

COURT-1

IN THE APPELLATE TRIBUNAL FOR ELECTRICITY
(Appellate Jurisdiction)

APL No. 399 OF 2025 & IA No. 1940 OF 2025 & IA No. 1983 OF 2025

Dated: 13th February, 2026

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

In the matter of:

Scatec India Renewable One Private Limited Appellant(s)

Versus

Central Electricity Regulatory Commission & Ors. Respondent(s)

Counsel on record for the Appellant(s) : Dinesh Pardasani
Bibin Kurian
Kaustubh Shrinarain
for App. 1

Counsel on record for the Respondent(s) :
for Res. 1
Shikha Ohri
Kartik Sharma
for Res. 2
Poorva Saigal
Pallavi Saigal
Rishabh Saxena
Shree Dwivedi
Shubham Arya
Reeha Singh
Kaavya Madaan
for Res. 3

ORDER

IA No. 1940 of 2025
(for interim relief)

The present appeal has been filed to set aside the order passed by the CERC in Case No. 26/MP/2024 dated 28.11.2025, and to grant such appropriate reliefs as was prayed for in Petition No.26/MP/2024, taking into consideration the supervening events that had occurred subsequent to 09.09.2024 on which date the judgment was reserved in the Petition. By way of IA No. 1940 of 2025, the Appellant herein sought stay of operation and effect of the judgment passed by the CERC in Petition No. 26/MP/2024 dated 28.11.2025, and for an interim order continuing the interim arrangement prevailing on the date and dispose of Petition No. 26/MP/2024, including but not limited to the undertaking given by Solar Energy Corporation of India Limited (SECI) and the protection granted by this Tribunal in Appeal Nos. 258 and 259 of 2024, the orders passed by the Delhi High Court in WP (C) No. 8582 of 2025 and the interim protection granted by the CERC in Petition No. 781/MP/2025 dated 16.09.2025.

When the matter was initially listed on 23.12.2025, this Tribunal noted that, in the previous Appeal Nos. 258 & 259 of 2024, this Tribunal had protected the rights and interest of the Appellant qua the power project in question by passing an interim order; these two appeals were filed against the orders passed by the Commission in Petition No. 377/80/2023 dated 31.03.2024 and Petition No. 26/MP/2024 dated 27.03.2024 respectively; and these appeals were disposed of by the common judgment of this

Tribunal dated 02.07.2024 remanding the case back to the Commission for passing a fresh order after hearing both parties.

In its order dated 23.12.2025, this Tribunal further noted that, despite a direction to the Commission to pass orders within two months, the Commission took more than a year to pass a fresh order; while hearing of the Petition stood concluded on 09.09.2024, the impugned order was passed on 28.11.2025; in the meanwhile, the timelines as per the PPAs for completion of work had already expired; the Appellant had approached the Delhi High Court by filing WP (C) No. 8582 of 2025 and the High Court had protected the interest of the Appellant by order dated 23rd & 30th July, 2025; and, in view of these facts and circumstances, interest of justice required the rights and interests of the Appellant to be protected by way of an ad-interim order. This Tribunal directed that no coercive/precipitative steps be taken against the Appellant, with regard to bid securities and bank guarantees submitted by them to the Respondents, till the next date of hearing. It is not in dispute that the said order passed by this Tribunal on 23.12.2025 is an ex-parte ad-interim order before notice was issued to the Respondents.

Thereafter when the matter was listed on 16.01.2026, and on Respondent 2 to 4 entering appearance through counsel and seeking 10 days' time to file reply to the IA for interim relief, this Tribunal granted time as sought for replies to be filed besides granting the Appellant one week's time thereafter to file rejoinder. This Tribunal, after noting the submissions, urged on behalf of the Learned Senior Counsel, that the bank guarantee furnished by the Appellant for Rs. 60 crores would expire only on 26.06.2026, also recorded their undertaking that the said bank guarantee would be kept alive during the pendency of the present appeal. While

posting the matter for further hearing on 04.02.2026, the interim order granted by this Tribunal earlier on 23.12.2025 was extended till 06.02.2026.

When the IA was taken up for hearing on 11.02.2026, and while hearing the submissions advanced by Mr. B.P. Patil, Learned Senior Counsel appearing on behalf of the Appellant, this Tribunal examined the contents of the bank guarantee, in order to decide whether or not to continue the earlier directions of this Tribunal dated 23.12.2025, that no coercive/ precipitative steps be taken against the Appellant with regards bid security and the bank guarantees submitted by the Appellant to the Respondent, in as much as it is not in dispute that the bid security itself is the bank guarantee furnished by the Appellant. In short, this Tribunal considered it appropriate to ascertain whether the bank guarantee furnished by the Appellant was conditional or unconditional, in as much as it is settled law that the person (in the present case SECI), 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 (**U.P. State Sugar Corpn: (1997) 1 SCC 568**), or because there is a dispute between the parties pursuant to and in terms of the underlying contract; and as interference is permissible only for established fraud or special equities.

The bank guarantee dated 30.03.2023, (a copy of which is enclosed at page 416 of the appeal), records that the bank agreed unequivocally and unconditional to pay to the 2nd Respondent-SECI forthwith, on demand in writing from SECI or any officer authorised by it in this behalf, any amount up to and not exceeding Rs. 59,75,00,000/- (Rupees Fifty Nine Crores

Seventy Five Lakhs only) on behalf of the Appellant; the bank guarantee was to be valid and binding on the bank up to and including 30.04.2026 and was not terminable by notice or any change in the constitution of the bank or the terms of the contract or by any other reason whatsoever, and their liability thereunder shall not be impaired or discharged by any extension of time or variation or alterations, made, given, or agreed, with or without the knowledge of the bank or consent by or between the parties to the respective agreement.

The Bank guarantee further records the agreement and acknowledge of the bank that SECI shall have the right to invoke the bank guarantee in part or full as it may deem fit; the bank expressly agreed that it shall not require any proof, in addition to the written demand made by SECI in any format raised at the mentioned address of the bank, in order to make the said payment to SECI; the bank shall make payment on first demand without restriction or conditions, and notwithstanding any objection by the Appellant and/or any other person; the bank shall not require SECI to justify invocation of this bank guarantee nor shall the bank have any recourse against SECI in respect of any payment made; the bank guarantee was fully enforceable in accordance with its terms as against the bank in the manner provided therein; the bank guarantee shall be a primary obligation of the bank, and SECI shall not be obligated, before enforcing this bank guarantee, to take any action or any court or arbitral proceedings against the selected wind power developer/project company (the Appellant) to make any claim or any demand on the selected wind power developers/project company or to give any notice to the selected wind power developer/project company or to enforce any security held by SECI or to exercise, levy or

enforce any distress, diligence or other process against the selected wind power developers/project company.

The bank further acknowledged its liability to pay the guaranteed amount or any part thereof under the bank guarantee only if SECI served upon them a written claim or demand. While this bank guarantee was to remain in force till 30.04.2026, the said bank guarantee was extended, by proceedings dated 18.10.2023, till 26.06.2026.

On the law governing interference by Courts/Tribunals, with respect to invocation of an unconditional bank guarantee, this Tribunal, in **Renew Wind Entergy (TN) Pvt. Ltd Vs CERC 2025 SCC online APTEL 9**, relied on in its earlier judgement in **North Karanpura Transmission Co. Ltd. v. CERC, 2023 SCC OnLine APTEL 7** (Order in Appeal No. 188 of 2022 dated 23.02.2023), wherein it was observed as under:-

- I. *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; and Standard Chartered Bank v. Heavy Engineering Corporation Limited, (2020) 13 SCC 574).*
- II. *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).

- III. *The dispute, between the beneficiary and the party at whose instance the bank had given the guarantee, is immaterial and is of no consequence. Ordinarily, the Court should not interfere with the invocation or encashment of the bank guarantee as long as the invocation is in terms of the bank guarantee. (Standard Chartered Bank v. Heavy Engg. Corpn. Ltd., (2020) 13 SCC 574).*
- IV. *Existence of any dispute between the parties to the contract 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).*
- V. *Invocation of a bank guarantee does not depend on termination of the underlying contract. The bank guarantee is a separate contract, and is not qualified by the contract on performance of obligations. (Gujarat Maritime Board v. L&T Infrastructure Development Projects Ltd., (2016) 10 SCC 46).*
- VI. *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**).

VII. Where the bank guarantee furnished is unconditional and irrevocable, 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. (**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**).

VIII. 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. (**Shapoorji Pallonji Energy (Gujarat) Private Limited v. Gujarat Electricity Regulatory Commission, 2017 SCC OnLine APTEL 35**).

IX. The duty of the bank under the guarantee is created by the document itself. Once the documents are 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]

- X. Encashment of the amount specified in the bank guarantee does not depend upon the result of the decision in the dispute between the parties. **(Ansal Engineering Projects Ltd. v. Tehri Hydro Development Corpn. Ltd., (1996) 5 SCC 450).**
- XI. When, in the course of commercial dealings, an unconditional bank guarantee is given or accepted, the beneficiary is entitled to realize such a bank guarantee in terms thereof irrespective of any pending disputes. **(U.P. State Sugar Corpn. [(1997) 1 SCC 568).**
- XII. 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. **(Ansal Engg. Projects Ltd. v. Tehri Hydro Development Corpn. Ltd., (1996) 5 SCC 450; Dwarikesh Sugar Industries Ltd. v. Prem Heavy Engineering Works (P) Ltd., (1997) 6 SCC 450).**
- XIII. The two exceptions, for the 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).**

- XIV. *Interference by Courts, with the enforcement of a bank guarantee, is only in cases where fraud or special equities are prima facie 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).*
- XV. *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. (Itek Corporation v. First National Bank of Boston, (566 Fed Supp 1210); 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).*
- XVI. *Proof of loss or damage being suffered by the Respondents, in terms of the underlying contract, 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).*
- XVII. *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. 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. (Shapoorji Pallonji Energy (Gujarat) Private Limited v. Gujarat Electricity Regulatory Commission, 2017 SCC OnLine APTEL 35).

- XVIII.** *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).*

A similar view, as was taken in North Karanpura Transmission Co. Ltd. v. CERC, 2023 SCC OnLine APTEL 7 (Order in Appeal No. 188 of 2022 dated 23.02.2023), was also taken by this Tribunal in Inox Green Energy Services Limited vs. CERC (2023 SCC OnLine APTEL Page 8) and in Maitra Vayu (Brahmaputra) Private Limited vs. M/s. Solar Energy Corporation India Limited (order in IA No. 83 of 2024 in Appeal No. 29 of 2024 dated 18.03.2024).

Against the order passed by this Tribunal, in North Karanpura Transmission Co. Ltd. v. CERC, 2023 SCC OnLine APTEL 7 (Order in Appeal No. 188 of 2022 dated 23.02.2023), North Karanpura Transmission Company Ltd. filed Civil Appeal (Diary) No. 8290 of 2023 which was dismissed by the Supreme Court by its order dated 03.03.2023 holding that they found no error in the

*order of this Tribunal. Against the order passed by this Tribunal in **Inox Green Energy Services Limited vs. CERC (2023 SCC OnLine APTEL Page 8)** (ie Order in Appeal No. 292 of 2022 and IA No. 1010 of 2022 dated 24.02.2023), M/s. Inox Green Energy Services Limited filed Civil Appeal No. 1948-1943 of 2023 which was dismissed by the Supreme Court by its order dated 04.05.2023 holding that they found no reason to interfere with the order of this Tribunal.*

In Mytrah Vayu (Brahamputra) Pvt. Ltd. Cs Solar Energy Corporation of India Ltd. (ECI) (order in IA No. 83 of 2024 in Appeal No. 29 of 2024 dated 18.03.2024), this Tribunal examined the question as to whether the test for grant of interim relief would automatically applied to IA seeking injunction restraining invocation of bank guarantee and observed as under:

“.....Section 96 of the Civil Procedure Code relates to appeals from original decree and, under sub-section (1) thereof, save where otherwise expressly provided by any other law for the time being in force, an appeal shall lie from every decree, passed by any Court exercising original jurisdiction, to the Court authorized to hear appeals from the decisions of such Court. Section 111 of the Electricity Act confers power on this Tribunal to entertain appeals, against the orders passed by the appropriate Commissions, both on facts and law and to confirm, modify or set aside the order appealed against. In view of words “save where otherwise expressly provided by any other law for the time being in force” used therein, Section 96(1) CPC would yield to the appellate

powers conferred on this Tribunal under Section 111 of the Electricity Act. Consequently, the scope of the powers conferred on this Tribunal under Section 111 of the Electricity Act cannot be examined from the prism of what Section 96(1) CPC stipulates.

*Ordinarily, while hearing interlocutory applications seeking stay of the order passed by the Commission, this Tribunal would bear in mind the triple tests for grant of interim relief i.e. a prima facie case, balance of convenience and irreparable injury. With a prima facie case being the sine qua non, satisfaction of either one of the other two tests i.e. balance of convenience or irreparable injury would suffice for grant of interim relief. While considering in whose favour the balance of convenience lies, this Tribunal would undoubtedly take into consideration the relative harm which may be caused to the parties on interim relief being granted/refused, and thereby balance equities in the process. But these tests would not apply to cases where an injunction is sought to restrain invocation of bank guarantees, in as much as the question of examining whether a prima facie case is made out, and in whose favour the balance of convenience lies, does not arise in such cases as the Court cannot interfere with the unconditional commitment made by the bank in its guarantee. (**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**).....”*

This Tribunal thereafter dealt with the issue whether the dispute in terms of the underlying contract could be examined while considering whether or not invocation of bank guarantee should be restrained, and

then observed thus:

*“.....In **Gujarat Maritime Board v. Larsen and Toubro Infrastructure Development Projects Limited: (2016) 10 SCC 46**, and **Vinitec Electronics Private Limited v. HCL Infosystems Limited: (2008) 1 SCC 544**, the Supreme Court held that reference to the underlying contract or breach thereof in the bank guarantee, or in the invocation letter, will not make any difference to the principles of encashment of Bank Guarantee, as long as the terms of the Bank Guarantee are unconditional. In **Vinitec Electronics (P) Ltd**, the bank guarantee itself referred to the principal agreement between the parties and, in **Gujarat Maritime Board**, the guarantee itself stipulated that, in case of breach by the lead promoter of the conditions of the agreement, the appellant was free to invoke the bank guarantee, and yet the Supreme Court held that no restraint could be placed on its invocation.....”*

.....The only requirement, for a valid invocation, is that such invocation should be in terms of the bank guarantee which, as noted hereinabove, only required SECI, or any Officer authorized by it in this behalf, to make a demand in writing and nothing more. In terms of the bank guarantee, the bank agreed that, on any such demand, it would unequivocally, irrevocably and unconditionally pay SECI forthwith, the amount specified in the Bank Guarantee, on behalf of the Appellant, without requiring any proof, in addition to the written demand by SECI made in any format, in order to make payment.....”

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**). Interference by Courts, with the enforcement of a bank guarantee, is only in cases where fraud or special equities are *prima facie* 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 bank guarantees would be negated and the fabric of trading operation will be in jeopardy.

As no contention of “fraud” has been raised, let us examine whether the second exception to the general rule of non-intervention is attracted. This exception arises when there are “special equities” in favour of injunction, such as 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 in terms of the 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 hostage. 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**).*

*As held by 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), to avail of the exception of irretrievable injury or special equity, exceptional circumstances which make it impossible for the Guarantor to reimburse himself, if he ultimately succeeds, will have to be decisively established, which, in the present case, must be that there would be no possibility whatsoever for the Appellant to recover from SECI, the proceeds of the encashed Bank Guarantee, if the main Appeal were to be allowed later. Proof of loss or damage being suffered by the Respondents, in terms of the underlying contract, is not necessary for invocation and encashment of a Bank Guarantee. (**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). The financial difficulties which the person furnishing it may face, in case the bank guarantee is encashed, is also not relevant. Having furnished an unconditional bank guarantee with its eyes open, and being fully conscious of the right of SECI to encash it in its sole discretion, the Appellant cannot now be heard to contend that severe financial hardship would be caused to them as a result, and this would require interference with the encashment of a bank guarantee.

The *Itech Corporation* test must be satisfied for courts/tribunals to hold that special equities lie in favour of the persons seeking restraint on the invocation of a bank guarantee. Irreparable injury which such a person may suffer, if no injunction is granted restraining invocation of bank guarantee, must be of such exceptional circumstances which make it impossible for the guarantor to reimburse himself if they ultimately succeed. This test must be decisively established, and a mere apprehension that the other party will not be able to pay is not enough.

It is not even the case of the Appellant that, in case of their success in the main appeal, they would not be in a position to recover the amount, which SECI would receive on encashment of the bank guarantee, from SECI later. In the absence of any such contention, it cannot be held that special equities lie in favour of Appellant. Further, disputes between the parties, mainly or partially based on the underlying contract, would also not constitute special equities justifying restraint on the invocation of the bank guarantee.

We are of the view that the Appellant's interests can be adequately safeguarded by making it clear that encashment of the bank guarantee,

if the Respondent so chooses to do so, will undoubtedly be subject to the result of the main appeal and, while equities can be adjusted and refund of the amount along with interest can also be considered if the Appellant were to succeed in the main appeal, that, however, would not justify any order being passed restraining the Respondent-SECI, if it so chooses, from encashing the subject bank guarantee.

While this Tribunal had, in its ex-parte ad-interim order dated 25.12.2025, directed that no coercive /precipitative steps be taken against the Appellant with regard to bid securities and bank guarantees submitted by them to the Respondents, we deem it appropriate, while continuing the afore-said direction to the limited extent that no coercive/ precipitative action should be taken against the Appellant until further orders, to also make it clear that the said order shall not disable Respondent-SECI, if it so chooses, from invoking the unconditional bank guarantee furnished by the Appellant in their favour.

It is also made clear that invocation of the bank guarantee, if the Respondent-SECI so choose to do, shall be subject to the result of the main appeal and, in case this Tribunal were inclined to allow the appeal, the Appellant would be entitled to claim not only refund of the amount realised by SECI on encashment of the bank guarantee, but also for appropriate interest on the encashed amount, from the date the bank guarantee is encashed till the entire amount along with interest is paid back to them. This Tribunal would, when the main appeal is finally heard, also examine whether the Appellant should be compensated for the bank charges incurred by them in this regard. The earlier interim order is modified in terms of the directions now issued by way of the present order.

Mr. B.P. Patil, Learned Senior Counsel, would submit that the Appellant is not content with the direction issued by this Tribunal, that no coercive/precipitative be taken against them, and they seek interim stay of the impugned order itself. We deem it appropriate in such circumstances, while making it clear that it is open to the Respondent-SECI if they so choose, to encash the unconditional bank guarantee furnished in their favour by the Appellant, to direct that the IA be listed for further hearing after two weeks to enable Learned Senior Counsel/Learned Counsel on either side to put-forth their submissions in support and in opposition to the interim relief sought by the Appellant for grant of stay of the impugned order.

APL No. 399 OF 2025 & IA No. 1983 OF 2025

Post the matter on **26.02.2026**.

Ajay Talegaonkar
Technical Member (Electricity)

Justice Ramesh Ranganathan
Chairperson

sk/mkj