

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
COMMERCIAL ARBITRATION PETITION (L) NO.7085 OF 2026

RKEC Projects Limited

.....PETITIONER

: VERSUS :

Maharashtra Maritime Board and Anr.

....RESPONDENTS

Mr. Umesh Shetty, Senior Advocate with Mr. Gopalkrishna Nayak, Ms. Sharila D'Souza and Ms. Pooja Gondhali i/b M/s. Flavia Legal for the Petitioner.

Mr. Birendra Saraf, Senior Advocate with Mr. Jay Sanklecha, Mr. Ishwar Nankani, Mr. Huzefa Khokhawala and Mr. Kartik Gupta i/b M/s. Nankani & Associates for Respondents.

CORAM : SANDEEP V. MARNE, J.

JUDG. RESD. ON: 7 APRIL 2026

JUDG. PRON. ON: 9 APRIL 2026

JUDGMENT:

- 1) This is a Petition filed under Section 9 of the Arbitration and Conciliation Act, 1996 (**Arbitration Act**) seeking interim measures before commencement of arbitral proceedings. Disputes and differences have arisen between the parties out of performance of contract dated 11 October 2024 awarded by Respondent No. 1 to the Petitioner for
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construction of Passenger Jetty and Terminal Facilities at Radio Club, near Gateway of India, Mumbai. Petitioner expresses an apprehension that the contract is likely to be terminated by Respondent No.1, who may invoke and encash the Performance Bank Guarantee (**PBG**) aggregating to Rs.11.33 crores and Mobilization Advance Bank Guarantee (**MABG**) in the sum of Rs.20.53 crores. Petitioner has accordingly filed the present Petition seeking restraint order against the Respondents from terminating the Agreement dated 11 October 2024 and from preventing it from discharging the obligations under the Agreement dated 11 October 2024. Petitioner has also sought restraint order against the Respondents from encashing the PBG and MABG. Petitioner has also sought direction for release of balance amount of second installment i.e. 5% mobilisation advance under the agreement. Petitioner has also sought direction for release of stage wise payments to it as per the Agreement.

2) On 8 September 2024, Respondent No. 1- Maharashtra Maritime Board floated a tender for construction of Passenger Jetty and Terminal Facilities at Radio Club near Gateway of India, Mumbai (**Project**). Petitioner was selected as the successful bidder and Letter of Award dated 3 October 2024 was issued in its favour. On 11 October 2024, the Work Order was issued in favour of the Petitioner and Engineering Procurement and Construction Agreement dated 11 October 2024 (**Contract**) was executed between the Petitioner and Respondent No.1. The scope of the Project included design and construction of elliptical jetty, terminal platform, approach jetty and related facilities at

Radio Club near Gateway of India, Mumbai. The period of work envisaged under the Contract was for 30 months from 11 October 2024 to 11 April 2027. In pursuance of the Contract, Petitioner has deposited various Bank Guarantees in favour of Respondent No.1 comprising of PBGs aggregating Rs. 11.33 crores and MABG in the sum of Rs.20.53 crores.

3) Petitioner accuses Respondents for delay in execution and progress of the work on the Project. According to it, Respondents were responsible for providing General Arrangement Drawings (**GAD**) of parking platform and approach jetty. Petitioner holds Respondents responsible for delay in finalization of the GADs. According to the Petitioner, Mumbai Port Authority issued Circular dated 17 April 2025 imposing prohibition of “No Cold Moves” from 1 June 2025 to 15 September 2025 and 107 days were lost on that account. According to the Petitioner, 189 days were lost in the process of deck elevation approval and finalisation of GADs by Respondents and their consultants at IIT Madras. On 15 September 2025, after expiry of ‘No Cold Move’, meeting took place between the representatives of the Petitioner and Respondent No.1 in which Petitioner was called upon to submit schedule in the form of bar chart. Petitioner submitted the revised schedule on 24 September 2025. On 14 October 2025, Respondents proposed imposition of liquidated damages. Petitioner had received mobilization advance of Rs.19.35 crores. Petitioner requested for extension of time by 308 days and for revision of project completion date to 15 February 2028. Considering the limited remit of enquiry in the present Petition, it is not necessary to go into the details of correspondence and events which have

occurred during performance of contract by the Petitioner. However, it needs to be noted that two Writ Petitions were filed in this Court, challenging implementation of the Project. The petitions came to be dismissed by this Court on 15 July 2025. The Special Leave Petition has also been dismissed by the Supreme Court. Petitioner relies upon statements made by Respondent No.1 in its affidavits filed in the said Writ Petitions admitting that considerable work at the site was carried out and substantial amount was expended on the Project.

4) On 5 December 2025, Respondents issued Show Cause Notice to the Petitioner. On 7 January 2026, Petitioner raised running bill for Rs.6.21 crores which was approved by the Respondent's Engineer/PMC on 9 January 2026. Respondents however imposed liquidated damages amounting to Rs. 8,70,000/- per day and threatened to terminate the agreement on 3 February 2026. Petitioner replied to the Show Cause Notice. Petitioner requested for conciliation of disputes vide letter dated 20 February 2026.

5) In the above background, Petitioner has filed the present Petition on 24 February 2026, expressing apprehension about possible termination of the Contract by the Respondents and invocation of the bank guarantees. After filing of the Petition, it appears that conciliation meeting took place between the parties on 16 March 2026. The report of conciliation was submitted on 20 March 2026. It appears that the conciliation did not yield any positive outcome. On 24 March 2026, Respondents have issued Notice of intention to terminate the Contract.

Petitioner requested for further conciliation by the Chairman and according to it, further conciliation meeting has taken place before the Chairman on 1 April 2026. Petitioner however apprehends that the Respondents are likely to terminate the Contract even before receipt of report of conciliation proceedings before the Chairman.

6) Respondents have filed Affidavit in Reply dated 16 March 2026 to which the Petitioner has filed Affidavit in Rejoinder. Respondents have also tendered Affidavit of Surrejoinder. Since pleadings in the Petition are complete, the same is taken up for hearing and disposal.

7) Mr. Shetty, the learned Senior Advocate appearing for the Petitioner submits that the proposed action of the Respondents in terminating the contract is *ex facie* illegal. That Respondents have wrongfully denied extension of time to the Petitioner on account of which Petitioner is unable to raise funds from the financial institutions. That Respondents have grossly delayed approval of GADs. That there was delay in finalization of the deck levels by the PMC appointed by the Respondents. That the deck level was ultimately finalized at 8.10 metres and time of 189 days was wasted in the process of deck elevation approval and finalisation of GADs by the Respondents and their consultant Prof. Nallayarasu of IIT Madras.

8) Mr. Shetty further submits that the Respondents filed affidavit in Writ Petitions before the Division Bench confirming that there was substantial progress of the work and that substantial amount

was expended by the Petitioner in respect of the Project. He further submits that the second round of conciliation is underway before the Chairman who is yet to submit report of conciliation. That Respondents cannot take precipitative steps even before conclusion of the conciliation process. He submits that Petitioner is keen on completing the Project and is hopeful of resolution of disputes through the conciliation process. That therefore Respondents need to hold their hands till the disputes get resolved. He disputes that the Project is an infrastructure project within the meaning of Section 20A of the Specific Relief Act, 1963.

9) Mr. Shetty submits that though Petitioner is also entitled to interim measures staying the proposed termination, as of now, the real and grave apprehension for the Petitioners is in respect of invocation and encashment of the bank guarantees. He submits that if bank guarantees are encashed, the same would result in economic death for the Petitioner. That Petitioner satisfies the tests of irretrievable injustice and special equities. That the bank guarantees are alive till the year 2027/28. That therefore there is no urgency for the Respondents to proceed ahead with encashment of the bank guarantees. He relies on judgment of the Apex Court in the ***Jindal Steel and Power Limited vs. Bansal Infra Projects Private Limited***¹ in support of his contention that the Supreme Court has evolved the mechanism of directing the bank guarantees to be kept alive instead of permitting the principal/employer to encash the same. He also relies on judgment of Delhi High Court in ***Atlas Interactive (India) Pvt. Ltd. vs. Bharat Sanchar Nigam Limited &***

¹ (2025) 10 SCC 176

Anr.² in support of his contention that Respondents being an instrumentality of State, have a duty to act fairly and not arbitrarily. That the Respondents therefore need to appreciate the fact that the delay is not at all attributable to the Petitioner and that neither contract can be terminated nor the Bank Guarantees need to be invoked. That in any case, the bank guarantees can be invoked only when default is committed by the Petitioner and that there is no default on the part of the Petitioner.

10) Upon being queried by the Court as to whether the Petitioner is pressing for all the interim measures sought for in the Petition, Mr. Shetty, on instructions of his client, makes a statement that Petitioner would press the interim measures only in terms of prayer clause (c) at this juncture and craves leave of the Court to apply for other interim measures before the Arbitral Tribunal.

11) Dr. Saraf, the learned Senior Advocate appearing for Respondents, opposes the Petition. He raises two preliminary objections to maintainability of the Petition. Firstly, he submits that the contract is determinable by its nature and that therefore, specific performance thereof is expressly prohibited under Section 14 of the Specific Relief Act, 1963. He also submits that the contract is for execution of infrastructure project and that therefore no injunction can be granted in view of provisions of Section 20A of the Specific Relief Act. That the Petitioner has repeatedly failed to achieve the agreed milestones and the

² 2005 SCC OnLine Del 190

Respondents are convinced that the Petitioner is not in a position to complete the project which is of considerable public importance. That Petitioner has repeatedly sought extension of time without demonstrating any substantial progress at the site, nor has furnished any credible plans for completion of the project within the contractual framework. He takes me through the contents of Notice expressing intention to terminate the contract to demonstrate breaches on the part of the Petitioner. That therefore even on merits, Petitioner is not entitled to any interim measures.

12) So far as interim measures to restrain Respondents from encashing bank guarantee are concerned, he submits that Petitioner has failed to produce copy of bank guarantee on record. That bank guarantees submitted by the Petitioner are independent contracts. That court cannot grant injunction from invocation of bank guarantees by considering terms of the contract executed with the Petitioner. That Petitioner has failed to plead the grounds of fraud, irretrievable injustice or special equities. In support of his contention, he relies on the judgments of Apex Court in *Hindustan Steelworks Construction Ltd. vs. Tarapore & Co. and Anr.*³, *Vinitec Electronics Private Ltd. vs. HCL Infosystems Ltd.*⁴ and *Standard Chartered Bank vs Heavy Engineering Corporation Limited and Anr.*⁵, and of this Court in *Techno Unique*

³ (1996) 5 SCC 34

⁴ (2008) 1 SCC 544

⁵ (2020) 13 SCC 574

Infratech Private Limited vs. Gammon Infrastructure Projects Limited and Ors.⁶

13) Dr. Saraf further submits that mere conciliation proceedings cannot be a ground for restraining Respondents from taking a decision relating to termination. That conciliation is merely a part of dispute resolution mechanism agreed between the parties. That in the present case, the agreed procedure for commencement of arbitration is yet to be completed. He prays for dismissal of the Petition.

14) Rival contentions of the parties now fall for my consideration.

15) The Petition arises out of disputes between the parties relating to performance of the contract awarded to the Petitioner on 11 October 2024 for construction of Passenger Jetty and Terminal Facilities at Radio Club near Gateway of India, Mumbai. Petitioner apprehends termination of the contract and invocation of bank guarantee and has prayed for following interim measures:

(a) pending the constitution of Arbitral Tribunal for adjudication of disputes, inter alia, grant of Extension of Time (EOT) between Petitioners and Respondents under/in relation to the agreement dated 11.10.2024, the Respondents be restrained by an order and injunction of this Hon'ble Court from terminating the agreement dated 11.10.2024 being Exhibit C hereto or preventing the Petitioners in any manner from discharging their obligation under the said agreement dated 11.10.2024;

(b) pending the adjudication of disputes inter alia, grant of Extension of Time (EOT) between Petitioners and Respondents under/in relation to the Agreement dated 11.10.2024 by the Arbitral Tribunal to be

⁶ 2020 SCC OnLine Bom 42

constituted, the Respondents be restrained by an Order and Injunction of this Hon'ble Court from terminating the agreement dated 11.10.2024 being Exhibit C hereto or preventing the Petitioners in any manner from discharging their obligation under the said Agreement dated 11.10.2024;

(c) pending the constitution of the Arbitral Tribunal for adjudication of the disputes between Petitioners and Respondents under /in relation to the Agreement dated 11.10.2024, Respondents be restrained by an Order and Injunction of this Hon'ble Court from encashing the security deposit and performance Bank Guarantee aggregating to Rs.11.33 crores and Mobilisation Advance Bank Guarantee issued by Bank of Baroda, ICICI Bank and CSB Banks in the sum of Rs. 20.53 crores, deposited by Petitioners with Respondents, by way of Performance Guarantee and Bank Guarantee for mobilization advance;

(d) pending the constitution of the Arbitral Tribunal for adjudication of the disputes between Petitioners and Respondents under /in relation to the Agreement dated 11.10.2024, Respondents be ordered and directed by this Hon'ble Court for release the balance amount of 2nd installment i.e. 5% mobilization advance as contemplated under Article 19.2.1 of the said Agreement dated 11.10.2024;

(e) pending the constitution of the Arbitral Tribunal for adjudication of the disputes between Petitioners and Respondents under /in relation to the Agreement dated 11.10.2024, Respondents be ordered and directed by this Hon'ble Court to release the stage wise payments to the Petitioners without any delay and as contemplated under Article 19.5 of the said Agreement dated 11.10.2024 between Petitioners and Respondents;

(f) For ad interim reliefs in terms of clauses (a) to (e) above.

(g) For costs of the present Petition;

(h) For such other and further reliefs as may be required

16) The Project is for providing public infrastructure to the passengers undertaking water transport from Mumbai to Alibaug and surrounding areas in Raigad District. The Project is also aimed at decongesting the current jetty facilities at the Gateway of India. The importance of the project is highlighted in Para 83 and 84 of the judgment

of Division Bench of this Court in **Clean and Heritage Colaba Residents Association (CHCRA) vs. The State of Maharashtra and Ors.**⁷ which are as under:

83. At present, there are five antiquated operational jetties right next to the iconic Government of India monument, which have been in use for almost a century. One of the said five jetties is exclusively used by Bhabha Atomic Research Center. The other four jetties are used by daily commuters, who travel to work in South Mumbai as well as by the tourists who make use of ferries to reach Elephanta Caves, Alibaug etc. or for excursion in the sea. The jetties are also used by yacht owners and operators. According to the affidavit filed by MMB, approximately 30 to 35 lac passengers currently travel every year from the said four jetties. The said affidavit highlights the position that the existing jetties facilities are wholly inadequate as there is no proper infrastructure in terms of waiting area, parking facilities, disability accessibility, emergency services, physical frisking/checking of the passengers, etc. Location of those jetties next to the iconic Gateway of India monument, as well as proximity to the Taj Mahal hotel leads to overcrowding and high amount of road traffic at the junction of the Gateway of India. It is pointed out in the affidavit that during embarkation/ disembarkation from the jetties, passengers are required to cross 3-4 boats to get to their boat/ferry or to the shore. In the said process of embarkation, elderly persons, women and children are at the risk of serious injuries. The MMB has placed on record photographs of the existing jetty facilities at the Gateway of India, which depict overcrowding at the spot as well as serious security and safety hazards where passengers are seen crossing several jetties to reach the desired boat/ferry.

84. Bearing in mind the above concerns, the MPT has conceived the project of setting up passenger jetty and terminal, which involves construction of 10 fixed pile jetties (with 20 berths) with walkway, passenger terminal platforms and parking in pile and a terminal (porta cabins having heritage like look) over an aggregate area admeasuring 25116.3 sq.mtrs. The project site is 350 mtrs. away from the Gateway of India monument. The Affidavit indicates that MMB has considered the feasibility of other locations for the Project and has also taken into consideration the suggestions of Western Naval Command. Since the project is at close proximity of naval establishment, MMB has placed on record letter dated 29 November 2022 of Western Naval Command which has imposed several conditions including the condition of clearance of all boats from the sea area around Gateway of India, as well as provision of one jetty and office space on the passenger terminal to be allotted to the Indian Navy for berthing of Indian Navy Craft and associated administrative purposes.

⁷ Writ Petition (L) NO. 13336 of 2025 decided on 15 July 2025

17) Under the Schedule to the Specific Relief Act, a port is treated as an infrastructure project. Therefore, the Project in question would be governed by provisions of Section 20A of the Act and there is statutory bar from granting injunction in respect of contract in respect of the Project. Also, the contract, by its very nature, is determinable and therefore specific performance thereof cannot be granted under Section 14 of the Act. Therefore, Petitioner's prayers for interim measures need to be considered keeping in mind the two statutory bars under the Specific Relief Act.

18) However, as observed above, though Mr. Shetty has canvassed various submissions in support of the plea that proposed action of termination is invalid, the Petitioner has chosen to press only prayer clause (c) of the present Petition at this juncture. The other prayers in the Petition are not pressed now, and liberty is sought to exercise remedies in respect thereof before the Arbitral Tribunal. Therefore, it is not necessary to go into the issue of making interim measures to prevent Respondents from terminating the Contract or to restrain Respondents from preventing Petitioner from performing the same. As of now, this court needs to consider only the prayer for restraining the Respondents from invoking and/or encashing the PBGs aggregating sum of Rs.11.33 crores and MABG in the sum of Rs.20.53 crores. The bank guarantees are submitted by the Petitioner both for ensuring due performance of the contract as well as for securing the mobilization advance paid to it by the Respondents. It appears that by now Petitioner has been paid mobilization advance to the tune of Rs.19.35 crores.

19) It is well-settled position of law that a bank guarantee is an independent contract between the beneficiary (creditor) and the Bank (guarantor). It operates separately from the underlying contract. It obligates the Bank to pay the guaranteed amount on demand. A beneficiary has a right to enforce, and the bank has the liability to pay to the beneficiary the amount guaranteed under the bank guarantee. The commitment by the bank must be honoured free from interference by the courts. It is only in exceptional and rare cases, where there is an element of egregious fraud or where the case involves irretrievable injury or irretrievable injustice or where there are special equities, that the court would be justified in making interim order restraining encashment of bank guarantee. Mere general allegations of fraud or irretrievable injustice/injury are not sufficient. Fraud must be of egregious nature, which would vitiate the very foundation of bank guarantee. The irretrievable injustice/injury must be of such nature and magnitude which would make it impossible for the guarantor to reimburse itself if he ultimately succeeds. Even special equities are required to be pleaded and *prima facie* established by strong evidence as a triable issue. These settled principles are reiterated in several judgments of the Supreme Court and reliance by Dr. Saraf on judgments in *Hindustan Steelworks* (supra), *Vinitec Electronics Pvt. Ltd.* (supra) and *Standard Chartered Bank* (supra) as well as on judgment of this Court in *Techno Unique Infratech Pvt. Ltd.* (supra) in this regard is apposite.

20) In the present case, the Petitioner has failed to even plead, let alone establish, existence of egregious fraud, irretrievable injury or special equities. The only pleadings for claiming restraint order in respect of bank guarantees are to be found in para-57 of the Petition, which read thus:

In the circumstances, as mentioned above and particularly, in view of the fact that Respondents have without any justification imposed liquidated damages of Rs.8.70 lakhs per day without considering the genuine and bonafide reasons for the delay caused in execution of the work, there is every possibility that Respondents would take steps to terminate the contract and also encash/invoke the Security Deposit and Performance Bank Guarantee aggregating to Rs.11.33 Crores and Mobilisation Advance Bank Guarantee of Rs.20.53 Crores. In such an event, the Petitioners would be subjected to heavy losses, severe prejudice and such a situation would also adversely affect the reputation of the Petitioners and resulting in death knell of the Petitioners Company cascading into a loss of livelihood/joblessness for its work force of around 600 families.

21) Thus, the Petitioner has not even pleaded the case of egregious fraud, irretrievable injury or special equities. Since there are no pleadings, there is no question of Petitioner being able to establish such exceptional circumstances. Even if absence of pleadings is to be momentarily ignored, Mr. Shetty has not made any attempt to indicate existence of egregious fraud. He has however submitted that Petitioner would suffer irretrievable injury if interim measures for restraining invocation of bank guarantees are not granted. I am unable to agree. If Petitioner can demonstrate before the arbitrator that termination of contract is invalid, it can be awarded damages/compensation as well as the amount spent on the Project. Petitioner has already received

substantial mobilisation advance of Rs.19.35 crores whereas the total value of bank guarantees is Rs.31.86 crores. Thus, substantial portion of bank guarantee amount is already in the pockets of the Petitioner. There are no pleadings in the Petition to demonstrate that encashing of bank guarantees would result in a situation where the Petitioner would not be in a position to either get its claims adjudicated in arbitration or that success in arbitration would be meaningless for it. The case therefore does not involve either irretrievable injury to the Petitioner or existence of any special equities.

22) The Contract provides for encashment of bank guarantee upon termination of contract under clause 23.6. Therefore, if and when the contract is terminated, Respondents would be entitled to invoke and encash the bank guarantees. Thus, apart from Respondent's entitlement to demand monies from the Bank in terms of the guarantee, the underlying contract between the parties also entitles Respondents to encash the bank guarantees.

23) Reliance by Mr. Shetty on judgment of the Apex Court in ***Jindal Steel and Power Ltd.*** (supra) is inapposite. The judgment recognises power of High Court to grant stay in exercise of jurisdiction under Article 227 of Constitution of India in exceptional circumstances even in respect of Arbitral Proceedings. The case before the Apex Court involved peculiar circumstances where Section 9 Court had refused to grant *ex parte* ad interim measures and by bypassing the statutory appeal remedy under Section 37 of the Arbitration Act, a writ petition under

Article 227 of the Constitution of India was filed and the writ court granted an order of status quo till decision of Section 9 Petition. The issues before the Apex Court were about availability of remedy of appeal under Section 37 of the Act against only initial order of non-grant of ad interim measures and about propriety in High Court exercising jurisdiction under Article 227. The issues are not decided in the judgment. However, the Apex Court has refused to set aside the order of the Writ Court considering the peculiar circumstances of the case. It is well settled that a judgment is an authority for what it decides and not what can be logically deduced therefrom. [SEE: ***Commissioner of Customs (Port) vs. Toyota Kirloskar Motor (P) Ltd.***⁸, ***Secunderabad Club v. CIT***⁹]. The judgment in ***Jindal Steel and Power Ltd.*** therefore cannot be cited in support of an abstract proposition that in every case Courts can direct renewal of bank guarantee by ordering status quo in respect of encashment of bank guarantee.

24) Mr. Shetty has relied on judgment of Delhi High Court in ***Atlas Interactive*** (supra) in support of his contention that Respondent No. 1, being an instrumentality of State is dutybound to act fairly and not arbitrarily. The case involves contractual disputes between two parties. At this juncture it is not necessary to delve deeper into the aspect of fairness in the contractual spheres where one of the parties to the contract is an instrumentality of State. As of now, there is nothing to infer that Respondents have acted unjustly or arbitrarily. This is a simple case of inability on the part of the Petitioner to complete various milestones in a

⁸ (2007) 5 SCC 371

⁹ 2023 SCC Online SC 1004

timely manner under the contract. The Project is of considerable importance for the Respondents and for members of public. Respondents have issued notice expressing intention to terminate the contract after noticing that there is no desired progress at various work fronts. The slow progress of work is apparent from the figures indicated in notice dated 24 March 2026. Since Petitioner has not pressed other interim measures in the Petition, it is not necessary to examine the allegations of breaches alleged by rival parties.

25) In my view therefore, no case is made out for grant of any interim measures to restrain the Respondents from invoking or encashing the bank guarantees.

26) Arbitration Petition is accordingly disposed of without granting any relief in favour of the Petitioner. However, it would be open for the Petitioner to press for other interim measures before the Arbitral Tribunal, as and when constituted.

[SANDEEP V. MARNE, J.]

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