2026:DHC:8893

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

% ***Date of Decision: 07th October, 2026***

\# **CNR No. DLHC010483202026**

\+ O.M.P.(I) (COMM.) 469/2026 & I.A. 27830/2026

M/S SANJEEVNI INFRA PROJECTS LIMITED

.....Petitioner

Through: Mr. Sameer Dawar, Mr. Anshul Mittal, Mr. Vishwam Mishra and Mr. Pranay Bhati, Advocates.

versus

UNION OF INDIA & ANR.

.....Respondent

Through: Ms. Radhika Bishwajit Dubey, CGSC with Ms. Gurleen Kaur Waraich, Mr. K. Upadhyay, Mr. Amulya Dev Mishra, Mr. Saksham Sharma, Advocates Mr. Sajjan Kumar, AAO and Mr. Balbinder Singh, Consultant.

**CORAM:**
**HON'BLE MR. JUSTICE MANOJ JAIN**

**J U D G M E N T *(oral)***

1. The petitioner herein was engaged by respondent No.1 to construct *Regional Centre Building* at Sector 30, Rohini, New Delhi.

2. As per the terms of the contract, the petitioner had furnished a Performance Bank GuaranteeNo. 027GT02242610004 dated 17.09.2024 (herein referred to as 'PBG') of Rs.1,37,00,000/-, which was issued by his Bank i.e. HDFC Bank (respondent No.2 herein). According to petitioner, Respondent No. 1 has, in a *malafide* manner, determined the contract and invoked the Guarantee.



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3. The present petition seeks to restrain its encashment.

4. Admittedly, the petitioner has already filed an application seeking appointment of arbitrator, which is scheduled for further consideration on 9th instant.

5. As per the terms of PBG, which was renewed and is now valid upto19.10.2026,the bank hadundertaken as under: -

> *"3. We, HDFC Bank Ltd 27 West, Avenue Road Punjabi Bagh New Delhi-110026 do here by undertake to pay the amount due and payable under this guarantee without any demur, merely on a demand from the Government stating that the amount claimed is required to meet the recoveries due or likely to be due from the said Contractor. Any such demand made on the Bank shall be conclusive as regards the amount due and payable by the Bank under this Guarantee. However, our liability under this guarantee shall be restricted to an amount not exceeding Rs 1,37,00,000/- (Rupees One Crore Thirty Seven Lakh only)*
> *4.We, HDFC Bank Ltd 27 West, Avenue Road Punjabi Bagh New Delhi-110026 further undertake to pay the Government any money so demanded notwithstanding any dispute or disputes raised by the contractor in any suit or proceeding pending before any Court or Tribunal, our liability under this Bank Guarantee being absolute and unequivocal. The payment so made by us under this Bank Guarantee shall be a validdischarge of our liability for payment there under and the Contractor shall have no claim against us for making such payment.*
> *5.We, HDFC Bank Ltd 27 West, Avenue Road Punjabi Bagh New Delhi-110026 further agree that the Government shall have the fullest liberty without our consent and without affecting in any manner our obligation here under to vary any of the terms and conditions of the said agreement or to extend time of performance by the said Contractor from time to time or to postpone for any time or from time to time any of the powers exercisable by the Government against the said contractor and to forbear or enforce any of the terms and conditions relating to the said agreement and we shall not be relieved from our liability by reason of any such variation or extension being granted to the said Contractor or for any forbearance, act of omission on the part of the Government or any indulgence by the Government to the said Contractor or by any such matter or thing whatsoever which under the law relating to sureties would, but for this provision, have effect of so relieving us.*

> *6. We, HDFC Bank Ltd 27 West, Avenue Road Punjabi Bagh New Delhi-110026 further agree that the Government at its option shall be entitled to enforce this Guarantee against the Bank as a principal debtor at the first instance without proceeding against the Contractor and notwithstanding any security or other guarantee the Government may have in relation to the Contractor's liabilities. This guarantee will not be discharged due to the change in the constitution of the Bank or the Contractor.*
> *7.We, HDFC Bank Ltd, Punjabi Bagh, New Delhi undertake not to revoke this guarantee during its currency except with the consent of the Government in writing*
> *8. This Bank Guarantee shall be valid up to 19-OCT-2025 unless extended on demand by the Government. Notwithstanding anything mentioned above, our liability against this guarantee is restricted to Rs 1,37,00,000/- (Rupees One Crore Thirty-Seven Lakh only) and unless a claim in writing is lodged with us within the date of expiry or extended date of expiry of this guarantee, all our liabilities under this guarantee shall stand discharged."*
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> *(emphasis supplied)*

6. As per learned counsel for the petitioner, invocation is not in conformity with the agreed terms of the abovesaid PBG. He contends that in the invocation letter dated 01.10.2026, respondent No.1 has, nowhere, mentioned as to what amount, if any, is due or recoverable. So much so, according to him, the letter does not even specify that invocation was *in lieu* of any recovery due or likelyto be due and since invocation is not, strictly, as per the terms of PBG, the same is not justifiable and, therefore, the petitioner becomes entitled to have restraint order.

7. In order to appreciate said contention of petitioner, it will be appropriate to extract the relevant contents of the abovesaid letter dated 01.10.2026, which read as under:-

> *"With reference to above cited subject, it is stated that* M/s Sanjeevni Infra Projects Ltd., Corporate Office - 2. Road No. 80, Club Road, Punjabi Bagh, New Delhi-110026 (Formerly M/s Wonder Infrastructure and Power, B-226, 2nd Floor, North Ex-Mall, Sector-9, Rohini, North East Delhi-110085), *the contractor entrusted with the execution of the above-mentioned work, failed to execute and*

*complete the work in accordance with the terms and conditions of the agreement, despite repeated directions and opportunities afforded by this office. Owing to the contractor's failure to fulfil its contractual obligations and complete the work within the stipulated/extended time, the contract has been determined under Clause 3 of the agreement in accordance with Contract provisions.*

*In view of the aforesaid default attributable to the Contractor and consequent determination of the contract, the Bank Guarantee furnished by M/s Sanjeevni Infra Projects Ltd. in favour of the Executive Engineer. Construction Division-VI, CPWD, New Delhi, has become liable for invocation and encashment in accordance with its terms and the provisions of the agreement so as to meet the recoveries due or likely to be due from the said Contractor. ....”*

*(emphasis supplied)*

8. The abovesaid communication would clearly indicate that according to respondent No.1, the contractor (petitioner herein)had failed to execute and complete the work in accordance with the terms and conditions of the agreement and owing to such failure to fulfill its contractual obligations within the stipulated/extended time and consequent determination of the contract, the Bank Guaranteeis liable for invocation and encashment so as to meet the recoveries dues or likely to be due from the said contractor.

9. The letter, thus, contains the *prime-most* ingredient for the purposes of invocation as in no uncertain terms, it has been mentioned therein that ‘*the invocation is to meet the recoveries due or likely to be due from the contractor.’*

10. Merely because the amount to be recovered or likely to be recovered from the contractor has not been specified or crystallized in the invocation notice, it would not mean that the invocation is not in terms of the contractual obligations and unsustainable.Sum and substance of the invocation notice is found to be in complete synchronization with the contractual terms and guarantee in question. Thus, the contention of the

petitioner, which seems merely, hyper-technical in nature, lacks any merit.

11. Learned counsel for the petitioner relies upon *Marshal Infradevelopers India Private Limited vs. Union of India and Another:* 2022 SCC OnLine Del 936. However, in that case, invocation was found to be cryptic and not meeting the stipulated requirement as while sending invocation notice, it was simply mentioned that the guarantee was being sent for immediate encashment as the contract had been terminated.The position, as already noted in the present case, isquite different.

12. Needless to say, even otherwise, scope of interference by the Courts in such type of matters is very restricted and constricted. Reference be made to one recent pronouncement of this Court in *M/sVishal Infrastructure Ltd. and M/s OJSC Euro-Asian Construction Corporation Evrascon (JV) vs. Chief Engineer (Const)-I, North Western Railway, Jaipur & Ors*. [in O.M.P.(I) (COMM.) 240/2026, dated 16.07.2026], wherein while referring upon*U.P. State Sugar Corpn. Vs. Sumac International Ltd*.: (1997) 1 SCC 568 and *Himadri Chemicals Industries Ltd. vs. Coal Tar Refining Co,:* (2007) 8 SCC 110, this Court observed that there was no ground for grant of injunction under Section 9 of *Arbitration and Conciliation Act, 1996*. Relevant paragraphs of the abovesaid judgment reads as under: -

> *"9. The Apex Court in U.P. State Sugar Corpn. v. Sumac International Ltd.,* ***(1997) 1 SCC 568****, has held as under:*
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> > *"**11**. These bank guarantees which are irrevocable in nature, in terms, provide that they are payable by the guarantor to the appellant on demand without demur. They further provide that the appellant shall be the sole judge of whether and to what extent the amount has become recoverable from the respondent or whether the respondent has committed any breach of the terms and conditions of the agreement. The bank guarantees further provide that the right of the purchaser to recover from*

*the guarantor any amount shall not be affected or suspended by reason of any disputes that may have been raised by the respondent with regard to its liability or on the ground that proceedings are pending before any Tribunal, Arbitrator or Court with regard to such dispute. The guarantor shall immediately pay the guaranteed amount to the appellant-purchasers on demand.*

***12. The law relating to invocation of such bank guarantees is by now well settled. When in the course of commercial dealings an unconditional bank guarantee is given or accepted, the beneficiary is entitled to realize such a bank guarantee in terms thereof irrespective of any pending disputes. The bank giving such a guarantee is bound to honour it as per its terms irrespective of any dispute raised by its customer. The very purpose of giving such a bank guarantee would otherwise be defeated. The courts should, therefore, be slow in granting an injunction to restrain the realization of such a bank guarantee. The courts have carved out only two exceptions. A fraud in connection with such a bank guarantee would vitiate the very foundation of such a bank guarantee. Hence if there is such a fraud of which the beneficiary seeks to take advantage, he can be restrained from doing so. The second exception relates to cases where allowing the encashment of an unconditional bank guarantee would result in irretrievable harm or injustice to one of the parties concerned. Since in most cases payment of money under such a bank guarantee would adversely affect the bank and its customer at whose instance the guarantee is given, the harm or injustice contemplated under this head must be of such an exceptional and irretrievable nature as would override the terms of the guarantee and the adverse effect of such an injunction on commercial dealings in the country. The two grounds are not necessarily connected, though both may coexist in some cases. In the case of U.P. Coop. Federation Ltd. v. Singh Consultants and Engineers (P) Ltd. [(1988) 1 SCC 174] which was the case of a works contract where the performance guarantee given under the contract was sought to be invoked, this Court, after referring extensively to English and Indian cases on the subject, said that the guarantee must be honoured in accordance with its terms. The bank which gives the guarantee is***

***not concerned in the least with the relations between the supplier and the customer; nor with the question whether the supplier has performed his contractual obligation or not, nor with the question whether the supplier is in default or not. The bank must pay according to the tenor of its guarantee on demand without proof or condition. There are only two exceptions to this rule. The first exception is a case when there is a clear fraud of which the bank has notice. The fraud must be of an egregious nature such as to vitiate the entire underlying transaction. Explaining the kind of fraud that may absolve a bank from honouring its guarantee, this Court in the above case quoted with approval the observations of Sir John Donaldson, M.R. in Bolivinter Oil SA v. Chase Manhattan Bank [(1984) 1 All ER 351] (All ER at p. 352): (at SCC p. 197)***

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

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

*(emphasis supplied)*

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

> *"**10**. The law relating to grant or refusal to grant injunction in the matter of invocation of a bank guarantee or a letter of credit is now well settled by a plethora of decisions not only of this Court but also of the different High Courts in India. In U.P. State Sugar Corpn. v. Sumac International Ltd. [(1997) 1 SCC 568] this Court considered its various earlier decisions. In this decision, the principle that has been laid down clearly on the enforcement of a bank guarantee or a letter of credit is that in respect of a bank guarantee or a letter of credit which is sought to be encashed by a beneficiary, the bank giving such a guarantee is bound to honour it as per its terms irrespective of any dispute raised by its customer. Accordingly this Court held that the courts should be slow in granting an order of injunction to restrain the realisation of such a bank guarantee. It has also been held by this Court in that decision that the existence of any dispute between the parties to the contract is not a ground to restrain the enforcement of bank guarantees or letters of credit. However, this Court made two exceptions for grant of an order of injunction to restrain the enforcement of a bank guarantee or a letter of credit: (i) fraud committed in the notice of the bank which would vitiate the very foundation of guarantee; and (ii) injustice of the kind which would make it impossible for the guarantor to reimburse himself.*
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> ***11. Except under these circumstances, the courts should not readily issue injunction to restrain the realisation of a bank guarantee or a letter of credit. So far as the first exception is concerned i.e. of fraud, one has to satisfy the court that the fraud in connection with the bank guarantee or letter of credit would vitiate the very foundation of such a bank guarantee or letter of credit. So far as the second exception is concerned, this Court has held in that decision that it relates to cases where allowing encashment of an unconditional bank guarantee would result in irretrievable harm or injustice to one of the parties concerned.** While dealing with the case of fraud, this Court in U.P. Coop. Federation Ltd. v. Singh Consultants and Engineers (P) Ltd. [(1988) 1 SCC 174] held as follows: (SCC p. 197,*

*para 53)*

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

*(emphasis supplied)*

*While coming to a conclusion as to what constitutes fraud, this Court in the above case quoted (at SCC p. 197, para 54) with approval the observations of Sir John Donaldson, M.R. in Bolivinter Oil SA v. Chase Manhattan Bank [(1984) 1 WLR 392 : (1984) 1 All ER 351 (CA)] , All ER at p. 352g-h which is as follows:*

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

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

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

> ***(i) While dealing with an application for injunction in the course of commercial dealings, and when an unconditional bank guarantee or letter of credit is given or accepted, the***

***beneficiary is entitled to realise such a bank guarantee or a letter of credit in terms thereof irrespective of any pending disputes relating to the terms of the contract.***
***(ii) The bank giving such guarantee is bound to honour it as per its terms irrespective of any dispute raised by its customer.***
***(iii) The courts should be slow in granting an order of injunction to restrain the realisation of a bank guarantee or a letter of credit.***
***(iv) Since a bank guarantee or a letter of credit is an independent and a separate contract and is absolute in nature, the existence of any dispute between the parties to the contract is not a ground for issuing an order of injunction to restrain enforcement of bank guarantees or letters of credit.***
***(v) Fraud of an egregious nature which would vitiate the very foundation of such a bank guarantee or letter of credit and the beneficiary seeks to take advantage of the situation.***
***(vi) Allowing encashment of an unconditional bank guarantee or a letter of credit would result in irretrievable harm or injustice to one of the parties concerned."***

*(emphasis supplied)*

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

13. Learned counsel for respondent No.1 has made reference to*M/s Garg Builders Through Shri Mohinder Pal Garg vs. Hindustan Prefab Ltd. and Anr.:* 2022 SCC OnLine Del 1264and submits that this Court has summed up basic principles related to bank guarantee and their invocation in paragraph 36 of the said judgment. These have also been perused and

undeniably, there is an overwhelming element of public interest involved in requiring banks to honour their commitments towards customers and clients and if a bank is to be interdicted from honouring the bank guarantee, it would erode public faith in the banking institution of the country.A Bank Guarantee is a separate contract, which obligates the bank to pay the guaranteed amount on demand. The bank isconcerned with the terms of the bank guarantee and any dispute between the contractor and the beneficiary of the bank guarantee, or the conditions existing in the contract are generally irrelevant to the aspect of invocation of the bank guarantee.Interdiction of invocation of unconditional bank guarantee would be permissible where there is found to exist egregious fraud, or special equities, or where irretrievable injustice would ensue.

14. Fraud is neither pleaded nor argued.

15. Irretrievable injustice, as an exception to the rule of non-interference with invocation/encashment of unconditional bank guarantee, cannot be said to be fulfilled by mere pleading loss or financial hardship. Any party who furnishes guarantee is at the risk of suffering its encashment, however, such a party also, always, has the legal remedy to sue for recovery due to wrongful encashment. Therefore, what the petitioner needs to demonstrate is that it would be, eventually, impossible for it to recover the amount under guarantee if Arbitral Tribunal decides the issue in its favour. Reference be made to *Black Gold Resources Private Limited Versus International Coal Ventures Pvt. Ltd. and Another: 2025 SCC OnLine Del 9231*.No such situation exists herein.

16. Learned CGSC for respondent No.1, on instructions, submitted that after the termination of the contract, respondent No.1 is compelled to issue

a fresh tender to get the balance work completed through some other agency and, therefore, the amount which they would be, eventually, recovering from the petitioner would be well above the amount due under PBG.The PBG in question, as already noted, is unconditional and irrevocable in nature.

17. In view of the foregoing discussion, no case is made out for exercise of jurisdiction by this Court in the present proceedings. Consequently, the petition stands dismissed.

18. Pending application also stands disposed of.

19. Needless to state, nothing contained herein shall be construed as an expression on the merits of the dispute that may be referred to the Arbitral Tribunal. The observations made hereinabove are solely for the purpose of deciding the present petition and tentative in nature.

**(MANOJ JAIN)**
**JUDGE**

**OCTOBER 7, 2026/ss/js**