instant case, the High Court has misconstrued the terms of the bank guarantee and the nature of the inter-se rights of the parties under the contract. The mobilisation advance is required to be recovered by the appellant from the running bills submitted by the respondent. If the full mobilisation advance has not been recovered, it would be to the advantage of the respondent. Secondly, the Bank is not concerned with the outstanding amount payable by the appellant under the running bills. The right to recover the amount under the running bills has no relevance to the liability of the Bank under the guarantee. The liability of the Bank remained intact irrespective of the recovery of mobilisation advance or the non-payment under the running bills. The failure on the part of the appellant to specify the remaining mobilisation advance in the letter for encashment of bank guarantee is of little consequence to the liability of the Bank under the guarantee. The demand by the appellant is under the bank guarantee and as per the terms thereof. The Bank has to pay and the Bank was willing to pay as per the undertaking. The Bank cannot be interdicted by the court at the instance of Respondent 1 in the absence of fraud or special equities in the form of preventing irretrievable injustice between the parties. The High Court in the absence*

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of prima facie case on such matters has committed an error in restraining the Bank from honouring its commitment under the bank guarantee."

* * *

71. Shetty, J. speaking for the Bench noticed the earlier observations of Mukharji, J. in the case of ***U.P. Cooperative Federation Ltd.****. and stated that the nature of the fraud that the courts talk about is fraud of an "egregious nature as to vitiate the entire underlying transaction". It is fraud of the beneficiary, not the fraud of somebody else.*

72. Again in this very judgment Shetty, J. referred to the observations of Mukharji, J. that there should be prima facie case of fraud and special equities in the form of preventing irretrievable injustice between the parties. Mere irretrievable injustice without prima facie case of established fraud is of no consequence in restraining the encashment of bank guarantee."

13. A Division Bench of this Court in ***CRSC Research and Design Institute Group Co Ltd. v. Dedicated Freight Corridor Corporation of India Ltd.***[8] *has distilled the entire law on the subject, and held thus:*

"7. The settled law with respect to grant of an injunction which has the effect of restraining encashment of a bank guarantee, is (a) 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; (b) the Bank giving such a guarantee is bound to honour it as per its terms, irrespective of any dispute raised by its customer; (c) the very purpose of giving such a bank guarantee would otherwise be defeated; (d) the Courts should therefore be slow in granting an injunction to restrain the realization of such a bank guarantee; (e) the Courts have carved out only two exceptions i.e. (i) a fraud in connection with such a bank guarantee would vitiate the very foundation of such a bank guarantee - if there is such a fraud of which the beneficiary seeks to take the advantage, he can be restrained from doing so; fraud has to be an established fraud which the bank knows of and the evidence must be clear, both as to the fact of fraud and as to the bank's knowledge; and (ii) 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 effect the bank and its customers 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

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and the adverse effect of such an injunction on commercial dealings in the country; 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.

* * *

15. We are unable to agree with the contention of the Senior Counsel for the appellant that this Court, when approached for the interim measure of interference with unequivocal, absolute and unconditional BGs, is required to interpret the contract and/or form a prima facie opinion whether the beneficiary of the BGs has wrongfully invoked the BGs. Such exercise, in our view, is to be done in a substantive proceeding to be initiated by the appellant for recovery of the monies of the BGs, if averred to have been wrongly taken by Respondent 1 by encashment of BGs. If any interim relief is also claimed in the said substantive proceedings, the need for taking a prima facie view, will arise therein; however not while dealing with an application for the interim measure of restraining invocation/encashment of BGs. In the said proceedings, no question of taking a prima facie view arises and the enquiry is confined to, whether on the basis of the documents, a case of fraud of egregious nature in the matter of obtaining/furnishing BGs, is made out. As far as the argument of the Senior Counsel for the appellant, of special equities is concerned, the same is but a facet of the second exception aforesaid of irretrievable harm or injustice. Needless to state that from the entire arguments of the Senior Counsel for the appellant, no case of fraud of egregious nature in the matter of making/obtaining of the BGs is made out. All that emerges is that there are disputes between the appellant and Respondent 1 and it is not even whispered that Respondent 1 built the entire charade of entering into the contract, only to obtain BGs and to profiteer from the appellant. With respect to the ground urged by the Senior Counsel for the appellant, of special equities, the Solicitor General has stated that the appellant is a Chinese entity and if ultimately in arbitration, which has already commenced between the parties, the monies are found due to Respondent 1 from the appellant, Respondent 1 would have no means or ways available to it for recovering the same from the appellant and/or to enforce the arbitral award in China. On the contrary, it is contended that Respondent 1 is a Public Sector Undertaking and the monies, if ultimately found due to the appellant from Respondent 1, can always be recovered by the appellant from Respondent 1.

16. Fraud, as an exception to the rule of non-interference with encashment of BGs, is not any fraud but a fraud of an egregious nature, going to the root i.e. to the foundation of the bank guarantee and an established fraud. The entire case of the appellant, we are afraid, fails to qualify so. The Single Judge has written at length on the subject and save for as aforesaid, we need not say more.

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> *17. Irretrievable injustice, as an exception to the rule of noninterference with encashment of BGs, is again not a mere loss, which any person at whose instance bank guarantee is furnished, suffers on encashment thereof. It is always open to such person to sue for recovery of the amount wrongfully recovered. What has to be proved and made out to obtain an injunction against encashment, is that it will be impossible to recover the monies so wrongfully received by encashment. There is not even a whisper to this effect, neither in the pleadings nor in the arguments.""*

12. In particular, the learned Division Bench has extracted and incorporated, as a part of para 13 of its judgement, the judgement of the Division Bench in ***CRSC Research and Design Institute Group Co. Ltd. vs. Dedicated Freight Corridor Corporation of India Ltd.***; *2020 SCC OnLine Del 1536*.

13. Summed up, the aforesaid judgements essentially declare that in case of an unconditional bank guarantee, certain primordial principles ought to be applied while considering injunctive relief under section 9 of the Act. In that, (i) the beneficiary is entitled to realise the same, irrespective of any pending disputes; (ii) the bank providing such guarantee is bound to honour it irrespective of any dispute raised by its customer; (iii) failure of the bank in honouring such commitment, would result in defeating of the very purpose of issuance of such bank guarantee; (iv) Courts should be loathe in granting injunction in such cases and the only exceptions to the aforesaid general rule are (a) a fraud in connection with such BG which the beneficiary seeks to take advantage and such fraud has to be an established fraud which the bank knows of and the evidence must be clear, and (b) cases where allowing encashment of an unconditional bank guarantee would result in irretrievable harm or injustice to one of the parties. It was further made clear that the harm or injustice contemplated in (b) above must be of such an exceptional and irretrievable nature as would override the terms of the guarantee and the adverse effect such

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injunction may have on the commercial dealings in the country. The irretrievable injustice ought to be proved to the satisfaction of the Court to the extent as would demonstrate that there is no possibility whatsoever of the recovery of the amount from the beneficiary by way of restitution. Learned Division Bench has also succinctly noted that the issue of "special equities" is but a facet of "irretrievable injustice". In other words, special equities by itself may not be sufficient for a Court to assume irretrievable injustice, rather, it must be of such nature as would demonstrate rendering any remedy incapable of resurrecting or restituting the amounts which have thus far been encashed by invocation of the unconditional BGs. In other words, while "irretrievable injustice" may include and subsume all natures of special equities, yet, "special equities" by themselves may or may not constitute "irretrievable injustice" in a given case.

14. Similar echo can be found in the judgements of the Supreme Court in ***Svenska Handelsbanken v. Indian Charge Chrome Ltd.,*** *(1994) 1 SCC 502* and ***U.P. Cooperative Federation Ltd. v. Singh Consultants & Engineers (P) Ltd,*** *(1988) 1 SCC 174*, which were all considered threadbare in ***Vishal Infrastructure*** (*supra*).

15. Learned senior counsel for the respondent no.1 has extensively relied upon the judgement of the Division Bench of this Court in ***DLF Ltd.*** (*supra*) which according to him, was almost identical to the facts which arise in the present petition.The relevant paragraphs are extracted hereunder:

> *"40. In C.V. Rao v. Strategic Port Investments KPC Ltd., 2014 SCC OnLine Del 4441, this Court had held that while exercising jurisdiction under Section 9 of the A&C Act, the Court cannot ignore the underlying principles which govern the analogous powers conferred under Order XXXIX Rules 1 & 2 CPC and Order XXXVIII Rule 5 CPC. Not only is the court required to be satisfied that a valid arbitration agreement existed between the parties, but the powers under Section 9 of the A&C Act could be exercised only for orders of an interim measure of protection in respect*

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of the matters specified in Section 9(ii)(a) to (e) of the A&C Act. In other words, the orders must relate to preservation of the property, which is the subject matter of the dispute, till the Arbitral Tribunal decides the same. The scope of relief under Section 9 of the A&C Act cannot be extended to directing specific performance of the contract itself.

xxx xxx xxx xxx

46. In the present case, Leighton has claimed that certain losses were caused to it on account of the act/omission/commission of DLF, whereas DLF has accused Leighton of improper execution of the work and claims damages for breach of the C.A.. What amount would become payable to DLF or Leighton by the other, is a question still under determination. There is no basis to believe that DLF would not be entitled to any money and therefore, the invocation of the BGs would cause irreparable injury to Leighton. Leighton, on the other hand, has the right to include this amount in the claim before the Arbitral Tribunal and if it is made out that DLF was not justified in invoking the BGs, restitution can be made at that stage, and not here and now. It is clear that no strong case for grant of mandatory instructions in the form of direction to DLF to either refund the money or furnish security to the extent of the encashed BGs has been made out. The injury, if any, can be compensated in terms of money by placing a claim before the Arbitral Tribunal. The "balance of convenience" is in permitting the Arbitral Tribunal, which has since been constituted to determine the mutual liabilities and claims.

46. In the present case, Leighton has claimed that certain losses were caused to it on account of the act/omission/commission of DLF, whereas DLF has accused Leighton of improper execution of the work and claims damages for breach of the C.A.. What amount would become payable to DLF or Leighton by the other, is a question still under determination. There is no basis to believe that DLF would not be entitled to any money and therefore, the invocation of the BGs would cause irreparable injury to Leighton. Leighton, on the other hand, has the right to include this amount in the claim before the Arbitral Tribunal and if it is made out that DLF was not justified in invoking the BGs, restitution can be made at that stage, and not here and now. It is clear that no strong case for grant of mandatory instructions in the form of direction to DLF to either refund the money or furnish security to the extent of the encashed BGs has been made out. The injury, if any, can be compensated in terms of money by placing a claim before the Arbitral Tribunal. The "balance of convenience" is in permitting the Arbitral Tribunal, which has since been constituted to determine the mutual liabilities and claims.

47. For the said reason, there was no occasion for the learned Single Judge to issue a mandatory direction to DLF to furnish FDRs to secure the amount, which it had encashed on the invocation of the BGs on the

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ground that it was "just and convenient" to do so.

48. There is another aspect that needs to be discussed. While passing interim orders, relief that would amount to grant of a final relief must be eschewed. Also, while it is true that what would be the nature of an interim measure of protection that would appear to the court to be "just and convenient" would certainly vary from case to case. But, while deciding on the relief, the court ought not to venture into determination of liabilities and the interpretation of clauses. This Bench in Bhubaneswar Expressway (supra) has held as below-

> *"44. If the Courts, in exercise of powers under Section 9, start enforcing the terms of the contract, it would do extreme disservice to the very concept of arbitration, where the parties choose to have their disputes adjudicated, instead of by the Courts, by Arbitrators of their choice. In the present case, the appellant NHAI has disputed its liability for termination payment on diverse grounds, as can be understood from the narrative hereinabove of the arguments of the senior counsel for NHAI.* ***If this Court, while exercising jurisdiction under Section 9, were to adjudicate whether there is any legal merit in the said grounds or not, this Court would be adjudicating the disputes, which the parties have agreed to be adjudicated by arbitration and in fact there would be nothing left for the Arbitral Tribunal to decide****, as far as the claim of BEPL for the termination payment directed to be made is concerned. In fact, after reading the impugned judgment, we have also wondered what remains for the Arbitral Tribunal to decide, as far as the claim of BEPL for termination payment on a demurer, believing the breach to be on the part of BEPL, is concerned.* ***It is a hard reality that once there is judicial order on the merits of the dispute and which judicial order is not granting any interim measure but granting the final relief claimed in the arbitration proceeding, the Arbitral Tribunal would hesitate from deciding contrary to the findings returned by the Court on interpretation of terms of the Concession Agreement*** *and of admission, and to which Court, an application under Section 34 of the Act would lie against the award of the Arbitral Tribunal."*
>
> *(Emphasis added)*

49. In the instant case, both sides have extensively referred to communications between them, pertaining to extension of time to complete the project, the issuance of C.C., the defaults found in the work and the Clauses of the C.A., detailing the mutual rights and obligations. Clearly, therefore, these are matters that cannot be considered by the court in an application under Section 9. But the learned Single Judge has clearly dealt with the question of illegality and had laid the fault at the door of DLF. This it did on the basis of an assessment of the facts and the Clauses of the C.A. and concluded that while DLF could have encashed the RBGs,

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it was not proper to have encashed the PBGs and therefore, found it "just and proper" to direct DLF to furnish FDRs of the value of Rs. 143,87,22,708/-. The court has, thus, accepted the stand of Leighton, preferring it over the stand of DLF.

xxx xxx xxx xxx

51. Now that the Arbitral Tribunal has been constituted and claims and counter-claims along with applications under Section 17 of the A&C Act have been filed and have to be decided, it would be in the interest of fair play that this Court does not embark into an assessment of material on record to determine who was at fault and whether the BGs have been encashed in terms of the Clauses of the C.A. or illegally and unlawfully and further, to grant a relief of the nature of a final relief of refunding or restituting, as claimed by Leighton. In our view, it would be beyond jurisdiction to direct restitution in proceedings under Section 9 of the A&C Act as restitution by its very nature involves a final determination of rival contentions even if it were to appear just and proper to do so. Substantive questions have to be left to be decided in arbitration, the mode of dispute resolution chosen by the parties.

52. It is for the learned Arbitral Tribunal to determine all these issues relating to illegality of action, entitlement, liability, damages, etc. It is also for the learned Arbitral Tribunal to consider whether DLF would be required to furnish any security in the light of the claims and counter-claims made by the parties. Suffice it to note, at this juncture, as an interim measure, no case has been made out for grant of the relief claimed of refund or security that has been prayed for by Leighton."

16. Thus, Mr Srinivasan learned senior counsel would contend that the prayer for restitution is not available to the petitioner in view of the aforesaid judgement.

17. Mr. Raj Shekhar Rao, learned senior counsel for the petitioner had also relied on ***DLF Ltd.*** (*supra*) to the extent of paragraphs 45, 46 and 47, to submit that the learned Division Bench did not grant mandatory instructions in the form of direction to the DLF to refund the money or furnish security to the extent of encashed BGs, solely on the ground that no such strong case for grant of mandatory direction was made out. However, according to learned senior counsel the submissions and contentions surrounding the illegal and unlawful

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encashment of ABG worth Rs.100 Crores furnished *qua* the *ad-hoc* advance payment under the SA by itself clearly demonstrates not only "special equities" but also *prima facie* strong case for passing mandatory injunctive order directing restitution of the encashed BG.

18. This Court is unable to appreciate the arguments of the petitioner in the present petition. Even if this Court were to agree with the contentions and submissions of the petitioner insofar as it contends invocation of bank guarantees being contrary to the Contract as also the SA, yet, the intricate disputes and the reasons justifying or otherwise of the invocation of bank guarantees ought to be subject matter of a detailed inquiry by the learned Arbitral Tribunal as and when constituted and cannot detain this Court for the reason that such inquiry is not contemplated under the provisions of Section 9 of the Act.

19. That apart, having regard to the settled proposition of law, now *stare decisis*, it does not instill confidence in this Court that any of the instances cited by the petitioner, *arguendo,* even if constitutes "special equities", would constitute "irretrievable injustice". In other words, none of the invocations and encashment of the bank guarantees including the ABG of Rs.100 Crore furnished under the SA can be said to be irretrievable or insulated from any legal remedy for restitution which may be available to the petitioner. As per the *Shorter Oxford English Dictionary, Fifth Edition, pub. 2002 by Oxford University Press,* "irretrievable" is defined as "*unable to be retrieved, irrecoverable, irreparable."* Irretrievability by itself connotes a situation which can neither be restituted nor resurrected to its original state. Such is not the situation in the present case. It cannot be said with conviction or even proposed that the encashment of the BGs, which are purely monetary issues, cannot be restituted by an appropriate legal remedial measure available to the petitioner

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under the Arbitration Act. If that be so, the question of irretrievability as sought to be raised in the present petition, is no more than a mirage.

20. Additionally, in ***UP Sugar Corporation*** (*supra*), it was held that irretrievable injustice must be of the kind that was the subject matter of the decision in ***Itek Corpn Case*** *(supra)*, wherein the US Government had blocked all exports to Iran as well as cancelled all export licenses, and an exporter in the USA had sought the cancellation of letters of credit issued in favour of the Iranian Government by an American Bank. Put another way, it would be irretrievable injustice when the petitioner decisively establishes a situation where it is impossible for the guarantor to reimburse itself through legal or other remedial measures after the BG has been encashed. In the humble view of this Court, such circumstances have not arisen in the present case.

21. All that this Court can gather from the facts, submissions and contentions so ably raised and eloquently projected by Mr. Rao, learned senior counsel for the petitioner, is that there are clear disputes which have arisen between the parties which need to be adjudicated by an appropriate authority and no action or instance on the part of the respondent no.1 can be construed or concluded to be "irretrievable injustice". None of the actions undertaken by the respondent no.1 render any remedy or restitution, "irretrievable".

22. As far as the judgements relied upon by the petitioner are concerned, the sole binding proposition that bears out is that, to decide upon an injunction against an unconditional BG where no egregious fraud is alleged, the Court has to consider whether special equities arise as would prevent irretrievable injustice to the petitioner, if the injunction is not granted. In the present petition, this Court has already considered and has found that the petitioner failed to establish any likelihood of suffering irretrievable injustice if the injunction, as sought in the present petition, is not granted.

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23. Thus, for the aforesaid reasons, this Court does not find the facts urged meriting interference and resultantly the petition is dismissed.

TUSHAR RAO GEDELA
(JUDGE)

NOVEMBER 26, 2026/*anj/rl*

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