

COURT-1

IN THE APPELLATE TRIBUNAL FOR ELECTRICITY
(Appellate Jurisdiction)

APPEAL NO. 334 OF 2025 &
IA NO. 1544 OF 2025

Dated: 1st December, 2025

Present: Hon`ble Mr. Justice Ramesh Ranganathan, Chairperson
Hon`ble Mr. Ajay Talegaonkar, Technical Member (Electricity)

In the matter of:

Bangalore Electricity Supply Company Limited & Ors. Appellant(s)

Versus

Central Electricity Regulatory Commission & Ors Respondent(s)

Counsel on record for the Appellant(s) : Anand K. Ganesan
Swapna Seshadri
Ritu Apurva
Amal Nair
Utkarsh Singh
Karthikeyan M. for App. 1 to 5

Counsel on record for the Respondent(s) : Deep Rao Palepu
Arjun Agarwal
Parth Parikh
Shikha Sood
Iqra Khan
Prajeet Ghosh for Res.2

ORDER

A peculiar order passed by the CERC is the subject matter of challenge in the present Appeal. The 2nd Respondent herein filed Petition No. 303/MP/2024 under Sections 61, 63 and 79 of the Electricity Act read with Articles 11 and 12 of the Transmission Service Agreement dated 28.02.2019, seeking in-principle approval/ declaration recognising the change in law and force majeure events that impacted implementation of the project and the Petitioner's right to consequential relief. In the operative portion of the impugned order, in Petition No. 303/MP/2024 dated 01.09.2025, the CERC noted that the 2nd Respondent herein (ie the

Petitioner before the CERC) had prayed for restraining the LTTC from taking any coercive action against them in terms of the TSA, including encashment of the Contract Performance Guarantee (CPG); as the Commission had, in the earlier part of the impugned order, given liberty to the 2nd Respondent to approach the Commission only after completion/ implementation of the project, it was imperative that no precipitative action be taken against the 2nd Respondent as the subsistence of TSA in the interregnum was vital to the completion/ implementation of the project. The CERC further observed that, in the meanwhile, the 2nd Respondent shall make sincere endeavour to complete the project at the earliest.

The aforesaid directions, in effect, restrained the Appellant from taking any precipitative action against the 2nd Respondent without even fixing an end date for completion of the project. Since Petition No. 303/MP/2024 was itself disposed of, the appellant was, in effect, disabled by the impugned order from taking any precipitative action against them, even if the 2nd Respondent were, hypothetically, not to complete the project, say for the next two decades or more. Even more disconcerting is that the CERC has not even assigned any reason as to why the case before it justified a direction being issued to the Appellant not to take any precipitative action, more so when the Commission had itself refused to grant the 2nd Respondent the declaration sought for by them in the Petition.

What is of even greater concern is that the CERC should, in effect and by way of the direction to the Appellant not to take precipitative action, restrain invocation of an unconditional bank guarantee. It is settled law that a bank guarantee is an independent and distinct contract, between the bank and the beneficiary, and is not qualified by the underlying transaction, and the validity of the primary contract between the person at whose instance the bank guarantee was given and the beneficiary.

Subject to limited exceptions, the beneficiary cannot be restrained from encashing the bank guarantee even if the dispute, between the beneficiary and the person at whose instance the bank guarantee was given by the bank, had arisen in the performance of the contract. (***Ansal Engg. Projects Ltd. v. Tehri Hydro Development Corpn. Ltd.*, (1996) 5 SCC 450; *Standard Chartered Bank v. Heavy Engineering Corporation Limited*, (2020) 13 SCC 574**). Both the bank and the beneficiary are bound by, and its invocation should only be in accordance with, the terms of the bank guarantee. (***Standard Chartered Bank v. Heavy Engg. Corpn. Ltd.*, (2020) 13 SCC 574; *Hindustan Construction Co. Ltd. v. State of Bihar*, (1999) 8 SCC 436**).

The dispute, between the beneficiary and the party at whose instance the bank has given the guarantee, is immaterial and is of no consequence. Ordinarily, the Court (or Tribunal) should not interfere with the invocation or encashment of the bank guarantee so long as the invocation is in terms of the bank guarantee. (***Standard Chartered Bank v. Heavy Engg. Corpn. Ltd.*, (2020) 13 SCC 574**). Since a bank guarantee is an independent and separate contract, and is absolute in nature, existence of any dispute between the parties to the underlying transaction is not a ground for issuing an order of injunction to restrain enforcement of the bank guarantee. (***Himadri Chemicals Industries Ltd. v. Coal Tar Refining Co.*, (2007) 8 SCC 110; *Adani Agri Fresh v. Mehboob Sharif*, (2016) 14 SCC 517**).

The bank guarantee is a separate contract, and is not qualified by the contract for performance of obligations. (***Gujarat Maritime Board v. L&T Infrastructure Development Projects Ltd.*, (2016) 10 SCC 46**). Whether the action of the beneficiary is legal and proper, and whether on the basis of such a decision, the bank guarantee could have been invoked, are not matters of inquiry. Between the Bank and the

beneficiary, the moment there is a written demand for invoking the bank guarantee, the Bank is bound to honour the payment under the guarantee. (***Gujarat Maritime Board v. L&T Infrastructure Development Projects Ltd.***, (2016) 10 SCC 46).

If the bank guarantee furnished is unconditional, it is not open to the bank to raise any objection for payment of the amounts under the guarantee. The person, in whose favour the guarantee is furnished by the bank, cannot be prevented by way of an injunction from enforcing the guarantee on the pretext that the condition for enforcing the bank guarantee, in terms of the agreement entered into between the parties, has not been fulfilled. The party, at whose instance the bank guarantee was furnished by the bank, cannot, merely because a dispute exists in terms of the underlying contract, prevent the beneficiary from enforcing the bank guarantee by way of injunction save in exceptional circumstances. (***Mahatma Gandhi Sahakra Sakkare Karkhane v. National Heavy Engg. Coop. Ltd.***, (2007) 6 SCC 470; ***Adani Agri Fresh v. Mehboob Sharif***, (2016) 14 SCC 517; ***U.P. State Sugar Corpn. v. Sumac International Ltd.***, (1997) 1 SCC 568; ***Ansal Engineering Projects Ltd. v. Tehri Hydro Development Corpn. Ltd.***, (1996) 5 SCC 450). The duty of the bank under the guarantee is created by the document itself. Once the document is in order, the bank giving the guarantee must, ordinarily, honour the same and make payment. (***U.P. State Sugar Corpn. v. Sumac International Ltd.***, (1997) 1 SCC 568; ***State of Maharashtra v. National Construction Co.*** [(1996) 1 SCC 735). Encashment of the amount specified in the bank guarantee does not depend upon the result of the decision in the dispute between the parties, in case of a breach. (***Ansal Engineering Projects Ltd. v. Tehri Hydro Development Corpn. Ltd.***, (1996) 5 SCC 450).

Interference by Courts/Tribunals, with the enforcement of a bank guarantee, is only in cases where fraud or special equities are made out as a triable issue by strong evidence so as to prevent irretrievable injustice to the parties. (***Ansal Engg. Projects Ltd. v. Tehri Hydro Development Corpn. Ltd.***, (1996) 5 SCC 450; ***Standard Chartered Bank v. Heavy Engineering Corporation Limited***, (2020) 13 SCC 574). Otherwise, the very purpose of a bank guarantee would be negated, and the fabric of trading operations will be in jeopardy. (***Adani Agri Fresh v. Mehboob Sharif***, AIR (2016) 14 SCC 517; ***U.P. Coop. Federation Ltd. v. Singh Consultants and Engineers (P) Ltd.***, (1988) 1 SCC 174). It is only if the Bank Guarantee, furnished by the Bank, is vitiated by fraud or special equities would interference be justified.

As the two exceptions, for refusal to grant an order of injunction to restrain the enforcement of a bank guarantee, are (i) fraud committed in the notice of the bank which would vitiate the very foundation of the guarantee; and (ii) injustice of the kind which would make it impossible for the guarantor to reimburse himself (***Himadri Chemicals Industries Limited v. Coal Tar Refining Company*** (2007) 8 SCC 110), the question of examining whether a prima facie case is made out, and in whose favour the balance of convenience lies, does not arise as the Court cannot interfere with the unconditional commitment made by the bank in its guarantees. (***Adani Agri Fresh v. Mehboob Sharif***, (2016) 14 SCC 517; ***U.P. Coop. Federation Ltd. v. Singh Consultants and Engineers (P) Ltd.***, (1988) 1 SCC 174).

Both in ***Ansal Engg. Projects Ltd. v. Tehri Hydro Development Corpn. Ltd.***, (1996) 5 SCC 450 and in ***Dwarikesh Sugar Industries Ltd. v. Prem Heavy Engineering Works (P) Ltd.***, (1997) 6 SCC 450, the three-Judge Bench of the Supreme Court held that it is settled law that a bank guarantee is an independent and distinct contract between the

bank and the beneficiary and is not qualified by the underlying transaction or the validity of the primary contract between the person at whose instance the bank guarantee was given and the beneficiary; unless fraud or special equity exists, is pleaded and prima facie established by strong evidence as a triable issue, the beneficiary cannot be restrained from encashing the bank guarantee even if the dispute between the beneficiary and the person at whose instance the bank guarantee was given by the bank, had arisen in performance of the contract or execution of the works undertaken in furtherance thereof; since, in most cases, payment of money under such a bank guarantee would adversely affect the bank and its customer at whose instance the guarantee is given, the harm or injustice contemplated under this head must be of such an exceptional and irretrievable nature as would override the terms of the guarantee and the adverse effect of such an injunction on commercial dealings in the country; and, absent a case of fraud, irretrievable injustice and special equities, the Court should not interfere with the invocation or encashment of a bank guarantee so long as the invocation was in terms of the bank guarantee.

In ***BSES Ltd. v. Fenner India Ltd.*, (2006) 2 SCC 728**, the Supreme Court held that the general rule of non-interference against invocation of a bank guarantee, and its exceptions, has been reiterated in several of its judgments including ***U.P. State Sugar Corpn. v. Sumac International Ltd.*, (1997) 1 SCC 568**; ***State of Maharashtra v. National Construction Co.*, (1996) 1 SCC 735**; ***United Commercial Bank v. Bank of India*, (1981) 2 SCC 766**; and ***Centax (India) Ltd. v. Vinmar Impex Inc.*, (1986) 4 SCC 136**; and that, in ***U.P. State Sugar Corpn. v. Sumac International Ltd.* [(1997) 1 SCC 568**, the Supreme Court had correctly declared that the law was “settled”.

Special equities, in favour of injunction restraining invocation of an unconditional bank guarantee, would arise only when “irretrievable injury” or “irretrievable injustice” would occur if such an injunction were not granted (***Vinitec Electronics (P) Ltd. v. HCL Infosystems Ltd.*, (2008) 1 SCC 544; *Adani Agri Fresh v. Mehboob Sharif*, (2016) 14 SCC 517; *U.P. State Sugar Corpn. v. Sumac International Ltd.*, (1997) 1 SCC 568; *Himadri Chemicals Industries Limited v. Coal Tar Refining Company* (2007) 8 SCC 110**). Cases, under this category, arise where allowing encashment of an unconditional bank guarantee would result in irretrievable harm or injustice to one of the parties. Since, in most cases, payment of money under such a bank guarantee would adversely affect the bank, and its customer at whose instance the guarantee is given, the harm or injustice contemplated under this head must be of such an exceptional and irretrievable nature as would override the terms of the guarantee and the adverse effect of such an injunction on commercial dealings in the country. (***Vinitec Electronics (P) Ltd. v. HCL Infosystems Ltd.*, (2008) 1 SCC 544; *Adani Agri Fresh v. Mehboob Sharif*, (2016) 14 SCC 517; *U.P. State Sugar Corpn. v. Sumac International Ltd.*, (1997) 1 SCC 568**).

To attract the ground of irretrievable injury, it must be decisively established and proved, to the satisfaction of the Court, that there would be no possibility whatsoever of recovery of the amount by the beneficiary. The irretrievable injury must be of the kind which was the subject-matter of the decision in ***Itek Corporation v. First National Bank of Boston*, (566 Fed Supp 1210)**. In that case an exporter in the U.S.A. entered into an agreement with the Imperial Government of Iran and sought an order terminating its liability on stand-by letters of credit issued by an American bank in favour of an Iranian Bank as part of the contract. The relief was sought on account of the situation created after the Iranian revolution when the American Government cancelled the export licences in relation

to Iran, and the Iranian Government had forcibly taken 52 American citizens as hostages. The U.S. Government had blocked all Iranian assets under the jurisdiction of the United States, and had cancelled the export contract. The Court upheld the contention of the exporter that any claim for damages, against the purchaser if decreed by the American Courts, would not be executable in Iran under these circumstances and realization of the bank guarantee/Letters of credit would cause irreparable harm to the plaintiff.

To avail of this exception, therefore, exceptional circumstances which make it impossible for the guarantor to reimburse himself if they ultimately succeed, will have to be decisively established. Clearly, a mere apprehension that the other party will not be able to pay, is not enough. In ***Itek Corporation. v. First National Bank of Boston***, (566 Fed Supp 1210), there was certainty on this issue. (***Dwarikesh Sugar Industries Ltd. v. Prem Heavy Engineerings Works (P) Ltd.; U.P. State Sugar Corpn. v. Sumac International Ltd.***, (1997) 1 SCC 568; ***ITD Cementation India Ltd. v. Reliance Infrastructure Limited*** 2014 SCC OnLine Bom 198). Proof of loss or damage being suffered by the person, at whose instance the bank guarantee was furnished, is not necessary for invocation and encashment of a Bank Guarantee. (***Shahpoorji Pallonji Energy (Gujarat) Private Limited v. Gujarat Electricity Regulatory Commission***, (decision in I.A. No. 384 of 2017 in Appeal No. 161 of 2017 dated 29.05.2017).

As the exception of “special equities” in favour of grant of injunction must be such as to make it impossible for the person, at whose behest the bank guarantee was furnished, to reimburse themselves if they were to ultimately succeed in the main petition, the mere apprehension that the beneficiary will not be able to pay, is not enough. The possibility of payment of the amounts, under the bank guarantee, adversely affecting

either the bank, or the party at whose instance the guarantee was given, does not also justify a restraint order being passed against its invocation.

The long list of cases where Courts/Tribunals were called upon to exercise restraint against interference with invocation of bank guarantees include (1) ***U.P. Cooperative Federation Ltd. v. Singh Consultants and Engineers (P) Ltd.***, (1988) 1 SCC 174; (2) ***United Commercial Bank v. Bank of India***, (1981) 2 SCC 766; (3) ***Dwarikesh Sugar Industries Ltd. v. Prem Heavy Engineerings Works (P) Ltd.***, (1997) 6 SCC 450; (4) ***SBI v. Mula Sahakari Sakhar Karkhana Ltd.***, (2006) 6 SCC 293; (5) ***State of Maharashtra v. National Construction Company, Bombay*** (1996) 1 SCC 735; (6) ***Ansal Engineering Projects Ltd. v. Tehri Hydro Development Corporation Ltd.*** (1996) 5 SCC 450; (7) ***BSES Ltd. v. Fenner India Ltd.***, (2006) 2 SCC 728; (8) ***Gujarat Maritime Board v. L&T Infrastructure Development Projects Ltd.*** (2016) 10 SCC 46; (9) ***Vinitec Electronics Private Ltd. v. HCL Infosystems Ltd.***, (2008) 1 SCC 544; (10) ***Adani Agri Fresh v. Mehboob Sharif***, (2016) 14 SCC 517; (11) ***Himadri Chemicals Industries Ltd. v. Coal Tar Refining Co.***, (2007) 8 SCC 110; (12) ***A.P. Pollution Control Board v. CCL Products (India) Ltd.***, (2019) 20 SCC 669; (13) ***Standard Chartered Bank v. Heavy Engg. Corpn. Ltd.***, (2020) 13 SCC 574, and (14) ***U.P. State Sugar Corpn. v. Sumac International Ltd.***

To summarise, it is settled law, as declared in a series of judgments of the Supreme Court, that a bank guarantee is an independent and distinct contract between the bank and the beneficiary; it is not qualified by the underlying transaction or the validity of the primary contract between the person at whose instance the bank guarantee was given and the beneficiary; and, save fraud or special equities, the beneficiary cannot be restrained from encashing the bank guarantee even if the dispute

between the beneficiary and the person at whose instance the bank guarantee was given by the bank, had arisen in terms of the underlying contract.

After referring to ***Ansal Engineering Projects Ltd. v. Tehri Hydro Development Corporation Ltd.*** : (1996) 5 SCC 450; ***Hindustan Steel Workers Construction Ltd. v. G.S. Atwal Co. (Engineers) (P) Ltd.*** : (2009) 5 SCC 313; ***Hindustan Steelworks Construction Ltd. v. Tarapore & Co.*** : (2009) 5 SCC 313; ***U.P. Coop. Federation Ltd. v. Singh Consultants and Engineers (P) Ltd.*** : (2009) 5 SCC 313; ***Mahatma Gandhi Sahakara Sakkare Karkhane v. National Heavy Engineering Cooperative Limited*** : (2007) 6 SCC 470; ***Vinitec Electronic Private Limited v. HCL Infosystem Ltd.*** : (2008) 1 SCC 544; ***U.P. State Sugar Corpn. v. Sumac International Ltd.*** : (2015) 4 SCC 136; ***BSES Ltd. v. Fenner India Ltd.*** : (2009) 5 SCC 313; ***Adani Agri Fresh v. Mehboob Shariff*** : (2016) 14 SCC 517 : AIR 2016 SC 92; and ***Himadri Chemicals Industries Ltd. v. Coal Tar Refining Company*** : (2007) 8 SCC 110, this Tribunal, in its order in ***Shapoorji Pallonji Energy (Gujarat) Private Limited***, summarised the principles laid down by the Supreme Court as follows:

“.....The Bank Guarantee is an independent contract between the bank and the beneficiary thereof. The bank is always obliged to honour its guarantee as long as it is an unconditional and irrevocable Bank Guarantee. The dispute between the beneficiary and party, at whose instance the bank has given the guarantee is immaterial and is of no consequence. The liability of the bank is absolute and unequivocal. The bank has to only verify whether the amount claimed is within the terms of the Bank Guarantee or Letter of Credit. Any payment by the bank would obviously be subject to the final decision of the court or the tribunal. At the stage of invocation of Bank Guarantee, there is no need for final adjudication and decision on the amount due and payable by the person giving the Bank Guarantee. The Courts should not interfere with invocation and encashment of Bank Guarantee unless there is fraud of egregious nature of which the beneficiary seeks to take advantage and which vitiates the entire underlying transaction or a case where

*irretrievable injustice is likely to be caused to either of the parties. That is to say, there must be special equities in favour of injunction such as when irretrievable injury or irretrievable injustice would occur if injunction were not granted. Since in most cases payment of money under a Bank Guarantee would adversely affect the bank and its customer at whose instance the guarantee is given, the harm or injustice contemplated under this head must be of such an exceptional and irretrievable nature as would override the terms of the guarantee and the adverse effect of such an injunction on commercial dealings in the country. **There is no question of making out any prima facie case much less strong evidence or special equity for interference by way of injunction by the court in preventing encashment of Bank Guarantee. The bank must honour Bank Guarantees free from interference by the courts, otherwise trust in commerce, internal and international would be damaged irreparably.** There has to be glaring circumstances of deception or fraud warranting interference. **Final adjudication is not a pre-condition to invoke the Bank Guarantee and that is not a ground to issue injunction restraining the beneficiary from enforcing the Bank Guarantee. The mere fact that the Bank Guarantee refers to the principal agreement without referring to any specific clause in the preamble of the deed of guarantee does not make the guarantee furnished by the bank to be a conditional one.. ..**”
(emphasis supplied)*

The Order of this Tribunal, in **Shahpoorji Pallonji Energy (Gujarat) Private Limited v. Gujarat Electricity Regulatory Commission**, (Order in I.A. No. 384 of 2017 in Appeal No. 161 of 2017 dated 29.05.2017), was followed in the subsequent orders of this Tribunal in (1) **Juniper Green Energy Private Limited vs Maharashtra Electricity Regulatory Commission and Others: 2023 SCC OnLine APTEL 6** (Order in IA No. 1294/2022 & IA No. 719/2022 In Appeal No. 206/2022 & IA-135/2023 dated 30-01-2023); (2) **North Karanpura Transmission Company Limited vs CERC: 2023 SCC OnLine APTEL 7** (Order in APPEAL No. 188 of 2022, IA No. 599 of 2022, IA No. 2216 of 2022 and IA No. 2217 of 2022 dated 23.02.2023); and (3) **Inox Green Energy Services Ltd. Through its authorised Representative Inox Towers vs CERC: 2023 SCC OnLine APTEL 8** (Order in Appeal No. 292 of 2022 and IA No. 1010 of 2022 dated 24.02.2023).

While Appeal No.276 of 2022, in which the order was passed by this Tribunal in **Juniper Green Energy Private Limited** on 30.01.2023, was later dismissed as withdrawn by the Order of this Tribunal dated 13.02.2023, the appeal, preferred against the order of this Tribunal in **North Karanpura Transmission Company Limited**, was dismissed by the Supreme Court by its order in Civil Appeal Diary No. 8290 of 2023 dated 03.03.2023, and the appeal preferred against the order of this Tribunal, in **Inox Green Energy Services Ltd**, was dismissed by the Supreme Court by its order in Civil Appeal Nos. 1942-1943 of 2023 dated 04.05.2023.

It is only if the CERC were to be satisfied, for reasons to be recorded in the order passed by it, that the unconditional bank guarantee furnished by the Bank, at the instance of the 2nd Respondent in favour of the Appellant, is vitiated either by fraud or special equities, would it be justified in restraining the Appellant from invoking the bank guarantee.

We are saved the trouble of delving further into these aspects as both Mr. Deep Rao Palepu, Learned Counsel for the 2nd Respondent and Mr. Anand K. Ganesan, Learned Counsel for the Appellant, on instructions, agree that, instead of keeping the appeal pending on the file of this Tribunal and passing an interim order therein, the impugned order itself be set aside and the matter remanded to the CERC directing it to pass an order afresh in accordance with law.

Mr. Deep Rao Palepu, Learned Counsel for the 2nd Respondent, would, however, request this Tribunal to observe that, in case the 2nd Respondent were to file an IA seeking interim stay, the Commission should give such an application its due consideration at the earliest, more so as there is an imminent threat of the TSA itself being terminated in the interregnum.

While pointing out that the TSA, executed between the parties, prescribes a 60 days' consultation period prior to its termination, and the said consultative process has not even commenced as yet, Mr. Anand K. Ganesan, Learned Counsel for the Appellant, would submit that the Appellant has no objection if the IA, if any filed by the 2nd Respondent, were considered by the Commission expeditiously.

Suffice it, in such circumstances, to set aside the impugned order and remand the matter to the CERC for its consideration afresh and in accordance with law. The CERC shall, in case any IA is filed, consider the same with utmost expedition after giving parties to the proceedings a reasonable opportunity of being heard.

Needless to state that the Commission shall pass a reasoned order, after considering the rival contentions urged by parties on either side, without being influenced by any observations made in the order now passed by us.

The impugned order is set aside. Consequently, the Appeal and the IA therein stand disposed of.

Ajay Talegaonkar
Technical Member (Electricity)

Justice Ramesh Ranganathan
Chairperson

tpd/kns