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

+ O.M.P.(I) (COMM) 225/2024

VISHAL MVR CONSORTIUM .....Petitioner  
Through: Mr. Ashish Mohan, Sr. Adv.  
with Mr. Aditya Sikka and Ms. Onshi and  
Mr. Digvijay, Advs.

versus

AIRPORTS AUTHORITY OF INDIA & ORS.....Respondents  
Through: Mr. Digvijay Rai, Adv.

**CORAM:**  
**HON'BLE MR. JUSTICE C. HARI SHANKAR**  
**JUDGMENT (ORAL)**

% **11.07.2024**

1. This matter has been listed before the Court consequent on urgent mentioning. Inasmuch as this case involves invocation of Security Deposit Bank Guarantees<sup>1</sup> (SDBGs) provided by the petitioner to Respondent 1, and Respondent 1 has already addressed letters to the banks, calling upon the banks to remit the amounts covered by the bank guarantees to Respondent 1's account, the matter was mentioned and directed to be listed forthwith.

2. I have heard Mr. Ashish Mohan, learned Senior Counsel for the petitioner, and Mr. Digvijay Rai, learned Counsel for the respondent.

3. The petitioner was awarded a construction contract by the respondent to carry out certain works in the Kolkata Airport.

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<sup>1</sup> "SDBGs" hereinafter



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4. The contract required the petitioner to furnish Performance Bank Guarantees<sup>2</sup> and SDBGs.

5. According to the submissions of Mr. Ashish Mohan, the petitioner was issued a certificate by the respondent on 7 June 2023, certifying that the petitioner had satisfactorily completed the contract.

6. Mr. Ashish Mohan points out that defect liability period envisaged in the contract was of one year which, after issuance of the performance certificate, expired on or around 7 June 2024. Consequent on the issuance of the performance certificate on 7 June 2023, the performance bank guarantees provided by the petitioner were also returned to them.

7. The petitioner is aggrieved by the fact that the respondent is seeking to invoke and encash the following seven SDBGs:

Sl. No.	Bank Guarantee (s) No.	Date of Bank Guarantee (s)	Name of Issuing Bank	Amount of Bank Guarantee
1.	LOBG801512100233	13.01.2021 (as extended)	IDFC First Bank	₹ 1.25 crores
2	LOBG801512201940	22.03.2022(as extended)	IDFC First Bank	₹ 1 crore
3	LOBG801512204215	28.06.2022 (as extended)	IDFC First Bank	₹ 1.5 crore
4.	LOBG801512204337	02.07.2022 (as extended)	IDFC First Bank	₹ 1.86 crores

<sup>2</sup> "PBGs" hereinafter



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5.	009GT02222450002	02.09.2022 (as extended)	HDFC Bank Ltd.	₹ 2.5 crores
6.	009GT02212150004	03.08.2021 (as extended)	HDFC Bank Ltd.	₹ 2 crore
7.	0002NDLG00085822	02.12.2021 (as extended)	ICICI Bank Ltd.	₹ 1 crore

8. Respondent 1 has written to the bank on 10 July 2024, calling upon the bank to credit the amounts covered by the above SDBGs into the account of Respondent 1.

9. Mr. Ashish Mohan has taken me through the covenants of the SDBGs. Paras 1 and 2 are identical in all these seven SDBGs and read thus:

“1. In consideration of the Airport Authority of India having its head office at New Delhi [hereinafter called the "AAI" which expression shall unless repugnant to the subject or context include its administrator, successors having agreed under the terms and conditions of Contract Agreement No, AAI/CHQ/ER/Engg, (C) /Cap-Enh./ Kol/2019 dated 06th May 2019 made between *Mis.* Vishal-MVR Consortium having their office at No. 52, RV Road, Basavanagudi, Bangalore - 560 004 and AAI in connection with the work of Airside Capacity Enhancement of NSCBI Airport, Kolkata SH:- Extension of F-Taxi Track from proposed Bay No. C-13 to 19R & from 19R to 19L, Construction of 03 nos. RET's, 04 nos. Apron, Shoulders and Box Culvert at different locations of NSCBI Airport, Kolkata (Civil & Electrical works) (hereinafter called the said contract) to accept Deed of Guarantee as herein provided for Rs. 2,00,00,000/- (Rupees Two Crore Only) from a Scheduled Bank in lieu of the Security Deposit to be made by the contractor in lieu of the deduction to be made from the contractor's bills for the due fulfilment by the said Contract of the terms and conditions contained in the said Contract. We, HDFC Bank Ltd constituted under companies Act, 1956 having it's Registered Office at HDFC BANK LTD, HDFC Bank House, C.S. No. 6/242, Senapat Bapat Marg, Lower Pare) (W), Mumbai 400013 acting through its branch at No. 8/24, "Salco Centre" Richmond Road, Bangalore - 560025, (hereinafter referred to as "the said Bank") do



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hereby undertake and agree to pay AAI from time to time to the extent of Rs. 2,00,00,000/- (Rupees Two Crore Only) *against any loss or damage, cost, charges and expenses caused to or suffered by or that may be caused to or suffered by AAI by reason of any breach or breaches by the said Contractor of any of the terms and condition contained in the said contract* and to unconditionally pay the amount claimed by AAI on demand and without demur *to the extent aforesaid.*

2. We HDFC Bank Limited, further agree that AAI shall be the sole judge of and as to whether the said Contractor has committed any breach or breaches of any of the terms and conditions of the said contract and the extent of loss, damage, costs, charges and expenses caused to or suffered by or that may be caused to or suffered by AAI on account thereof and the decision of AAI that the said Contractor has committed such breach and breaches and as to. the amount or amounts of loss, damage, costs, charges and expenses caused to or suffered of that may be caused to or suffered by AAI from time to time shall be final and binding on us.”

**10.** Mr. Mohan has also taken me through the letters written by the respondent to the bank, seeking invocation of the bank guarantees. The letters are also identical and one sample letter may be reproduced thus:

“ AIRPORTS AUTHORITY OF INDIA

Ref: AAI/NSCBIA/Kol/BG-Encashment/73 Date: 10.07.2024

To

The Chief/Branch Manager  
HDFC Bank Ltd.  
No. 16, Sarakki Main Road,  
J.P. Nagar, 1<sup>st</sup> Phase, Bangalore  
Karnataka-560078

Subject: Invocation of Bank Guarantee no. 009GT02212150004 dated 03.08.2021 amended on 25.04.2023 and finally amended on 21.05.2024 for ₹ 20000000.00 valid upto 02.09.2024

Dear Sir,



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AAI hereby notify to immediately encash the following Bank Guarantee and the extension thereof issued by your bank in favour of Airports Authority of India (AAI) on account of M/s Vishal MVR Consortium towards contract no. AAI/CHQ/ER/Engg(C) CAP-ENH/KOL/2019 dated 06.05.2019 awarded by AAI.

Bank Guarantee No.	Bank Guarantee Date	Bank Guarantee Amount (INR)	Validity period	Sl.No. of letter
009GT02212 150004	03.08.2021	20000000.00	02.09.2024	GTEE/121962 7 GTEE/147855 6 GTEE/163301 3

The original Bank letter with Sl.No. GTEE/1219627, GTEE/1478556, GTEE/1633013 along with the original bank guarantee and extension thereof is enclosed for encashment.

The Proceeds of ₹ 20000000.00 be credited to AAI current account as per details given below:

Beneficiary Account Name: Airports Authority of India  
Bank Name: State Bank of India  
Branch: Kolkata Airport  
Branch Code: 003029  
Bank Account No. 11094829425  
IFSC Code: SBIN0003029  
SWIFT Code: SBININBB490  
PAN: AAACA6412D

Please acknowledge the receipt of this letter and above mentioned Bank Guarantee.

Please treat this matter as most urgent

Thanking You,

Yours sincerely,

Sd/-

Jt. General Manager(Engg-Civil)  
For and on behalf of



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Airports Authority of India  
NSCBI Airport, Kolkata”

**11.** On the face of it, the law regarding invocation of bank guarantee and the scope of interdiction therewith is well settled. If the invocation of the bank guarantee is contrary to the terms of the bank guarantee, the invocation has necessarily to be interdicted. However, if the invocation is in terms of the bank guarantee, an interdiction is permissible only if there is egregious fraud, special equities or irreparable prejudice.

**12.** In the present case, one does not, *prima facie*, have to seek recourse to any of the special circumstances in which the invocation of the bank guarantee in question can be interdicted, as the invocation is not in terms of the covenants of the bank guarantees.

**13.** A reading of paras 1 and 2 of the SDBGs, reproduced in para 9 *supra*, reveals that the letter of invocation of the SDBGs, as addressed by the respondent to the bank has necessarily to allege that the respondent had suffered “loss or damage, costs, charges and expenses”... by reason of any breach or breaches by (the petitioner) of any of the terms and conditions contained in the said contract.

**14.** There is, therefore, no escape from the fact that the respondent had necessarily to allege that, in the first instance, there were breaches by the petitioner of the covenants of the contract with the respondent and, secondly, that, owing to the said breaches, the respondent had suffered loss or damage, cost, charges and expenses. Once these two



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allegations existed, it may have been possible for the respondent to argue that the bank could not proceed to examine whether in fact any breach had or had not been committed.

**15.** In the present case, however, the letter of invocation neither alleges that any breach of the contract had been committed by the petitioner, nor that loss, damage, cost or charges had been suffered by the respondent as a consequence thereof.

**16.** This is, therefore, a case in which the invocation of the bank guarantees is, *prima facie*, in the teeth of the covenants of the bank guarantees itself.

**17.** A *prima facie* case for interdicting invocation of the bank guarantees is, therefore, made out.

**18.** In case interdiction is not granted and the bank guarantees are invoked, it would clearly result in the petitioner having to thereafter proceed against the respondent for receiving the amount encashed thereby. The principles of balance of convenience and irreparable loss would also, therefore, justify grant of an interim injunction as this stage.

**19.** In view of the aforesaid, issue notice.

**20.** Notice is accepted, on behalf of the respondent by Mr. Digvijay Rai.



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**21.** Reply, if any, may be filed within four weeks with advance copy to learned Counsel for the petitioner who may file rejoinder thereto, if any, within four weeks thereof.

**22.** Re-notify on 20 September 2024.

**23.** The Respondents 2 to 4 banks are restrained from crediting into the account of the Respondent 1, any amounts pursuant to the SDBGs executed by the petitioner. Any letter of invocation issued by the Respondent 1 to the Respondents 2 to 4, if not already honoured, shall be held in abeyance.

**C. HARI SHANKAR, J.**

**JULY 11, 2024**

*dsm*