2026:DHC:9469

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

% Judgement reserved on: **08.10.2026**
Judgement delivered on: **27.10.2026**

\+ O.M.P.(I) (COMM) 289/2026

M/S ONYCON INFRASTRUCTURE ……Petitioner

versus

VIRTUAAL PARENG HYDRO
PRIVATE LIMITED & ANR. ....Respondents

**Advocates who appeared in this case:**

For the Petitioner: Mr. Sujoy Datta, Mr. N.P.S. Chawla, Mr. Vibhor Kapoor, Ms. Nishtha Khurana, Mr. Shubham Raghuwanshi, and Ms. Kinjal Sharma, Advocates.

For the Respondents: Mr. Manish Sharma, Senior Advocates with Mr. Vijay Kaundal, Mr. Nitish Kant Sharma, Ms. Sapna Jha, Mr. Ninad Dogra and Ms. Adya Rao, Advocates for R-1.

**CORAM:**
**HON'BLE MR. JUSTICE TUSHAR RAO GEDELA**

**J U D G E M E N T**

**TUSHAR RAO GEDELA, J.**

1. The petitioner has filed the present petition under Section 9 seeking *ad-interim ex-parte* protection against invocation and encashment of two Bank Guarantees (hereinafter referred to as *'BGs'*), being Bank Guarantee No. 075BG03243170001 dated 12.11.2024 for Rs.2,53,80,000/- (hereinafter referred to as *'BG-1'*) and Bank Guarantee No. 075BG03250170001 dated 17.01.2025 for

Rs.1,78,20,000/- (hereinafter referred to as *'BG-2'*), both aggregating to Rs.4,32,00,000/-, issued by respondent no.2/Yes Bank Limited, and currently valid up to 15.11.2026.

2. This Court, on 22.07.2026, after having heard the learned counsel for the petitioner at length and recording his submissions, passed the following order, relevant portions of which are reproduced hereunder:

> *"6. The petitioner claims to be a firm engaged in execution of civil, infrastructure and engineering projects. It claims that by a Letter of Acceptance dated 12.08.2024, the respondent no.1, developer of the Pareng Hydro Electric Project, Arunachal Pradesh awarded to the petitioner, a Civil Works Contract dated 12.11.2024 for a contract price of Rs.86,38,57,744/-. The aforesaid two bank guarantees, i.e., BG-1 and BG-2 were furnished by the petitioner exclusively as security for mobilisation advance under the Civil Works Contract. It is also stated that apart from the aforesaid Civil Works Contract, the parties also executed an independent Framework Agreement on 06.01.2025 for supply of cement and steel under which the respondent no.1 was the supplier and the petitioner was the purchaser. It is claimed that the Framework Agreement did not contemplate any bank guarantee as security, and that neither BG-1 nor BG-2 were referred directly or indirectly in the said Framework Agreement.*
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> *7. In the meanwhile, it is stated by the petitioner that disputes have arisen between the parties under the Civil Works Agreement allegedly, on account of respondent no.1's failure to hand over an encumbrance-free site, failure of timely release of mobilization advances and certified bills etc. It is further stated that by a legal notice dated 23.06.2026, the respondent no.1 demanded approximately a sum of Rs.3,71,46,662/- from the petitioner, which is solely under the Framework Agreement. It is claimed that the said notice is bereft of any reference to any default or dispute in respect of the Civil Works Contract.*
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> *8. The petitioner also states that another Bank Guarantee for a sum of Rs.3,24,00,000/- (BG-3) was furnished by the petitioner in connection with the Civil Works Contact which was sought to be invoked by the respondent no.1, however, the concerned bank declined to honour it. It is stated that since there was no advance monies paid under the Framework Agreement, the said BG-3 was permitted to lapse.*
>
> *9. It is contended that the respondent no.1 having failed in its previous attempts to encash BG-3, is now attempting to encash BG-1 and BG-2, which have no nexus nor are incidental to the Framework Agreement, and are related only under the Civil Works Contract, which is a separate contract.*

*10. It is also contended that the BG-1 and BG-2 are conditional in nature and unless the conditions prescribed therein are completed, the respondent no.1 has no right under the law to invoke the bank guarantees. It is further stated that the Civil Works Contract contains an Arbitration Agreement at Clause 14 providing for the arbitration under the Rules of the Indian Council of Arbitration, with seat and venue at New Delhi.*
*11. The petitioner also prays that in case this Court is inclined, an Arbitrator may be appointed so as to ensure that the disputes are decided by proper arbitration procedure as prescribed under Clause 14 of the Contract Works Contract.*

*12. This Court has heard the learned counsel for the petitioner.*

*13. At the first instance, the learned counsel for the petitioner, on a query by this Court contended that unlike cases where irrevocable and unconditional bank guarantees are tendered, the present BG-1 and BG-2 both are conditional bank guarantees. He submitted that having regard to the fact that both BGs are conditional, the same cannot be invoked in the manner in which the respondent no.1 is purporting to. The learned counsel has relied upon the judgement of the Supreme Court in* ***Hindustan Construction Company Limited vs. State of Bihar & Ors.,*** *reported in* ***1999 (8) SCC 436,*** *particularly paras 11, 13, 14 and 22 to contend that in case of a conditional bank guarantee, the party cannot be permitted to invoke such bank guarantee in the same way an unconditional or irrevocable bank guarantee can. He had also contended that the special equities which have arisen in this case in his favour, would also propel this Court to restrain the encashment of BG-1 and BG-2. According to the learned counsel, the special equities are that the bank guarantees i.e. BG-1 and BG-2 both have been furnished to the respondent no.1 in respect of the Civil Works Contract alone and has no relation to the Framework Agreement which was executed on 06.01.2025, and thus could not be encashed on an alleged default/breach of the Framework Agreement.*

*14. In the aforesaid context, it would be relevant to extract the aforesaid paragraphs of the judgment in Hindustan Construction (supra), which are as under:*

> *"11. We will first consider the bank guarantee relating to "mobilisation advance". This guarantee was furnished in terms of clause 9 of the principal contract between HCCL and the defendants which provides as under:*
> *"9. Advance mobilisation loan.—The employer will make an advance loan to the contractor at 13 per cent simple interest per annum for the costs of mobilisation in respect of the works in a lump sum amount equivalent up to 15 per cent of the contract price named in the letter of acceptance, payable in the proportioned amounts of foreign and local currencies as provided for in the contract. Payment of the loan will be due under separate certification by the Engineer after (i) execution of the form of agreement by the parties thereto, (ii) provision by the contract of the performance security in*

*accordance with clause 5, and (iii) provision by the contractor of a bank guarantee, by a bank acceptable to the employer in an amount equal to the advance loan, such bank guarantee to remain effective until the advance loan has been completely repaid by the contractor out of current earnings under the contract and certified accordingly by the Engineer. A form of bank guarantee acceptable to the employer is indicated in Section 9 Annexure B. The advance loan shall be used by the contractor exclusively for mobilisation expenditures, including the acquisition of constructional plant, in connection with the works. Should the contractor misappropriate any portion of the advance loan, it shall become due and payable immediately, and no further loan will be made to the contractor thereafter. The advance mobilisation loan shall be paid within 15 days of the date of certification."*

*xx xx xx*

*13. The Bank, in the above guarantee, no doubt, has used the expression "agree unconditionally and irrevocably" to guarantee payment to the Executive Engineer on his first demand without any right of objection, but these expressions are immediately qualified by following:*
*"... in the event that the obligations expressed in the said clause of the above-mentioned contract have not been fulfilled by the contractor giving the right of claim to the employer for recovery of the whole or part of the advance mobilisation loan from the contractor under the contract."*

*14. This condition clearly refers to the original contract between HCCL and the defendants and postulates that if the obligations, expressed in the contract, are not fulfilled by HCCL giving to the defendants the right to claim recovery of the whole or part of the "advance mobilisation loan", then the Bank would pay the amount due under the guarantee to the Executive Engineer. By referring specifically to clause 9, the Bank has qualified its liability to pay the amount covered by the guarantee relating to "advance mobilisation loan" to the Executive Engineer only if the obligations under the contract were not fulfilled by HCCL or HCCL has misappropriated any portion of the "advance mobilisation loan". It is in these circumstances that the aforesaid clause would operate and the whole of the amount covered by the "mobilisation advance" would become payable on demand. The bank guarantee thus could be invoked only in the circumstances referred to in clause 9 whereunder the amount would become payable only if the obligations are not fulfilled or there is misappropriation. That being so, the bank guarantee could not be said to be unconditional or unequivocal in terms so that the defendants could be said to have had an unfettered right to invoke that guarantee and demand immediate payment thereof from the Bank. This aspect of the matter was wholly ignored by the High Court and it unnecessarily interfered with the order of injunction,*

*granted by the Single Judge, by which the defendants were restrained from invoking the bank guarantee.*

*xx xx xx*

*22. We have scrutinised the facts pleaded by the parties in respect of both the bank guarantees as also the documents filed before us and we are, prima facie, of the opinion that the lapse was on the part of the defendants who were not possessed of sufficient funds for completion of the work. The allegation of the defendants that HCCL itself had abandoned the work does not, prima facie, appear to be correct and it is for this reason that we are of the positive view that the "special equities" are wholly in favour of HCCL."*

*15. It would be relevant to extract the Bank Guarantee furnished under the Civil Works Contract:*

*"BANK GUARANTEE FOR MOBILIZATION ADVANCE*

*Letter of Acceptance/Contract Reference No VPHPL/PRG-LOA-Civil Works-01/24-25/01 dated 12/08/2024 for the Contract for Civil Works for Pareng HEP (3x 4850KW) in Pareng Village, District Papumpare, Arunachal Pradesh.*

*To:*
*M/s Virtuaal Pareng Hydro Private Limited,*
*Pvt Res, Near Directorate of Eco and stats,*
*P.O.RKM, Itanagar, Arunachal Pradesh- 791111, India*

*Dear Ladies and/or Gentlemen,*

*We refer to the Contract for Civil Works for Pareng HEP (3x 4850KW) in Pareng Village vide reference no VPHPL/PRG-LOA-Civil Works-01/24-25/01 dated 12/08/2024.*

*BETWEEN*

*You, M/s Virtuaal Pareng Hydro Private Limited a company incorporated under the laws of India under the Companies Act 1956 as amended from time to time and having its principal place of business and Registered Office at Pvt Res, Near Directorate of Eco and stats, P.O.RKM, Itanagar, Arunachal Pradesh- 791111, India (hereinafter called "the Employer" which expression shall unless repugnant to the context or meaning thereof include its successors and assigns)*

*AND*

*M/s Onycon Infrastructure, a corporation incorporated under the laws of India under the Companies Act 1956 as amended from time to time and having its principal place of business and Registered Office at 307 3rd Floor, Shri Krishna Premises, New Link Road, Opp Laxmi Ind. Estate, Andheri West, Mumbai-400053 (hereinafter called "the Contractor" which expression shall unless repugnant to the context or meaning thereof include its successors and assigns) for providing of all plant, materials and performing of all required services,*

*including design (to the extent applicable), procurement, quality assurance, construction, installation, erection, Tests on Completion, delivery, Tests after Completion, as applicable, and Completion of the Works and rectification of defects, in accordance with the plans, procedures, specifications, drawings, codes, and any other documents and provisions as specified, for All Civil Works Comprising of River Diversion Works, Barrage, Intake, Feeder Tunnel, De-silting Chamber, Head Race Tunnel & Adits, Surge Shaft, Pressure Shaft, Penstock Civil Structural Works, Power House Complex, etc., under the Civil Works Package for Pareng Hydropower Project (14.5 MW) in Arunachal Pradesh ("the Works") and the Taking Over of the Works by the Employer subsequent to its Completion by the Contractor.*
*Whereas, in accordance with the terms of the said Contract, the Employer has agreed to pay or cause to be paid to the Contractor Advance Payment(s) against furnishing of an irrevocable bank guarantee for amount of Rs 2,53,80,000/- (Rupees Two Crore Fifty Three Lakh Eighty Thousand Only).*

*By this letter We, YES Bank Ltd., a company incorporated and registered under the Companies Act 1956 and a banking company within the meaning of section 5(c) of the Banking Regulation Act, 1949 and having its registered office at YES BANK LIMITED, YES BANK House, Off Western Express Highway, Santacruz East, Mumbai 400055, India & Issuing branch office inter alia at YES BANK LTD, Ground Floor, Hotel Fortune Galaxy, N.H.8, GIDC, Vapi - 396195, Gujarat (Hereinafter called as "Bank") do hereby irrevocably guarantee repayment of Rs 2,53,80,000/- (Rupees Two Crore Fifty Three Lakh Eighty Thousand Only) upon the first demand of the Employer without cavil or argument in the event that the Contractor fails to commence or fulfill its obligations under the terms of the said Contract for reasons whatsoever.*

*Provided always that the Bank's obligation shall be limited to the amount of this bank guarantee or an amount equal to the outstanding balance of the Advance Payment(s), taking into account such amounts, which have been repaid by the Contractor from time to time in accordance with the terms of payment of the said Contract, as certified by you.*

*This bank guarantee will be effective only on receipt of advance payment in the account 000184600001594 maintain with YBL.*

*This Guarantee shall remain in full force from the date upon which the said Advance Payment(s) are received by the Contractor up to ninety (90) days beyond the date on which the entire Advance Payment(s) has been fully adjusted in terms of the Contract i.e., up to ninety (90) days beyond the date of Completion of the Facilities under the Contract. This Guarantee may be extended from time to time, as may be desired by M/s Virtuaal Pareng Hydro Private Limited on whose behalf this Guarantee has been issued.*

*Any claims to be made under this Guarantee must be received by the Bank during its period of validity, i.e. upto ninety (90) days beyond the date of Completion of the Facilities by the Employer i.e. upto and inclusive of 30-SEP-2025.*

*Notwithstanding anything contained hereinabove:*

*1) Our liability under this bank guarantee shall not exceed Rs.2,53,80,000/- (Rupees Two Crore Fifty Three Lakh Eighty Thousand Only);*
*2) This bank guarantee shall be valid only up to 30-SEP-2025;*
*3) We are liable to pay the guaranteed amount or any part thereof under this bank guarantee only and only if a written claim or demand, served by you in accordance with the terms of this bank guarantee, is received by us on or before 5 P.M on or before 30-SEP-2025 at YES BANK LTD, Ground Floor, Hotel Fortune Galaxy, N.H.8, GIDC, Vapi - 396195, Gujarat. Thereafter, your right to claim under this bank guarantee shall be forfeited once and forever and we shall be relieved from all our liabilities hereunder irrespective of whether the original bank guarantee has been returned to us or not."*

*[Emphasis Supplied]*

*16. It may also be relevant to consider Clause 43.1 of the Civil Works Contract dated 12.11.2024 which is reproduced hereunder:*
***"43.1. Mobilization Advance:** Interest bearing mobilisation advance shall be paid to the Contractor in 2 (two) instalments as specified herein below.*

*43.1.1. **1st Instalment:** A lump sum mobilization advance **(Initial Mobilisation Advance)** not exceeding Rs.4.00 crores (Indian Rupees Four Crores only) shall be paid to the Contractor at a simple interest rate of 8% (eight percent) per annum, subject to fulfilment of the following conditions: -*

*a) On unconditional confirmation of Letter of Acceptance by the Contractor.*
*b) Acceptance and finalization of the Contractor's Detailed Construction Schedule for the Works and finalization of the Contractor's Equipment mobilization schedule.*
*c) Signing of the Contract.*
*d) Submission of Contractors invoice for the advance amount*
*e) Submission of advance payment security in the form of Advance Bank Guarantee (as per format enclosed at Appendix 2) for 108% (one hundred eight percent) of the amount of Initial Mobilisation Advance Plus GST thereon, with initial validity of up to ninety (90) days beyond the Time for Completion of the Works reckoned from the Commencement Date. The same shall be extended by the Contractor time to time till ninety (90) days beyond the date of Completion Certificate.*

*43.1.2. **2nd Instalment:** A further lump sum mobilization advance **(Additional Mobilisation Advance)** not exceeding Rs.4.50 crores (Indian Rupees Four Crores and Fifty Lakhs only) shall be paid to the Contractor at a simple interest rate of 8% (eight percent) per annum on certification by the Employer that the*

*Contractor has opened his office at Site and mobilized the Contractor's Equipment specifically agreed with the Employer for releasing this advance payment subject to fulfilment of the following conditions: -*

*a) Confirmation that the Contractor's Equipment as per schedule have been deployed at site.*
*b) Submission of Contractors invoice for the advance amount*
*c) Submission of Advance payment security in the form of Advance Bank Guarantee (as per format enclosed at Appendix 2) for 108% (one hundred eight percent) of the amount of Additional Mobilisation Advance plus GST thereon, with initial validity of up to ninety (90) days beyond the Time for Completion of the Works reckoned from the Commencement Date. The same shall be extended by the Contractor time to time till ninety (90) days beyond the date of Completion Certificate.*
*Notwithstanding the above, the Contractor may choose to submit the Advance payment security with an initial validity of not less than one (1) year reckoned from the Commencement Date. In such a case, the Contractor shall, however, be required to extend the validity of the Advance payment security by at least one (1) year at a time, and finally till ninety (90) days beyond the Time for Completion of the Works reckoned from the Commencement Date, as may be required under the Contract. Such extension may be arranged by the Contractor at any time, but the Contractor must ensure the submission of the extended Advance payment security to the Employer no later than 45 days before the expiry of the Advance payment security, failing which the said Advance payment security shall be invoked by the Employer for recovery of the unadjusted advance."*

*17. From the aforesaid conditions employed in the Bank Guarantee, it is apparent that the same is not unconditional, and there are certain conditions which have been prescribed which may fall within the purview of the ratio of the judgement laid down by the Supreme Court in* ***Hindustan Construction*** *(supra).*

*18. That apart, two legal notices dated 23.06.2026 and 11.07.2026 issued by the respondent no.1 appear to be primarily and solely based on the alleged violations of the Framework Agreement, and have not remotely referred to any issue arising out of the Civil Works Contract. This is particularly relevant for the reason that though by the said notices, the respondent no.1 is attempting to threaten the petitioner of invocation of the Bank Guarantee in an indirect manner, however, are premised only on issues pertaining to the Framework Agreement dated 06.01.2025.*

*19. At this prima facie stage, the action of respondent no.1 appears to be contrary to the ratio laid down by the Supreme Court in* ***Hindustan Construction*** *(supra).*

*20. At this stage, Ms. Palak Rohmetra, learned counsel for the respondent no.1 enters appearance and states that she has been apprised of the present petition just now. She states, on instructions, that the invocation of BG-1 and BG-2 shall*

*not be processed further for the next two days, and requests that the matter may be taken up for consideration thereafter.*

*21. Having regard to the aforesaid and binding the respondent no.1 to the statement tendered by Ms. Rohmetra, learned counsel, list the matter on 27.07.2026 for consideration."*

**CONTENTIONS OF THE RESPONDENT:-**

3. Appearing for the respondent no.1, Mr. Sharma, learned senior counsel would submit that the law in respect of minimal interference in invocation of BGs by the Courts is well settled. He would contend as under:

3.1. Learned senior counsel, at the outset, stated that the premise on which the petitioner had pitched its case that the subject BGs were being wrongly invoked on the basis of violation of the Framework Agreement dated 06.01.2025 (hereinafter referred to as *"FA"*) between the parties, is absolutely incorrect and false. He would contend that the BGs were furnished only in respect of and under the Civil Works Contract dated 12.11.2024 (hereinafter referred to as *"CWC"*), and not the FA. Alluding to Appendix 2 of the CWC, learned senior counsel elaborately demonstrated the scope of work. He further referred to Clause 43.1 of the CWC regarding Mobilization Advance and the requirement of the Contractor to furnish Advance Payment Security in the form of Advance BG. In order to explain the manner in which the Advance BG was to be furnished, learned senior counsel drew attention to the format provided of the Advance BG specified in Appendix 2. Explaining the format, he would contend that the BG is unconditional inasmuch as the so-called condition relied upon by the respondent prescribed two aspects. One, that the contractor fails to commence the work, and two, it fails to fulfil the obligations under the terms of the CWC. He contended that in the present case, the works had already commenced, and thus, the only aspect remaining was of fulfilment of the obligations. He would emphasize that it is on account of non-

fulfilment of obligations that the BGs are sought to be invoked, which is not a condition precedent for this Court to pass any interim orders.

3.2. Apart from the above, learned senior counsel drew attention to the Advance BG dated 12.11.2024 (BG-1) furnished by the petitioner. He would contend that apart from the conditions specified, BG-1 also had a *non obstante* clause whereby the bank had given an unconditional guarantee of payment, if a written claim or a demand is served upon it. He would contend that having regard to the *non obstante* clause, *arguendo*, even if the BGs are claimed to be conditional, the same would be overridden by the non obstante clause. Thus, according to him, read any which way, the BGs are unconditional.

3.3. In the same context, learned senior counsel also contended that BG-2 was also furnished only in respect of the Advance BG, and as such, in view of the aforesaid submissions, ought to be read as unconditional BG, which can be invoked by the respondent without a demur. He would contend that even in BG-2, the same *non obstante* clause is available, thus there cannot be a distinction on invocation between BG-1 and BG-2.

3.4. Handing over the Bench a list of documents containing the FA, learned senior counsel would forcefully contend that the said FA did not contemplate any security in the nature of a BG. He would emphatically contend that no BG of whatsoever nature was furnished or required from the petitioner. He emphasised that the petitioner has raised a completely false bogey of the respondent invoking the BGs by relying upon or predicating some alleged breach of the FA. In fact, according to him, the invocation of BGs is clearly contemplated only under the CWC, and not the FA. Thus, according to him, the main stay of the petitioner on which the entire petition is predicated falls flat, and is dissipated.







3.5. In order to buttress the aforesaid, learned senior counsel read the legal notice dated 23.06.2026 to clarify that the invocation of BGs were not at all linked to the said notice as has been falsely contended by the petitioner. In fact, learned senior counsel would emphasise that in the penultimate paragraph of the said legal notice, there was no reference to any invocation of BG, rather it was a notice of initiation of proceedings before the Micro, Medium and Small Enterprises Facilitation Centre (MSMEFC) under Section 18 of the Micro Small and Medium Enterprises Development Act, 2006 (hereinafter referred to as '*MSME Act, 2006'*). Thus, according to him, the entire case of the petitioner is premised on a false and vexatious ground.

3.6. Further to the above, learned senior counsel also invited attention of this Court to the grounds in the petition, particularly, Ground A to D, G, H, I, K and L, M and N, which relate only and only to the FA, and have no nexus or relation to the CWC. By reference to these grounds, the learned senior counsel would have the Court believe that the petitioner's premise is completely false and unavailable.

3.7. Learned senior counsel seriously contended that the petitioner is guilty of suppression of material documents which would disentitle it from praying for any interim relief. Referring to the documents filed alongwith the reply, learned senior counsel would contend that by way of a number of correspondence and legal notices, the petitioner was put to notice of serious infirmities and grave failure in fulfilment of material obligations of the Contract. He would also refer to notices dated 24.02.2025, 01.07.2025, and 10.11.2025 alongwith the snapshots of the instruction book and photographs annexed to the legal notices to demonstrate the abject failure of the petitioner in fulfilling its contractual obligations. So much so, that not only were notices for default issued, but even penalties for unauthorized

open excavation were sought to be levied. Learned senior counsel would contend that things came to such a pass that the respondent had no choice but to withdraw certain works from the petitioner *vide* notice dated 04.04.2026. Although, *vide* the letter dated 21.04.2026, the said withdrawal was kept in abeyance, however, the petitioner was cautioned that its performance will be monitored closely, and appropriate and strict action as deemed necessary under the terms and conditions of the Contract would be initiated without any further notice. It is in this context, learned senior counsel contended that the BGs were sought to be invoked.

3.8. Additionally, he would also contend that even if it is assumed, though without admitting, that the BGs were conditional, the letters, correspondences, even of default notices, the withdrawal of work, etc., would clearly demonstrate non-fulfilment of obligations in terms of the CWC entitling the respondent to invoke the BGs. He would submit that looking at it any which way, the action of invocation of BGs whether premised on unconditional nature or assumingly conditional nature, is clearly not only justifiable, but also well within the conditions specified in the CWC. Learned senior counsel relied on the judgement of the Supreme Court in ***National Highways Authority of India vs. Ganga Enterprises & Anr., (2003) 7 SCC 410***, and that of this Court in ***Kalpataru Projects International Limited vs. JSW Infrastructure Limited, 2026 SCC OnLine Del 3936***. He thus prays that the present petition may be dismissed with costs.

**REJOINDER OF THE PETITIONER:-**

4. Mr. Sujoy Datta, learned counsel for the petitioner refutes the submissions of the respondent. Referring to Clause 43.1 of the CWC, the learned counsel would contend that though the said Contract contemplated furnishing of BGs for Advance

Security, however, did not provide any mechanism for encashment of the same. He would contend that unlike Performance BG, the BGs for Advance Security had a mechanism for recovery as spelt out in Clause 43.3. Alongwith Clause 43.1 of the CWC, he would also invite attention to Clause 38.2, which clearly specifies that the contractor was required to issue the Bill of Quantities, which were measured till the 15th and 30th of every month. Referring further to sub-clause (f) and (g) of Clause 38.2, he would contend that the deduction, if at all, can be acted upon only under the said provisions. Apart from the said provisions, according to him, there is no provision which provides or empowers the respondent to encash the BGs. He would contend that the BG-1 and BG-2 in question, are furnished only against the Advance Mobilization Security, and not the Performance Security, thus, would remain bound by the aforesaid terms. To demonstrate the distinction between Advance BG and Performance BG, he referred to Clause 5 of the CWC regarding furnishing of Performance Security.

5. Apart from the above, learned counsel would contend that the respondent has failed to demonstrate as to under which clause of the CWC, has the respondent sought invocation of the BGs furnished on account of Advance Mobilization. Additionally, he would contend that the reply itself is bereft of reference to any clause of the CWC for such invocation.

**RESPONSE OF THE RESPONDENT:-**

6. Mr. Sharma, learned senior counsel would submit that the submissions of the petitioner are bereft of the pleadings and as such cannot be taken note of. He reiterated that the petitioner has not furnished any BG in the nature of PBG as stipulated under Clause 5 of the CWC. He would further contend that it is only the Performance Security which is subject to the final accounting. Thus, according to







him, the invocation of BG-1 and BG-2 is in consonance with the conditions of the CWC.

**ANALYSIS AND CONCLUSION:-**

7. At the outset, this Court would refer to its order dated 22.07.2026. It may be recalled that the petitioner had pitched its case for restraint of invocation of BGs on two fundamental issues. In that, (i) that the BG-1 and BG-2 are conditional and cannot be invoked predicated on the judgement of the Supreme Court in ***Hindustan Construction Company Limited*** (*supra*), and (ii) that the invocation is arbitrary and malafide being based on the FA and have no nexus nor an incidental to the said FA having been furnished under the CWC, which is a separate Contract.

8. So far as the issue no (ii) noted above is concerned, it is beyond cavil that the invocation of BG is purely under the CWC and not under the FA. This is clear from the fact that no contrary assertion has been made by the petitioner to the submission that BG-1 and BG-2 are furnished only under the CWC and not the FA. In fact, in rejoinder, learned counsel for the petitioner did not at all dispute this submission. Thus, it is apparent and manifest that the BGs have been furnished by the petitioner under the conditions of CWC and not the FA.

9. Further to issue no. (ii), it would be relevant to consider the submission that was made on the admission hearing that the respondent is seeking to invoke BG-1 and BG-2 predicated on some violation of conditions of the FA, this Court has, with the assistance of learned senior counsel perused the abovesaid notices. On such examination, it is profoundly clear that the notices do not refer to invocation or any threat of invocation of BG-1 and BG-2, and in the penultimate paragraph only refer to initiation of proceedings under the MSME Act, 2006. Other than that, it has no nexus with the invocation of the BGs. To ensure that there is no doubt

about the aforesaid analysis and conclusion, the penultimate paragraph of the notice dated 23.06.2026 is extracted hereunder:

> *"19. In view of the foregoing, you are hereby called upon to pay to our client the following amounts within SEVEN (7) days from the date of receipt of this Notice:*
>
> *(a) Rs.3,16,33,233.46/- (Rupees Three Crore Sixteen Lakh Thirty Three Thousand Two Hundred Thirty Three and Forty Six paise Only) being the principal outstanding amount towards materials supplied;*
>
> *(b) Rs.54,38,428/- (Rupees Fifty Four Lakh Thirty Eight Thousand Four Hundred Twenty Eight Only) being compound interest on the principal outstanding amount under Section 16 of the MSMED Act, 2006, computed at three (3) times the RBI Bank Rate i.e., at 19.50% per annum compounded annually, from the respective due dates of each invoice until 22.06.2026, as per the MSME Interest Calculation Statement annexed hereto as AnnexureB, and further interest continuing to accrue at the said rate until actual payment; and*
>
> *(c) Rs.75,000/- (Rupees Seventy Five Thousand Only) towards the costs of drafting and sending this Legal Notice. The aggregate amount demanded hereunder as at 31.05.2026 is Rs.3,71,46,662/- (Rupees Three Crore Seventy One Lakh Forty Six Thousand Six Hundred Sixty two Only), exclusive of further interest accruing after 31.05.2026 until actual payment.*
>
> *Take notice that in the event you fail to comply with the aforesaid demand within the time stipulated, our client shall, without any further notice to you, initiate proceedings before the Micro and Small Enterprises Facilitation Council (MSMEFC) under Section 18 of the MSMED Act, 2006, file a complaint on the MSME Samadhaan Portal, and take such other steps as may be advised, including reporting your non-compliance to the GST and Income Tax authorities, all at your risk as to costs and consequences.*
>
> *Our client remains open to an amicable resolution of this dispute and is willing to meet at a mutually convenient time and place to explore an early settlement, failing which it shall be constrained to initiate the legal proceedings referred to herein.*
> *This Notice is issued without prejudice to all other rights and remedies of our client in law and in equity, all of which are expressly reserved."*
>
> [Emphasis Supplied]

Thus, it is abundantly manifest that the submission of the petitioner itself is without any factual or legal foundation and is outrightly rejected.

10. So far as issue no. (i) aforenoted is concerned, it would require this Court to examine the language employed in the subject BGs. Since the language is almost identical, BG-1 is extracted hereunder:

> *"BANK GUARANTEE FOR MOBILIZATION ADVANCE*
> *Letter of Acceptance/Contract Reference No VPHPL/PRG-LOA-Civil Works-01/24-25/01 dated 12/08/2024 for the Contract for Civil Works for Pareng HEP (3x 4850KW) in Pareng Village, District Papumpare, Arunachal Pradesh.*
>
> *To:*
> *M/s Virtuaal Pareng Hydro Private Limited,*
> *Pvt Res, Near Directorate of Eco and stats,*
> *P.O.RKM, Itanagar, Arunachal Pradesh- 791111, India*
>
> *Dear Ladies and/or Gentlemen,*
>
> *We refer to the Contract for Civil Works for Pareng HEP (3x 4850KW) in Pareng Village vide reference no VPHPL/PRG-LOA-Civil Works-01/24-25/01 dated 12/08/2024.*
>
> *BETWEEN*
>
> *You, M/s Virtuaal Pareng Hydro Private Limited a company incorporated under the laws of India under the Companies Act 1956 as amended from time to time and having its principal place of business and Registered Office at Pvt Res, Near Directorate of Eco and stats, P.O.RKM, Itanagar, Arunachal Pradesh- 791111, India (hereinafter called "the Employer" which expression shall unless repugnant to the context or meaning thereof include its successors and assigns)*
>
> *AND*
>
> *M/s Onycon Infrastructure, a corporation incorporated under the laws of India under the Companies Act 1956 as amended from time to time and having its principal place of business and Registered Office at 307 3rd Floor, Shri Krishna Premises, New Link Road, Opp Laxmi Ind. Estate, Andheri West, Mumbai-400053 (hereinafter called "the Contractor" which expression shall unless repugnant to the context or meaning thereof include its successors and assigns) for providing of all plant, materials and performing of all required services, including design (to the extent applicable), procurement, quality assurance, construction, installation, erection, Tests on Completion, delivery, Tests after Completion, as applicable, and Completion of the Works and rectification of defects, in accordance with the plans, procedures, specifications, drawings, codes, and any other documents and provisions as specified, for All Civil Works Comprising of River Diversion Works, Barrage, Intake, Feeder Tunnel, De-silting Chamber, Head Race Tunnel & Adits, Surge Shaft, Pressure Shaft, Penstock Civil Structural Works, Power House Complex, etc., under the Civil Works Package for*

*Pareng Hydropower Project (14.5 MW) in Arunachal Pradesh ("the Works") and the Taking Over of the Works by the Employer subsequent to its Completion by the Contractor.*

*Whereas, in accordance with the terms of the said Contract, the Employer has agreed to pay or cause to be paid to the Contractor Advance Payment(s) against furnishing of an irrevocable bank guarantee for amount of Rs.2,53,80,000/- (Rupees Two Crore Fifty Three Lakh Eighty Thousand Only).*

*By this letter We, YES Bank Ltd., a company incorporated and registered under the Companies Act 1956 and a banking company within the meaning of section 5(c) of the Banking Regulation Act, 1949 and having its registered office at YES BANK LIMITED, YES BANK House, Off Western Express Highway, Santacruz East, Mumbai 400055, India & Issuing branch office inter alia at YES BANK LTD, Ground Floor, Hotel Fortune Galaxy, N.H.8, GIDC, Vapi - 396195, Gujarat (Hereinafter called as "Bank") do hereby irrevocably guarantee repayment of Rs.2,53,80,000/- (Rupees Two Crore Fifty Three Lakh Eighty Thousand Only) upon the first demand of the Employer without cavil or argument in the event that the Contractor fails to commence or fulfill its obligations under the terms of the said Contract for reasons whatsoever.*

*Provided always that the Bank's obligation shall be limited to the amount of this bank guarantee or an amount equal to the outstanding balance of the Advance Payment(s), taking into account such amounts, which have been repaid by the Contractor from time to time in accordance with the terms of payment of the said Contract, as certified by you.*

*This bank guarantee will be effective only on receipt of advance payment in the account 000184600001594 maintain with YBL.*

*This Guarantee shall remain in full force from the date upon which the said Advance Payment(s) are received by the Contractor up to ninety (90) days beyond the date on which the entire Advance Payment(s) has been fully adjusted in terms of the Contract i.e., up to ninety (90) days beyond the date of Completion of the Facilities under the Contract. This Guarantee may be extended from time to time, as may be desired by M/s Virtuaal Pareng Hydro Private Limited on whose behalf this Guarantee has been issued.*

*Any claims to be made under this Guarantee must be received by the Bank during its period of validity, i.e. upto ninety (90) days beyond the date of Completion of the Facilities by the Employer i.e. upto and inclusive of 30-SEP-2025.*

*Notwithstanding anything contained hereinabove:*

*1) Our liability under this bank guarantee shall not exceed Rs.2,53,80,000/- (Rupees Two Crore Fifty Three Lakh Eighty Thousand Only);*
*2) This bank guarantee shall be valid only up to 30-SEP-2025;*

> *3) We are liable to pay the guaranteed amount or any part thereof under this bank guarantee only and only if a written claim or demand, served by you in accordance with the terms of this bank guarantee, is received by us on or before 5 P.M on or before 30-SEP-2025 at YES BANK LTD, Ground Floor, Hotel Fortune Galaxy, N.H.8, GIDC, Vapi - 396195, Gujarat. Thereafter, your right to claim under this bank guarantee shall be forfeited once and forever and we shall be relieved from all our liabilities hereunder irrespective of whether the original bank guarantee has been returned to us or not."*
>
> [Emphasis Supplied]

11. To the mind of this Court, the language employed appears to be partly conditional, which is predicated on non-commencement of the works or failure to fulfil the obligations under the terms of the CWC. It is not disputed that the works under the CWC have already commenced, and thus, the first portion of the BG is already fulfilled. So far as the second portion of the condition regarding failure of fulfilment of obligations under the CWC is concerned, the respondent alongwith its reply has furnished crucial correspondences which would demonstrate, *prima facie*, that the petitioner has failed in fulfilment of its obligations. As to how this Court is forming the said opinion would be demonstrable from the critical paragraphs of such notices whereby events of default have been notified, certain works were withdrawn, and though the withdrawal was kept in abeyance, however, a warning of immediate strict action under the CWC without further notice would be undertaken by the respondent, was clearly mentioned and intimated to the petitioner, and are extracted hereunder:



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Outlook

**Fw: Onycon letter No 45 for Construction of Civil work of Pareng 14.5 MW HEP , Pareng Village Arunachal Pradesh**

**From** Chinmoy Gangopadhyay <chinmoy@virtuaal.in>
**Date** Wed 2025-01-29 2:28 PM
**To** chandrashekharsingh <chandrashekhar.singh@onyconinfra.com>; amitpatel <amit.patel@onyconinfra.com>
**Cc** Vikram Aggarwal <vikramaggarwal@virtuaal.in>; srg <srg@virtuaal.in>; mary <mary@virtuaal.in>

1 attachment (2 MB)
45-Slippage_in_Construction_Schedule_13.01.25.pdf;

Dear Mr. Chandrashekhar,

At the outset, it must be said that you have painted a very distorted picture in the attached letter of the trailing mail, about the work environment and VPHPL support at Pareng. After issuing NTP, VPHPL has done everything possible under the sun to make the ONYCON team settle down and work. If there were initial hurdles, as you mention in your letter, the same happened to be, not a handiwork of VPHPL, but a fall out of your organisational inability to efficiently plan and mobilise adequate equipment and manpower. Surely, you can't transfer this blame on to the Employer.

Since beginning, you have been using to the last drop, all the usable infra. facilities, material and equipment left behind by KIPL. Blockades etc., as mentioned in your letter, were a temporary passing phase, which hardly lasted. This cannot be a reason for losing work pace. If a list of ONYCON's deficiencies, which prevented momentum of construction, are to be made out, that will be long ; we however, are pointing out only a few below :

1. Till today, ONYCON doesn't have a proper site organisation in place. There is neither leadership available at site, nor regular supervision available from HQ. CVs of the few people who are available at site, have also not been submitted to us.
2. ONYCON doesn't have a proper Planning organisation within and as suchno work plan could be prepared and submitted by you. So the material indents made by you have not been linked to any work plan.
3. Strangely, while you are asking for drawings in advance, we find that the tunnel construction, where the drawings have been issued well in advance, is not proceeding as per approved drawings. This has been pointed out to you recently when you raised your first RA Bill, seeking measurements and payment as per drawings. So much for the quality of work. Such casual approach may prove devastating for the Project.
4. Your lack of concern and casual approach for safety is often giving us (and our Investors too) heartbeats. A gas meter has been brought in only last week after about two month's persuation. The ducts which have been sent to the site, are ill fitted and oversized for the

tunnel. It's not clear if these are going to serve any purpose. The PPE kits often suffer in terms of quality and quantity. On many occasions, workers are found moving around workplace without proper PPE gear. There is only one experienced safety officer in your team for multiple work fronts. No efforts are being made for training the fresher Safety officers without experience. This, incidentally, is a major point of concern for our Investors which has the potential of adversely impacting cash flows of the Project.

5. You have not so far not submitted the Labour License from the concerned State Administration.
6. While you are still using VPHPL camp for your officers/staff, your own camp has not yet come into existence even after about two and half months post NTP. This explains the reason for hiring accommodation in the village. Can VPHPL be blamed for this ?
7. You have so far not submitted the documents/information as per Appendix-5 of Contract Agreement which inter alia includes Security and Safety arrangements.

Without further extending the list of such lapses and omissions on your part, we would like to impress upon you that contrary to your claim of delays and idling charges, we have made every possible effort to facilitate work at the project site by offering equipment, material and infra support. As far as payment of idling charges are concerned, pl. note that the same will be governed by the applicable provisions of GCC, basis which, none of the situations described by you would qualify.

Regarding works at the Seema village site, we expect you to develop some rapports with the local population without which such minor issues will keep cropping up from time to time. No civil contractor can work as an island without maintaining good relationships with local communities. VPHPL has already paid for and acquired the Project land in its entirety. We therefore advice that work be taken up in the right earnest by taking into confidence the local community and other stakeholders.

Yours sincerely

Chinmoy Gangopadhyay

From: Chadrashekhar Singh <chandrashekhar.singh@onyconinfra.com>
Sent: Fri, 24 Jan 2025 22:53:42 GMT+0530
To: "'srg '" <srg@virtuaal.in>
Cc: "'Vikram Aggarwal '" <vikramaggarwal@virtuaal.in>, <chinmoy@virtuaal.in>, "'shweta '" <shweta@virtuaal.in>, "'amitpatel '" <amit.patel@onyconinfra.com>, "'pranitgharat '" <pranit.gharat@onyconinfra.com>
Subject: Onycon letter No 45 for Construction of Civil work of Pareng 14.5 MW HEP , Pareng Village Arunachal Pradesh

VIRTUAAL PARENG HYDRO PRIVATE LIMITED

VPHPL/24-25/032

Date: February 24, 2025

To
M/s Onycon Infrastructure
307, 3rd Floor, Shri Krishna Premises, New Link Road,
Opp. Laxmi Industrial Estate, Andheri W,
Mumbai 400053

Kind Attention: Mr. Amit Patel

Subject: **Notice of Default - Contract No. PRG-W007-Civil Works**

Reference:

1. Contract Agreement dated 12th Nov., 2024 for Construction of Civil Works for 14.5 MW Pareng Hydroelectric Project in Arunachal Pradesh
2. Contractor's Letter dated 13 Jan 2025 regarding slippage in Construction Schedule
3. Employer's response vide mail dated 29 Jan 2025

Dear Sir,

1. We refer to your letter dated 13th January 2025 wherein you have attempted to justify your continued performance failures under the Contract through various unsubstantiated and untenable claims and issues. Our comprehensive response dated 29 January 2025 has already addressed these issues and refuted these claims. For the sake of clarity and record, we have tabulated below your purported issues alongside our responses, which clearly demonstrate the baseless nature of your assertions:

| Issue Category | Contractor's Claims/Requests | Employer's Response |
|---|---|---|
| **Site Handover and Access** | Initial hurdles in mobilization due to previous contractor (KIPL) blocking access and not handing over facilities | • These issues were resolved before Onycon was given the NTP and a clean site was handed over to Onycon with a lot of infrastructure (accommodation for labour, facilities, storage etc) for immediate use. This enabled Onycon to mobilise from day one and start work on the site. However, lack of proper mobilisation planning continues and so does the structural weakness of ONYCON's site organisation. |
| **Local Issues and Safety** | Faced threats from local villagers at Seema Area, preventing work commencement | • Contractor is expected to develop rapport with local communities and manage minor issues as part of normal project execution. There remains a continued issue of lack of effective leadership on the part of ONYCON. To date Onycon has not provided employment to a single villager, nor given them any minor works. While negotiating the Contract, Onycon has represented several times that it is a company experienced in remote area working environments and has even faced anti national organisations in Manipur. Accordingly, Onycon is requested to step up its local community engagement and speed up the work. |
| **Mobilization and Planning** | Have mobilized equipment and manpower but faced restrictions | • Absence of a proper planning organization • Failed to submit required work plans •material indents not linked to any work plan • Equipment documents e.g. registration, insurance are not submitted |

Corporate Office:
9, Astley Hall,
Dehra Dun, 248001
Uttarakhand, India

Registered Office: G-3, Akarshan Bhavan
4754/23, Ansari Road, Darya Ganj, New Delhi-110002
Mobile : +91-9412992473, Email: infrapower@virtuaal.in
CIN : U74999DL2012PTC240327

VIRTUAAL PARENG HYDRO PRIVATE LIMITED

Despite these comprehensive facilitation measures that go beyond standard contractual obligations -

- Your performance continues to remain severely deficient, indicating a fundamental lack of commitment to project execution.
- Your persistent defaults, viewed against the backdrop of such extensive support and accommodation by VPHPL, are particularly egregious and cannot be justified by any reasonable standard of contract performance.

Pl. also note that VPHPL is under commitment to the State Govt. to commission the Pareng HEP by March 2027, failing which serious commercial implications may follow.

4. **Notice to Remedy**

In view of the above situation, pursuant to Clause 49.2, you are hereby directed to remedy these defaults within 7 days of receipt of this notice by:

a) Submitting a detailed recovery plan and revised program showing how you will complete the Works within the Time for Completion
b) Significantly augmenting your mobilization of manpower, equipment, and materials
c) Implementing comprehensive safety measures and obtaining required insurances
d) Establishing proper site organization and management systems
e) Implementing effective coordination strategies for handling local conditions and community relations
f) Correcting all non-compliant work

5. **Payment Resolution and Performance Requirements**

Without prejudice to our position regarding your defaults please note that we are implementing measures to expedite payment processing, while requiring you to rectify your defaults expeditiously and improve upon your performance. Payment matters do not justify or excuse the defaults detailed in this Notice.

6. **Reservation of Rights**

VPHPL expressly reserves all rights and remedies available under the Contract and at law, including but not limited to:

a) Claim for damages
b) Recovery of additional costs
c) Contract termination under Clause 49.2
d) Engagement of third parties to remedy defaults at your cost

Please acknowledge receipt of this Notice and provide your comprehensive plan of action within the stipulated 7 days. Failure to take immediate corrective action will result in further contractual measures, including potential termination

Thanking you
Virtuaal Pareng Hydro Private Limited

Authorised Signatory

**DOCUMENT-8**

VIRTUAAL PARENG HYDRO PRIVATE LIMITED

**VPHPL/OI/CVL/2024-25/004** **Date: 01.07.2025**

**To M/s Onycon Infrastructure**
307, 3rd Floor, Shri Krishna Premises,
New Link Road, Opp. Laxmi Industrial Estate,
Andheri West,
Mumbai - 400053

**Kind Attention:** Mr. Amit Patel

**Subject: VPHPL's response on Onycon letter regarding Immediate work progress at the site**

**Ref:** Contract Agreement No. PRG-W007 dated 12/11/2024 for Construction of Civil works of Trench weir, Intake well, Feeder Tunnel, Head race Tunnel and Adits, Desilting Basin, Surge Shaft, Pressure Shaft, Penstock Civil work, Power house Civil work, Switchyard and Tailrace Channel for 14.5 MW Pareng Hydroelectric Project, Arunachal Pradesh

Dear Sir,

Please refer to your letter No. **OI/CVL/HO100/2025-26/006** dated **30/06/2025**, on the referred subject. We have noted your intent to take up work on some fronts immediately. You may please note the following:

**Item No. 1)** Please raise indent for steel and cement required for the Adit 3 portal stabilisation work, with time frame.

For Adit 2, as such there is no such obstruction on the road. In fact, Adit 2 work should be taken up on priority. Please let us know your plan to go ahead.

**Item no. 2)** Though surge shaft drawings have been issued, the work is suggested to be taken up when the monsoon starts receding.

**Item no. 3)** Noted

**Item no. 4)** Class wise rock support system has been designed and drawing issued accordingly. For rock class V, only rib support with laggings have been envisaged. However, if there is any specific suggestion from Onycon, the same can be taken up with the designers.

However, on the tunnel support arrangement, we would like to highlight the following points which are very critical needing immediate attention:

- Rock bolts those are being installed are neither anchored properly nor tightened as there is no proper tool (torque wrench) available with the team. The bolts are being just fixed by normal hand-held spanners. **(Refer Photograph – 01 & 02 below)**

- Workmanship of installation of wire mesh and shotcreting being executed at site at present, is of extremely poor quality, with wire mesh completely hanging outside the shotcrete layers at many places. **(Refer Photograph – 03 & 04 below)**

Corporate office:
I-A, Astley Hall,
Dehra Dun, 248001
Uttarakhand, India

Registered Office: Pvt Res Near Directorate of Eco & Stats,
P.O. RKM, Itanagar -791111, Arunachal Pradesh, India
Mobile : +91-9412992473, Email: infrapower@virtuaal.in
CIN : U40101AR2012PTC008375

VIRTUAAL PARENG HYDRO PRIVATE LIMITED

**PHOTOGRAPHS**



*Photograph 1*



*Photograph 2*

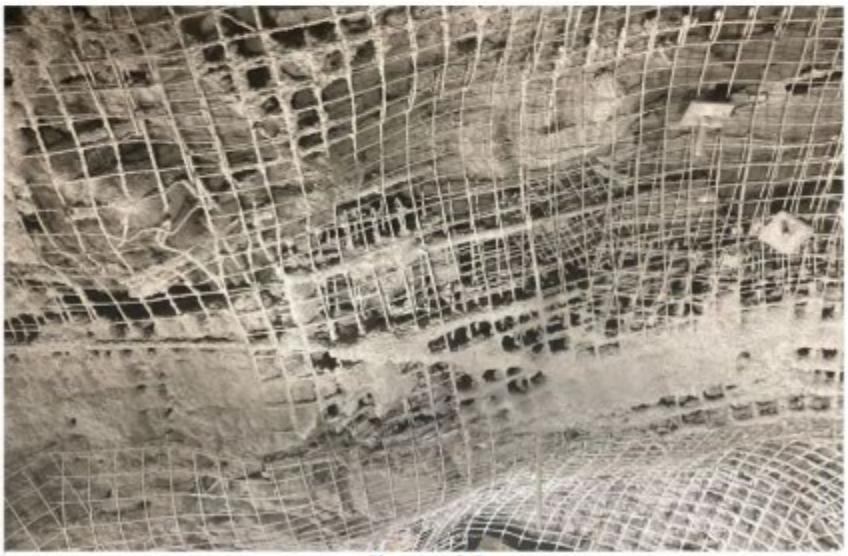
Corporate office:
9-A, Astley Hall,
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Uttarakhand, India

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*Photograph 3*



*Photograph 4*

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VIRTUAAL PARENG HYDRO PRIVATE LIMITED

**SNAPSHOTS OF SITE INSTRUCTION BOOK**

| | | | |
|---|---|---|---|
| 22.04.25 | 9:30 | Regarding shotcrete & Rock bolt As per site condition rock quality is not good in crown area. So, Pls do the rock bolt & shotcrete first before face blast. you are doing fixing Rock bolt without washer. And you are not doing the work as per drawing, So Pls arrange and do the work properly. | |
| 28.04.25 | 9:29 | As instructed so many times for marking the quality of Rock bolt as per drawing and insert as per given direction but you have not followed yet. | |

| | | | | |
|---|---|---|---|---|
| | | | Sign of VPHPL | Compliances |
| 2.04.25 | L.K Sing | Regarding Rock Bolt - I have observed that you are not inserting Rock bolt properly, 1st while inserting thread top the rock bolt, upper part of the bolt is getting damaged and 2nd while inserting the bolt, bolt should be inserted while rotating, which is not happening. Washer have not arranged yet. | | Noted Ramdev |

| | | | | |
|---|---|---|---|---|
| 15.05.25 | L.K. Sing | Thickness of shotcrete - Pls use Rmp Hail Incfe spacing for marking & checking the thickness of shotcrete and easy for verified. So, Pls arrange it asap. | | Noted Ramdev |

Corporate office:
9-A, Astley Hall,
Dehra Dun, 248001
Uttarakhand, India

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Mobile : +91-9412992473, Email: infrapower@virtuaal.in
CIN : U40101AR2012PTC008375

**DOCUMENT-9**

VIRTUAAL PARENG HYDRO PRIVATE LIMITED

**VPHPL/OI/CVL/2025-26/021** **Date: 10.11.2025**

**To M/s Onycon Infrastructure**
307, 3rd Floor, Shri Krishna Premises,
New Link Road, Opp. Laxmi Industrial Estate,
Andheri West,
Mumbai - 400053

**Kind Attention:** Mr. Amit Patel

**Subject:** Pareng HEP – Show Cause Notice for Unauthorized execution of work at Adit – 2 area

**Ref:** Contract Agreement No. PRG-W007 dated 12/11/2024 for Construction of Civil works of Trench weir, Intake well, Feeder Tunnel, Head race Tunnel and Adits, Desilting Basin, Surge Shaft, Pressure Shaft, Penstock Civil work, Power house Civil work, Switchyard and Tailrace Channel for 14.5 MW Pareng Hydroelectric Project, Arunachal Pradesh

Dear Sir,

This refers to the works at Adit 2. The GFC drawings (DMR_20158_PNSHP_C90_05, 06, 11C, 23 & 52) for Adit 2 portal slope cutting, stabilisation and false portal were kept on hold and the same was formally communicated to Onycon by VPHPL through email dated 28th October 2025.

However, despite the clear directions, it has come to our notice that on 3rd November '25, Onycon started unauthorised excavation of the Adit 2 portal area on their own, without any approved drawings, permission/authorisation of VPHPL, without any method statement for the work, even without any knowledge of VPHPL. Strangely none at site from Onycon was able to respond why this has been done and what to do next. **This is a serious violation of the contract and accordingly we issue Show Cause Notice to you for**

**A - executing unauthorised works**
**B - Carrying out works detrimental to the progress and interests of the project**

Lot of random excavation has been done on the upper reaches above the portal and also lot of muck has been thrown below the roadside. Such a callous work without any knowledge of what and how to do, has made the slope unstable and also created issues with locals.

Onycon is hereby asked to explain within 7 days from the date of this notice

1. Why contractual action should not be taken against Onycon and
2. What remedial measures are being put in place by Onycon to ensure that such incident is not repeated in future.

Failure to provide a satisfactory explanation within the stipulated time will compel us to take appropriate action.

**Regards,**

**SR Ganguly**
**For VPHPL**

Corporate office:
9-A, Astley Hall,
Dehra Dun, 248001
Uttarakhand, India

Registered Office: Pvt Res Near Directorate of Eco & Stats,
P.O. RKM, Itanagar -791111, Arunachal Pradesh, India
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CIN : U40101AR2012PTC008375

VIRTUAAL PARENG HYDRO PRIVATE LIMITED

# DOCUMENT-10

**VPHPL/OI/CVL/2025-26/022** **Date: 13.11.2025**

**To M/s Onycon Infrastructure**
307, 3rd Floor, Shri Krishna Premises,
New Link Road, Opp. Laxmi Industrial Estate,
Andheri West,
Mumbai - 400053

**Kind Attention:** Mr. Amit Patel

**Subject:** Pareng HEP – Show cause notice for unauthorized Blasting at HRT Face-6

**Ref:** Contract Agreement No. PRG-W007 dated 12/11/2024 for Construction of Civil works of Trench weir, Intake well, Feeder Tunnel, Head race Tunnel and Adits, Desilting Basin, Surge Shaft, Pressure Shaft, Penstock Civil work, Power house Civil work, Switchyard and Tailrace Channel for 14.5 MW Pareng Hydroelectric Project, Arunachal Pradesh

Dear Sir,

It has been observed with serious concern that your team carried out a blasting operation in **Head race Tunnel Face 6** on 9th Nov '25, despite knowing very well that the only shotcrete m/c Onycon is having was under breakdown. Taking a blast and exposing the tunnel face without readiness for protection and support is only inviting disasters. This action is **without adhering to the prescribed technical and safety requirements** and in direct violation of approved work procedures.

Such a **careless and unsafe practice** not only compromises the **quality and safety standards of the project**, but also **endangers personnel and equipment** at site. It reflects a serious lapse in supervision and disregard for established protocols.

You are hereby **directed to show cause within next 7 days, a**s to **why contractual action should not be taken against you** for this gross negligence and violation of safety and technical norms.

Onycon should also let us know what actions are being taken to ensure so as to avoid such situations in future.

Failure to provide a satisfactory explanation within the stipulated time shall lead to further action as deemed appropriate.

Regards,

Virtuaal Pareng Hydro Private Limited
Authorised Signatory

Corporate office:
9-A, Astley Hall,
Dehra Dun, 248001
Uttarakhand, India

Registered Office: Pvt Res Near Directorate of Eco & Stats,
P.O. RKM, Itanagar -791111, Arunachal Pradesh, India
Mobile : +91-9412992473, Email: infrapower@virtuaal.in
CIN : U40101AR2012PTC008375

# DOCUMENT-13

VIRTUAAL PARENG HYDRO PRIVATE LIMITED

**Ref No: VPHPL/OI/CVL/2025-26/043** **Date: 03.03.2026**

**To M/s Onycon Infrastructure**
307, Third floor
Shri Krishna Premises, New link Road
Opp. Laxmi Industrial Estate, Andheri (W)
Mumbai-400053

**Kind Attention:** Mr. Amit Patel

**Subject:** Powerhouse Construction – Pareng HEP - Show Cause Notice for Failure to Mobilize Resources and Progress

**Ref:** Contract Agreement No. PRG-W007 dated 12.11.2024 for Construction of Civil Works of Trench Weir, Intake Well, Feeder Tunnel, Head Race Tunnel and Adits, Desilting Basin, Surge Shaft, Pressure Shaft, Penstock Civil Works, Powerhouse Civil Works, Switchyard and Tailrace Channel for 14.5 MW Pareng Hydroelectric Project, Arunachal Pradesh

Dear Sir,

This has reference to the ongoing construction works under the above-mentioned contract, particularly the Powerhouse civil works of the Pareng Hydroelectric Project.

Powerhouse construction is one of the most critical activities of the project, and we refer to the schedule submitted by Onycon for completion of this work (replicated as under for ready referral).

The excavation works were to be complete by 22nd January 2026 and raft concreting was planned to be substantially completed by 12th April 2026 the non-monsoon period prior to the onset of the monsoon in April.

It is observed with serious concern that Onycon has failed to mobilize adequate equipment, manpower, and planning for the Powerhouse works, 0064espite repeated follow ups and the clear urgency of the activity.

It is moreover particularly alarming that:

- Not only has Onycon failed to mobilize the substantial equipment and manpower required for executing the Power House Works some of the construction machineries, including 2 transit mixers, generator have been removed from site without any prior intimation to VPHPL.
- Other machinery is either not it working condition or has not been mobilised. A matter of immediate concern is the anchor holes for Power House raft for which there is no machinery at site and in absence of Onycon Site Manager no clear way forward is communicated to client.
- With the monsoon season approaching within a month, there is still no clarity or preparedness from Onycon regarding the execution of Powerhouse activities.

As of date, the following critical deficiencies have been observed:

a) Powerhouse excavation remains incomplete.
b) No execution plan has been submitted for installation of 148 nos. rock anchors, nor has any plan been presented for mobilization of ROC or equivalent drilling equipment required for the same.
c) Bar Bending Schedule (BBS) has not been submitted.

Corporate office:
9-A, Astley Hall,
Dehra Dun, 248001
Uttarakhand, India

Registered Office: Pvt Res Near Directorate of Eco & Stats,
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Mobile : +91-9412992473, Email: infrapower@virtuaal.in
CIN : U40101AR2012PTC008375

**DOCUMENT-17**

VIRTUAAL PARENG HYDRO PRIVATE LIMITED

**Ref No: VPHPL/OI/CVL/2026-27/001** **Date: 04.04.2026**

**To M/s Onycon Infrastructure**
307, Third floor
Shri Krishna Premises, New link Road
Opp. Laxmi Industrial Estate, Andheri (W)
Mumbai-400053

**Kind Attention:** Mr. Amit Patel

**Subject:** Pareng HEP – Withdrawal of Powerhouse work from Onycon's scope of work

**Ref:** Contract Agreement No. PRG-W007 dated 12.11.2024 for Construction of Civil Works of Trench Weir, Intake Well, Feeder Tunnel, Head Race Tunnel and Adits, Desilting Basin, Surge Shaft, Pressure Shaft, Penstock Civil Works, Powerhouse Civil Works, Switchyard and Tailrace Channel for 14.5 MW Pareng Hydroelectric Project, Arunachal Pradesh

**VPHPL Letter - VPHPL/OI/CVL/2025-26/043 -** Powerhouse Construction – Pareng HEP - Show Cause Notice for Failure to Mobilize Resources and Progress
**VPHPL Letter - VPHPL/OI/CVL/2025-26/044 -** Powerhouse Construction – Pareng HEP - Final Reminder for Submission of Response to Show Cause Notice
**VPHPL Letter - VPHPL/OI/CVL/2025-26/047 -** Pareng HEP – Follow-up on Show Cause Notice dated 10 March 2026 – Performance Review and Required Actions

Dear Sir,

This is with reference to the above-mentioned letters issued by VPHPL to Onycon regarding the withdrawal of Powerhouse works of Pareng Hydroelectric Project from Onycon's scope.

We have been closely monitoring your desired actions on various fronts over the last 10 days and found no improvement on ground.

**Accordingly, in accordance with Clause 51 (Foreclosure of Contract) of the Conditions of Contract, Vol. 2, the following works under Powerhouse Works (Item No. 12, Annexure III of the Contract) are hereby withdrawn from Onycon's scope of work with immediate effect.**

This action is without prejudice to any other rights and remedies available to the Employer under the Contract.
You are advised to take note of the above and proceed accordingly as per the Contract.

**For Virtuaal Pareng Hydro Private Limited**

Virtuaal Pareng Hydro Private Limited
Authorised Signatory

**Authorized Signatory**

**DOCUMENT-18**

VIRTUAAL PARENG HYDRO PRIVATE LIMITED

**Ref No: VPHPL/OI/CVL/2026-27/004** **Date: 21.04.2026**

**To M/s Onycon Infrastructure**
307, Third floor
Shri Krishna Premises, New link Road
Opp. Laxmi Industrial Estate, Andheri (W)
Mumbai-400053

**Kind Attention:** Mr. Amit Patel

**Subject:** Pareng HEP – Permission to Recommence Powerhouse Civil Works and Continuation Within Existing Scope of Work

**Ref:** Contract Agreement No. PRG-W007 dated 12.11.2024 for Construction of Civil Works of Trench Weir, Intake Well, Feeder Tunnel, Head Race Tunnel and Adits, Desilting Basin, Surge Shaft, Pressure Shaft, Penstock Civil Works, Powerhouse Civil Works, Switchyard and Tailrace Channel for 14.5 MW Pareng Hydroelectric Project, Arunachal Pradesh

**VPHPL/OI/CVL/2026-27/001 –** Withdrawal of Powerhouse work from Onycon's scope of work
**OI/CVL/HO100/2025-26/164 –** Response to Descoping Notice – Powerhouse Construction Work

Dear Sir,

We refer to the above-mentioned subject and your letter dated **09.04.2026** requesting VPHPL to allow Onycon to continue the Powerhouse works.

Based on the above request and further discussion wherein you have agreed to carry out the powerhouse construction activity as per schedule, we are hereby keeping the VPHPL letter dated **04.04.2026** in abeyance.

The above shall however be subject to the following:

- Onycon will proceed with the Powerhouse Civil Works with immediate effect.
- Onycon to ensure adequate deployment of manpower, machinery, materials, and proper planning so that the works are executed in line with the project requirements.

Please note that your performance will be closely monitored and in the event of any delay or failure to meet the committed targets, VPHPL shall be constrained to take appropriate and strict action as deemed necessary under the terms and conditions of the contract, without any further notice.

**For Virtuaal Pareng Hydro Private Limited**

Virtuaal Pareng Hydro Private Limited
Authorised Signatory

**Authorized Signatory**

Corporate office:
9-A, Astley Hall,
Dehra Dun, 248001
Uttarakhand, India

Registered Office: Pvt Res Near Directorate of Eco & Stats,
P.O. RKM, Itanagar -791111, Arunachal Pradesh, India
Mobile : +91-9412992473, Email: infrapower@virtuaal.in
CIN : U40101AR2012PTC008375

Outlook

**P112 - Submission of Mobilisation Bank Guarantee No. 0356NDLG00000226 dated 15th April 2025**

From gokul.ravi@onyconinfra.com <gokul.ravi@onyconinfra.com>
Date Tue 2025-10-14 2:44 PM
To vikramaggarwal <vikramaggarwal@virtuaal.in> <vikramaggarwal@virtuaal.in>
Cc Chinmoy Gangopadhyay <chinmoy@virtuaal.in>; amit.patel@onyconinfra.com <amit.patel@onyconinfra.com>; pranit.gharat@onyconinfra.com <pranit.gharat@onyconinfra.com>

1 attachment (3 MB)
OI_CVL_HO100_ 25 -26_074.pdf;

Sir,

Please find attached letter no. OI/CVL/HO100/ 2025 -26 /074 for the submission of Mobilisation Bank Guarantee No. 0356NDLG00000226 dated 15th April 2025.

Thanks & Regards,
Gokul Ravi A K
Deputy Manager(Billing, Planning & Monitoring)
Phone No: 9677389195

ONYCON
ONYCON INFRASTRUCTURE
307, Shri Krishna Bldg, 3rd Floor,
Opp Laxmi Industrial Estate, New Link,
Andheri West, MUMBAI- 400053.

12. A cumulative reading of the aforenoted crucial paragraphs of the notices and other communications would leave no doubt or any ambiguity as to the issue raised by the respondent regarding non-fulfilment of the contractual terms of the CWC by the petitioner, which may be serious in nature. This Court is not called upon to consider or examine the merits or demerits of such disputes. Rather, at this stage, this Court is only required to see as to whether the part condition in the BG has been necessarily fulfilled by the respondent. The fact that the respondent has raised essential and crucial issues in respect of non-fulfilment or breach of obligations under the CWC, has not been disputed. While the petitioner may question or object

to the correspondences and their contents regarding the alleged non fulfilment of conditions of the CWC, this Court consciously is not dealing with any of such allegations, lest it prejudices any of the parties. Liberty is available with the parties to take up those issues in appropriate proceedings.

13. From the above, it is clear that in the present case, conditions as required under the BGs, are met with.

14. So far as the bank maintaining the BGs is concerned, the disputes inter se parties is not relevant to it. The bank, *per se*, is bound to honour its commitment to the respondent. In those circumstances where BGs are wholly or partly conditional, it is only for the Courts to examine and ascertain such necessary facts as would be crucial to the Court to form an opinion as to the fulfilment of such conditions. In the present case, this Court is, *prima facie*, satisfied that the conditions are fully met with, and thus, the action of seeking invocation of the BGs is fully within the right of the respondent.

15. To the argument of the petitioner predicated on Clause 43 and its sub-clauses, in the opinion of this Court, the invocation or otherwise, or the justification thereof would be a subject matter of a dispute which might be referred to arbitration. At this stage, where the petitioner is seeking discretionary relief under Section 9 of the Act, this Court is only required to assess as to whether such invocation is within the confines of the conditions prescribed in the BGs itself. If this Court were to embark upon such aspects, it would amount to examining the issue on merits which would be the sole domain of arbitration proceedings. In case the petitioner is inclined to initiate arbitration, the learned Tribunal would have the jurisdiction to pass any appropriate orders or award compensating the petitioner for

any wrongful acts of the respondent. Thus, this Court does not find such submissions persuasive and are held to be unmerited.

16. It may be significant to note that the petitioner had predicated its case only on the BGs being 'conditional' and the challenge was neither on egregious fraud or irretrievable injury or special equities. Thus, the above analysis is predicated on the limited ground.

17. The Supreme Court in ***National Highways Authority of India vs. Ganga Enterprises*** (*supra*) and relied upon by the respondent, held that the underlying contract executed between the parties would not be a relevant consideration while examining a case of invocation of a BG premised on the settled aspect that a contract of guarantee is a complete and separate contract by itself. Thus, this Court is enjoined only to consider the terms and conditions of the BGs alone. The other judgement relied upon by the respondent in ***Kalpataru Projects International Limited*** (*supra*) may not be strictly applicable inasmuch as, in that case the learned Coordinate Bench was considering a case of an unconditional BG and after considering other aspects had refused grant of injunction. However, in the present case, the petitioner has pleaded that the BGs are conditional.

18. It is noted that while the petitioner is seeking discretionary relief from this Court, yet, crucial documents, in the nature of correspondences, notices of events of default etc., for this Court to ascertain as to whether the petitioner has approached this Court with clean hands, have been concealed from the Court by the petitioner.

19. A note of caution is required to be placed observing that petitions which are filed under Section 9 of the Act are clearly required to place on record, all material documents and correspondences, which may be in their favour, and more







importantly, those which may be prejudicial. It is for the Court alone to ascertain, assess, and conclude whether, even in adverse circumstances, a petitioner is entitled to discretionary relief by the Court. Even otherwise, filing of all essential documents is a statutory requirement in view of the provisions of the Commercial Courts Act, 2015. [See: **Order XI Rule 1(5) of the Commercial Courts Act, 2015**]

20. Therefore, finding no merits in the arguments of the petitioner, the petition is dismissed, however, without any order as to costs. Any interim order or arrangement stands vacated.

**TUSHAR RAO GEDELA**
**(JUDGE)**

**OCTOBER 27, 2026**
*yrj/anj/rl*