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

\+ O.M.P.(I) (COMM.) 466/2025&I.A. 27797/2025

ENGINEERING PROJECTS INDIA LIMITED .....Petitioner

Through: Mr. Uttam Datt, Sr. Adv. with Ms. Sonakshi Singh, Mr. Kumar Bhaskar and Mr. Naman Kumar, Advs.

versus

SOUTHERN RAILWAY & ANR. .....Respondents

Through: Mr. Premtosh K. Mishra, CGSC along with Mr. Anubhav Upadhyay, Adv.

CORAM:
HON'BLE MR. JUSTICE OM PRAKASH SHUKLA

<u>O R D E R (ORAL)</u>

% **23.07.2026**

1. The present petition has been filed under Section 9 of the Arbitration and Conciliation Act, 1996[1] seeking interim protection against the invocation and encashment of three bank guarantees furnished by the Petitioner in favour of Respondent No.1 in relation to an Engineering, Procurement and ConstructionContract[2] for the redevelopment of Katpadi Railway Station.

2. The Petitioner principally seeks an order restraining Respondent No.1 from invoking the following bank guarantees: (i) Performance Bank Guarantee dated 06.10.2022 for a sum of Rs.9,87,97,388/-; (ii) Mobilization Advance Bank Guarantee dated 23.03.2023 for a sum of

[1] "the Act", hereinafter
[2] "EPC", hereinafter

Rs.18,11,28,544/-; and (iii) Additional Performance Bank Guarantee dated 07.06.2024 for a sum of Rs.3,29,32,463/-.

3. The dispute arises from an EPC Agreement dated 16.11.2022 executed between the parties pursuant to a Letter of Acceptance dated 22.09.2022 issued by Respondent No.1 in favour of the Petitioner for the redevelopment of Katpadi Railway Station. The contract contemplated completion of the project within the stipulated contractual period, against which the petitioner furnished the aforesaid bank guarantees in terms of the contractual conditions. The performance guarantee secured the due and faithful performance of the contractual obligations, whereas the mobilization advance guarantee secured repayment of the mobilization advance released by Respondent No.1. Subsequently, upon revocation of an earlier termination, the petitioner furnished an additional performance security as a condition for reinstatement of the contract.

4. Disputes between the parties first arose during the execution of the project, culminating in the termination of the contract by Respondent No.1 on 05.03.2024. Aggrieved thereby and apprehending invocation of the bank guarantees furnished under the contract, the petitioner institutedO.M.P. (I) (COMM.) 79/2024 under Section 9 of the Act, wherein this Court granted interim protection restraining invocation of the then existing bank guarantees.

5. During the pendency of the said proceedings, negotiations were undertaken between the parties. The earlier termination was revoked by Respondent No.1 and the contract was reinstated. The petitioner, in

terms of the understanding arrived at between the parties, withdrew the earlier Section 9 petition, furnished an additional performance bank guarantee and resumed execution of the works in accordance with revised milestones mutually agreed upon between the parties.

6. However, disputes resurfaced thereafter. Respondent No.1 once again issued notices alleging lack of progress in execution of the project and ultimately terminated the contract on 12.08.2025. Simultaneously, Respondent No.1 sought invocation of all the three bank guarantees. This led to the second round of proceedings, wherein the Petitioner once again approached this Court under Section 9 by filing O.M.P. (I) (COMM.) 331/2025.

7. By an order dated 18.08.2025, this Court restrained invocation of the bank guarantees. Subsequently, Respondent No.1 withdrew the invocation letters before this Court and, on the basis of the said statement, the aforesaid petition came to be disposed of as having become infructuous.

8. The dispute, however, did not rest there, Respondent No.1 thereafter issued fresh invocation letters dated 03.11.2025 seeking encashment of the very same bank guarantees. The Petitioner, submits that such invocation was contrary to the earlier conduct of Respondent No.1 as also contrary to the contractual understanding between the parties, instituted the present petition, constituting the third round of proceedings under Section 9 of the Act.

9. Therefore, this is the third round of Section 9 petition arisingout

of the same cause of action relating to invocation of bank guarantee by the Respondents.

10. Albeit, at the threshold of this third round of proceedings under Section 9 of the Act, this Court, upon a *prima facie* appreciation of the material placed before it, granted *ad interim* protection *vide* order dated 07.11.2025, restrainingRespondent No.1 from invoking the bank guarantees. he said protection was granted, inter alia, taking note of the fact that the contractual period had not then expired and that the stipulated date of completion of the project was 30.11.2025.

11. *Prima facie*, therefore, this Court was of the opinion that invocation of the performance guarantees before expiry of the contractual completion period required further examination.

12. It is not is dispute that subsequent to the passing of the aforesaid interim order by this Court, dated 07.11.2025, the contractual period has expired on 30.11.2025. It is also not been disputed that the parties have not yet commenced arbitral proceedings and that the pre-arbitral conciliation mechanism envisaged under the contract continues to remain pending according to both the parties.

13. In these circumstances, the question which now arises is not as to whether the *ad interim* order dated, 07.11.2025 was justified on the facts then obtaining, but whether the Petitioner has made out any case for continuation of the injunction restraining invocation of admittedly unconditional bank guarantees pending commencement of arbitration. The issue necessarily requires this Court to examine the settled

principles governing judicial interference with invocation of unconditional bank guarantees and whether the present case falls within any of the recognized exceptions warranting such interference.

14. Learned Counsel for the Petitioner submits that the Petitioner has been constrained to approach this Court for the third time solely on account of the repeated attempts of Respondent No.1 trying to invoke the very same bank guarantees despite the conduct of the parties and the earlier proceedings before this Court.

15. Learned Counsel submits that although Respondent No.1 had initially terminated the contract on 05.03.2024, the said termination was subsequently revoked after negotiations between the parties. Pursuant thereto, the Petitioner withdrew the earlier proceedings under Section 9 of the Act, furnished an additional performance bank guarantee as required by Respondent No.1 and resumed execution of the works in accordance with the revised milestones agreed between the parties.

16. Learned Counsel further submits that the dispute resolution clause contained in the agreement mandates conciliation before commencement of arbitration. In accordance with the contractual mechanism, the Petitioner has already invoked the pre-arbitral conciliation process and the same is presently pending. It is, therefore, contended that the Petitioner cannot be faulted for non-commencement of arbitral proceedings.

17. Thus, according to the learned Counsel for the Petitioner, the

disputes relating to the validity of the termination, responsibility for delay and entitlement to invoke the bank guarantees are all arbitrable disputes which are required to be adjudicated in accordance with the contractual dispute resolution mechanism. Until such adjudication, Respondent No.1 ought not to be permitted to invoke the bank guarantees.

18. *Per Contra* learned Counsel for the Respondent No.1 submits that the present petition is a clear attempt to indefinitely restrain invocation of admittedly unconditional bank guarantees despite the Petitioner's persistent failure to fulfil its contractual obligations.

19. Learned Counsel submits that the interim order dated 07.11.2025 was passed when the contractual period had not expired. However, admittedly, the contractual completion period expired on 30.11.2025 and the project remains incomplete. Consequently, the very basis on which interim protection had been granted no longer survives.

20. It is further submitted that the bank guarantees in question are unconditional and irrevocable bank guarantees, obligating the issuing bank to honour the demand upon invocation without reference to the underlying contractual disputes.

21. Further, the pendency of conciliation cannot furnish a ground for continuing an injunction against invocation of unconditional bank guarantees.

22. It is accordingly prayed that the interim order dated 07.11.2025 deserves to be vacated and the present petition dismissed.

23. I have heard submissions made by both the parties and have pursued the materials on record.

24. At the outset, it is necessary to delineate the limited scope of the present proceedings. The Court, while exercising jurisdiction under Section 9 of the Act, is not required to adjudicate the merits of the disputes arising out of the underlying contract.

25. Questions relating to the legality of termination, responsibility for delay, entitlement to extension of time, breaches allegedly committed by either party and the consequent monetary claims are all matters which fall within the domain of the arbitral tribunal and cannot be conclusively determined in proceedings under Section 9 of the Act.

26. The controversy before this Court is considerably narrower. The sole issue requiring consideration is whether the Petitioner has made out a case for continuation of the interim injunction restraining invocation of the three bank guarantees.

27. The jurisprudence governing judicial interference with the invocation of bank guarantees is no longer *res integra*. A bank guarantee constitutes an independent and autonomous contract between the issuing bank and the beneficiary, distinct from and unaffected by the disputes arising under the underlying commercial

transaction. The sanctity accorded to such instruments is founded upon the imperative of preserving certainty, credibility and efficacy in commercial dealings. It is for this reason that Courts have consistently exercised considerable restraint while interfering with the invocation of unconditional bank guarantees.

28. The Supreme Court, commencing from ***United Commercial Bank v. Bank of India***[3] and subsequently in ***U.P. Cooperative Federation Ltd. v. Singh Consultants & Engineers (P) Ltd.***[4], has consistently underscored that commitments undertaken by banks under unconditional guarantees must ordinarily be honoured irrespective of disputes subsisting between the contracting parties.

29. The mere existence of disputes under the principal contract, allegations of breach, pendency of conciliation or arbitral proceedings, claims for extension of time, or apprehended financial prejudice do not, by themselves, constitute valid grounds to restrain the invocation of an unconditional bank guarantee.

30. Judicial intervention is warranted only in exceptional circumstances, namely where the invocation is vitiated by fraud of an egregious nature going to the root of the transaction and of which the beneficiary has knowledge, or where permitting encashment would result in irretrievable injustice or irreparable harm of such an exceptional nature that restitution would become impossible. Save and except these limited exceptions, the beneficiary remains entitled to

[3](1981) 2 SCC 766
[4](1988) 1 SCC 174

realise the bank guarantee strictly in accordance with its terms.

31. Tested on the touchstone of the aforesaid principles, this Court is unable to persuade itself to continue the injunction granted on 07.11.2025.

32. The interim protection granted by this Court was admittedly upon a *prima facie* consideration of the material then available. Significantly, at that point in time, the contractual completion period had not expired and this Court was persuaded to examine whether invocation of the bank guarantees before expiry of the stipulated contractual period warranted interim protection.

33. However, subsequent events cannot be ignored. It is an admitted position before this Court that the contractual completion period expired on 30.11.2025. Equally, it is not disputed that the project has not been completed and the contract presently stands terminated. The factual foundation on which the interim protection came to be granted has thus undergone a material change.

34. The Petitioner has sought to justify continuation of the injunction by referring to the pendency of the contractual conciliation mechanism and by contending that arbitral proceedings cannot commence until completion of the said process.

35. This submission, according to me, cannot be accepted. The existence or pendency of a contractual conciliation process cannot enlarge the scope of judicial interference with unconditional bank

guarantees. At best, such pendency may explain why arbitration has not yet commenced. It cannot, however, operate as a ground for indefinitely restraining invocation of bank guarantees which are otherwise unconditional and payable on demand.

36. In the ***National Thermal Power Corporation Ltd v. FlowmorePvt. Ltd.***[5], the Supreme Court held that even pendency of arbitration between the parties does not, by itself, justify restraining encashment of an unconditional bank guarantee.

37. It is also pertinent to note that none of the recognised exceptions governing interference with unconditional bank guarantees have been established in the present case. There is neither any pleading nor any material demonstrating fraud of the egregious nature as contemplated in the aforesaid decisions of the Supreme Court. Equally absent is any material to demonstrate irretrievable injustice or irreparable harm of such an exceptional character that restitution would become impossible even if the petitioner ultimately succeeds before the arbitral tribunal.

38. It is also deserved to be noted at the outset that the Petitioner is also not disputing the fact to the extent as to the existence of an unconditional bank guarantee.

39. This Court is therefore of the considered view that continuation of the interim injunction would amount to defeating the very commercial purpose for which unconditional bank guarantees are

[5](1995) 4 SCC 515

furnished. Such an approach would run contrary to the consistent line of authority of the Supreme Court.

40. This Court hastens to clarify that the observations made herein are confined solely to the question of interim protection against invocation of the bank guarantees. Nothing contained in the present judgment shall be construed as an expression of opinion on the legality of any other disputes pertaining between the parties.

41. In view of the aforesaid discussion, this Court is of the considered opinion that the Petitioner has failed to establish any ground warranting continuation of the interim protection granted by this Court on 07.11.2025.

42. Consequently, the interim order dated 07.11.2025 stands vacated.

43. For all the aforesaid reasons, the present petition under Section 9 of the Act, is also accordingly dismissed.

44. Pending applications, if any, also stand disposed of.

45. No order as to costs.

OM PRAKASH SHUKLA, J

JULY 23, 2026/pa