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

% ***Judgment reserved on: 23.12.2025***
Judgment pronounced on: 09.01.2026
Judgment uploaded on: 09.01.2026

\+ FAO(OS) (COMM) 211/2025, CM APPL. 81218/2025, CM APPL. 81219/2025, CM APPL. 81220/2025, CM APPL. 81221/2025 and CM APPL. 81222/2025

BLACK GOLD RESOURCES PRIVATE LIMITADA

.....Appellant

Through: Mr. Parag Tripathi, Sr. Adv. with Mr. Saurav Agrawal, Mr. Mayank Jain, Mr. Madhur Jain, Ms. Aakriti Dhawan, Mr. Arpit Goel, Mr. Deepak Jain and Ms. Samayra Adlakha, Advs.

versus

INTERNATIONAL COAL VENTURES PVT. LTD & ANR.

.....Respondents

Through: Mr. Rajshekhar Rao, Sr. Adv. with Mr. Shaiwal Srivastava and Ms. Aashna Chawa, Advs.

CORAM:
HON'BLE MR. JUSTICE ANIL KSHETARPAL
HON'BLE MR. JUSTICE HARISH VAIDYANATHAN SHANKAR

J U D G M E N T

ANIL KSHETARPAL, J.

I. INTRODUCTION

1. The present Appeal, preferred under Section 37(1) of the Arbitration and Conciliation Act, 1996 ("the Act") read with Section 13 of the Commercial Courts Act, 2015, assails the judgment and

order dated 17.12.2025 passed by the learned Single Judge in OMP(I)(COMM.) 78/2025 captioned as ***Black Gold Resources Private Limitada vs. International Coal Ventures Pvt. Ltd. & Anr.***,

2. By the impugned order, the learned Single Judge dismissed the Appellant's petition under Section 9 of the Act, which sought to restrain the Respondents from encashing an Unconditional Performance Bank Guarantee ("PBG") of USD 10,535,000 issued by First Capital Bank. The Appellant also sought protection against what it describes as the "illegal termination" of the Mining Services Contract dated 02.11.2017.

3. The present Appeal was listed for hearing on 23.12.2025 before this bench for the first time, and arguments of the learned counsel representing the parties have been heard at length and with their able assistance, the paper book and the Impugned Order have been perused.

II. FACTUAL BACKGROUND

4. The Appellant, a Special Purpose Vehicle registered in Mozambique, entered into a Mining Services Contract with Respondent No. 2, Minas De Benga Limitada ("MBL"), on 02.11.2017. Respondent No. 2 is a subsidiary of Respondent No. 1, International Coal Ventures Pvt. Ltd. ("ICVL"), a joint venture of Indian Public Sector Undertakings including SAIL, NMDC, CIL, and NTPC. The contract involved the extraction of Run-of-Mine ("ROM") coal and the removal of overburden ("OB") at the Benga Coal Mine in

Mozambique. (Overburden means extracted sand, rocks, stones and waste material.)

5. On 18.08.2023, the parties executed "Addendum No. 2," extending the contract duration until 22.08.2025. This addendum mandated the excavation of target quantities and the clearance of "Backlog OB" from previous periods. Under Clause 12 of the General Conditions of Contract read with the Addendum, a 90-day cure notice was required for defaults in quarterly targets.

6. Performance issues emerged in late 2024. The Respondents alleged substantial shortfalls in OB removal and raised concerns over the accuracy of prior computations. A survey report by M/s Bureau Veritas suggested that excess quantities of approximately 17.69 BCM of OB had been incorrectly recorded between August 2023 and July 2024. On 08.11.2024, the Respondents issued a default notice. While the Respondents urged continued performance via a letter dated 13.12.2024, the Appellant, citing a financial crisis caused by the Respondents withholding payments for August to October 2024, communicated its inability to perform on 19.12.2024.

7. Negotiations and dispute resolution attempts under Clause 13 failed to yield a consensus. Consequently, on 03.03.2025, Respondent No. 2 terminated the contract at the Appellant's "risk and cost" and simultaneously moved to invoke the PBG. The Appellant filed a Section 9 petition on 05.03.2025, securing an ad-interim stay on encashment the following day. During the pendency of these proceedings, a three-member Arbitral Tribunal was constituted under

the International Chamber of Commerce ("ICC") on 01.09.2025, comprising Mr. D. K. Singh, Mr. Justice L. Nageswara Rao (Retd), and Datuk Professor Sundra Rajoo Nadarajah.

III. APPELLANT'S CONTENTIONS

8. Learned Senior Counsel for the Appellant argued that the termination was arbitrary, non-transparent, and procedurally defective. It was submitted that the Appellant had successfully achieved 96% of the coal production target, and since OB removal is merely an ancillary obligation, termination on that ground was disproportionate. The Appellant contended that the Respondents violated Clause 12.1(b) and Clause 9 of the Addendum by failing to provide the mandatory 90-day cure period, instead granting only 14 days in the notice dated 08.11.2024. Furthermore, it was argued that Clause 13.2 prohibited termination while the dispute resolution process was underway, yet the Respondents terminated the contract just one day before a scheduled conciliation meeting.

9. Regarding the PBG, the Appellant alleged "egregious fraud" on the basis that the Respondents were seeking to recover amounts already settled or refunded. It was further contended that "special equities" exist because the illegal termination and withholding of over USD 25 million in pending bills had wiped out the Appellant's net worth. Relying on the ratio in *BGR Energy Systems Ltd.*, the Appellant argued that such financial incapacitation constitutes irretrievable injury, as it prevents the Appellant from effectively pursuing its claims before the Arbitral Tribunal. Finally, the Appellant

maintained that once the Tribunal was formed, the learned Single Judge was duty-bound under Section 9(3) to refer the matter to the Tribunal rather than dismissing the petition on its merits.

IV. RESPONDENTS' CONTENTIONS

10. Learned Senior Counsel for the Respondents submitted that the PBG is an independent and unconditional contract, and the law restricts judicial interference to very narrow exceptions. They argued that the Appellant's communication dated 19.12.2024, stating its inability to perform, amounted to a clear abandonment of the contract. It was contended that the shortfalls in OB removal were not trivial but constituted a material breach of the performance targets stipulated in the Addendum. The Respondents denied any fraud, asserting that the discovery of misreported OB volumes by Bureau Veritas justified both the termination and the invocation of the guarantee.

11. The Respondents further argued that the Appellant's financial distress does not meet the threshold of "special equities" or "irretrievable harm". They pointed out that as the Respondents are government-backed entities with substantial assets, the Appellant's interests remain protected, as any amount encashed could be refunded with interest should the Appellant prevail in arbitration. It was also highlighted that the dispute over the exact quantum of liability-whether it is USD 30 Million or less is a matter of evidence to be adjudicated by the Arbitral Tribunal. Given that the Tribunal is already seized of the matter and a Section 17 application has been

filed by the Respondents, they urged that the Court should not interfere at this stage.

V. ANALYSIS

12. The legal framework governing the stay of encashment of an unconditional bank guarantee is remarkably strict. It is well-settled through a catena of judgments, including *U.P. State Sugar Corporation vs. M/S. Sumac International Ltd. [1997 (1) SCC 568]* and ***Dwarikesh Sugar Industries Ltd vs Prem Heavy Engineeing Work***[1]***, Vinitec Electronics Private Limited v. HCL Infosystems Limited***[2] and ***Gujarat Maritime Board v. L&T Infrastructure Development Projects Ltd. and Anr,*** that a bank guarantee must be honoured regardless of any pending dispute between the parties to the underlying contract. The two recognized exceptions are: (i) fraud of an egregious nature which the bank has notice of and which vitiates the very foundation of the guarantee; and (ii) special equities where encashment would result in irretrievable harm or injustice.

13. On the first exception, the Appellant's allegations of fraud pertain to the computation of overburden volumes and the validity of the termination. These are essentially contractual disputes. Even if the Appellant is correct that the termination was procedurally flawed or based on inaccurate surveys, such claims do not constitute the kind of "egregious fraud" that would allow a Court to stay an unconditional guarantee. The dispute over whether the liability is USD 30 Million or a lower figure is a matter for the Arbitral Tribunal to determine

[1] [1997 (6) SCC 450],

through evidence. Though the dispute is to be finally decided by the Arbitral Tribunal, however, prima facie, removal of OB is not an ancillary but integral and important component of the contract.

14. Regarding "special equities" and "irretrievable harm," the Appellant's reliance on its "wiped out" net worth and the *BGR Energy* case is misplaced in the present context. Financial hardship or a liquidity crisis resulting from a commercial dispute does not equate to "irretrievable harm". Irretrievable harm implies a situation where the party, even if successful in arbitration, would find it impossible to recover the money from the beneficiary. Since the Respondents are backed by Indian Public Sector Undertakings like SAIL and NTPC, there is no risk that they would be unable to satisfy an eventual arbitral award.

15. The observation in the impugned judgment regarding the Appellant's conduct are significant. The Appellant's refusal to perform on 19.12.2024, following the Respondents' demand for performance on 13.12.2024, prima facie indicates a cessation of work. While the Appellant justifies this on financial grounds, such an abandonment strengthens the Respondents' right to invoke the PBG, which is intended to protect the beneficiary against performance failures.

16. Lastly, the procedural reality of this case cannot be ignored. A high-level three-member Arbitral Tribunal has already been constituted and is actively managing the dispute. Under Section 9(3) of the Act, once the Tribunal is constituted, the Court shall not entertain a Section 9 petition unless the remedy under Section 17 is

found to be inefficacious. The Respondents have already moved an application under Section 17. It is therefore appropriate that all interim measures, including the status of the PBG, be addressed by the Tribunal, which has the power to pass comprehensive orders based on a full review of the record.

VI. CONCLUSION

17. In light of the foregoing, the Appellant has failed to meet the high threshold required to restrain the encashment of an unconditional bank guarantee. The issues raised regarding the legality of the termination and the quantum of overburden removal are matters for arbitration. The learned Single Judge correctly applied the settled law on bank guarantees and properly considered the constitution of the Arbitral Tribunal.

18. The present Appeal and all pending applications are hereby dismissed.

ANIL KSHETARPAL, J.

HARISH VAIDYANATHAN SHANKAR, J.

JANUARY 09, 2026
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