

M/S Chaitanya Energy Private Limited vs Indian Bank on 3 June, 2024

Author: Surepalli Nanda

Bench: Surepalli Nanda

IN THE HIGH COURT OF TELANGANA AT HYDERABAD

WRIT PETITION No. 24169 of 2023

Between:

M/s Chaitanya Energy Private Limited

... Petitioner

And

Indian Bank and another

... Respondents

JUDGMENT PRONOUNCED ON: 03.06.2024

THE HON'BLE MRS. JUSTICE SUREPALLI NANDA

1. Whether Reporters of Local newspapers : Yes
may be allowed to see the Judgment?
2. Whether the copies of judgment may be : Yes
marked to Law Reporters/Journals?
3. Whether Their Lordships wish to : Yes
see the fair copy of the Judgment?

SUREPALLI NANDA, J

2

WP_24169_2023
SN,J

IN THE HIGH COURT OF TELANGANA AT HYDERABAD

WRIT PETITION No. 24169 of 2023

% 03.06.2024

Between:

M/s Chaitanya Energy Private Limited

... Petitioner

And

\$ Indian Bank and another

...Respondent

< Gist:

> Head Note:

! Counsel for the Petitioner: Mr R.S.Associates

Sri S.Ravi Sr. Counsel

^ Counsel for Respondent No.1:Smt V.Dyumani

^Counsel for Respondent No.2:Sri Vivek Reddy

Sr.Designate counsel

? Cases Referred:

- (1) (2016) 10 SCC 46
- (2) (2007) 8 SCC 110
- (3) (1999) 8 SC 436
- (4) (2000) 6 SCC 293
- (5) (2021) 10 SCC 690
- (6) (2004) 3 SCC 553
- (7) (2002) 1 SCC 216
- (8) (2015) 7 SCC 728
- (9) (2021) 6 SCC 771
- (10) (1998) 8 SCC 1
- (11) 2021 SCC Online SC 801

3

WP_24169_2023
SN,J

HON'BLE MRS JUSTICE SUREPALLI NANDA

WRIT PETITION No. 24169 of 2023

ORDER:

Heard learned senior counsel Sri S.Ravi, appearing on behalf of the Petitioner and the learned counsel Smt. V. Dyumani appearing on behalf of 1st Respondent and learned senior designate

counsel Sri Vivek Reddy, appearing on behalf of the 2nd Respondent.

2. The petitioner approached the court seeking prayer as under:

"to issue a Writ of Mandamus directing the Respondent No. 1 not to encash/allow fraudulent invocation of the Bank Guarantees bearing No. 02687IG210000013, 02687IG210000014, 2687IG210000015, 02687IG210000018, 02687IG210000019, 02687IG210000021, 02687IG210000022, 02687IG210000023, 02687IG210000024, 02687IG210000025, 02687IG210000069, 02687IG210000070, 02687IG210000071, 02687IG210000072, by the Respondent No.2 and acting on including under Letter of Invocation dated 28.08.2023"

3. PERUSED THE RECORD :

a) The counter affidavit filed by the 1st Respondent -

Paras 5, 8 and 9, read as under :

WP_24169_2023 SN,J "5. It is submitted that as per the guidelines issued by the Reserve Bank of India issued from time to time, the borrower who has been availed credit facilities from the Banking Financial Institution shall not avail any credit facility with any other bank or Financial Institution without obtaining NOC from the existing Bank. On perusal of the documents filed by the Petitioner it is observed that without the written consent from the Respondent 1, the Petitioner has entered into a Working Capital Agreement dated 26.02.2021 (138 A-153) with M/s CAPSAVE FINANCE PRIVATE LIMITED, A NBFC incorporated under Companies Act and First Amendment dated 28.03.2023(Page No 186-201), Working Capital loan Agreement dated 28.03.2023(Page No 202-275), Deed of Hypothecation dated 28.03.2023 (Page No 276-319) and the Respondent no 2 has executed Corporate Guarantee Deed dated 28.03.2022(Page No 320-369) in favour of CAPSAVE FINANCE P LTD. It is pertinent to note in Clause No 2 of the 1st Amendment Agreement dated 28.03.2023 (Page No 180) it is stated as details hereunder:

"The Borrower and Corporate Guarantor expressly, unconditionally and irrevocably agree and confirm that for the purpose of the Bank Guarantee and the Transaction documents, until such time that the Amounts Due/outstanding/Obligations (however described, and more particularly referenced in the Loan Agreement and the other Transaction Documents) WP_24169_2023 SN,J is fully and finally discharged/paid to the Lender/CFPL, as confirmed by the Lender in writing, (i) the lender shall be the sole and absolute Beneficiary within the meaning of the Bank Guarantee."

8. It is submitted that for invocation of the Bank Guarantee that there shall be a liability on the part of the Petitioner. Since the petitioner is alleging that the 4 Respondent No 2 has not supplied the material for which the Bank Guarantees were obtained, it is the incumbent of the part of the

Respondent No 2, that the material has been supplied to the Petitioner which is a precondition in between the Petitioner and Respondent No 2 to invoke the Bank Guarantees issued by the Respondent No 1 in favour of the Respondent No 2.

9. It appears that the Petitioner and Respondent No 2 have suppressed the material fact of the transactions in between them and also M/s CAPSAVE FINANCE P LTD and execution of the Corporate Guarantee by the Respondent No 2 and secured the Bank Guarantees from this Respondent. It is the submitted the matter requires a detailed enquiry to find out whether the material is supplied by the Respondent No 2 and whether the BGs are invoked in respect of the liability that has arisen out of the material WP_24169_2023 SN,J supplied by the Respondent No 2 to the Petitioner."

b) The counter affidavit filed on behalf of 2nd Respondent - Paras 12, 15, 16, 17, 25 and 26 read as under :

"12. The present writ petition is not maintainable as the Hon'ble High Court of Telangana at Hyderabad is not the appropriate forum to adjudicate on the issues between Petitioner and Zetwerk. The terms of the Amended Purchase Agreement which governs the relationship between the Petitioner and Zetwerk categorically stipulates that any disputes relating to this matter will have to be referred to the exclusive jurisdiction of the Courts in Mumbai only. It reads:

"Any disputes relating to this matter will have to be referred to the exclusive jurisdiction of the Courts in Mumbai only and is binding on both Borrower (Petitioner) and Corporate Guarantor (Zetwerk) unconditionally agree to submit thereto, and to that extent the clause in relation to Arbitration in the Purchase Agreement shall not apply, unless otherwise agreed to by the Lender in writing and shall not be acted or insisted upon by the Borrower and/or the Corporate Guarantor".

15. The Petitioner is a signatory to the Amended Purchase Agreement which is the document that has the entire understanding of the Petitioner, Zetwerk and WP_24169_2023 SN,J CFPL. Despite being a signatory to the Amended Purchase Agreement which categorically records that the Petitioner and Zetwerk have agreed to secure by way of first and exclusive charge the assignment of all the rights and benefits of the Bank Guarantee, to CFPL, the Petitioner has not disclosed the same.

16. Despite being a signatory to the Amended Purchase Agreement that contains this clause, the Petitioner has secured an interim order from this court on the false ground that the bank guarantees are only for the materials supplied by Zetwerk and therefore the bank guarantees cannot be invoked for the benefit of CFPL.

17. Contrary to the assertion of the Petitioner, admittedly, the Amended Purchase Agreement also specifies that the term 'provision of material supply services' shall mean to include provision of the loan to the Petitioner by CFPL. Therefore, the Petitioner's objections regarding Zetwerk's locus for invoking bank guarantees for amounts owed to CFPL are incorrect.

25. The Writ Petition is liable to be dismissed at the threshold stage since at the directions of the Petitioner, the Respondent No. 1 bank had undertaken that on demand from Zetwerk, the guaranteed amount shall be paid to Zetwerk without any demur, reservation, recourse, contest or protest and without any reference to any third party. Therefore, if Zetwerk chooses to WP_24169_2023 SN,J invoke the bank guarantee, the banks are obliged to honour the same.

26. It is settled law that in case of an unconditional and irrevocable bank guarantee, the nature of obligation of the bank is absolute and is not dependent upon any dispute or proceeding between the party at whose instance the bank guarantee is given and the beneficiary. The terms of the bank guarantee are therefore extremely material, as both the parties would be bound by the terms thereof. Therefore, if and when Zetwerk chooses to invoke the bank guarantee, the banks are obliged to honour the same."

c) Para 45 and Para 46 of the rejoinder filed by the Petitioner read as follows :

"45. That the contents of Para 26 are admitted to the extent that terms of the Bank Guarantee are extremely material and both parties are bound by it. In the present case, the Respondent No. 2 has further failed to supply material in terms of the Bank Guarantees and in terms of the Agreement, which forms the very basis of the Bank Guarantees. At the cost of repetition, it is stated that the encashment can be done only within the terms of the Bank Guarantees itself. The contents of the writ petition as well as the preliminary objections and submissions may be read as part and parcel of the present para and are not repeated herein for the sake of brevity.

WP_24169_2023 SN,J

46. That the contents of Para 27 are admitted to the extent that the Bank Guarantees are an independent and distinct contract. However, Respondent No.1 is bound by the terms of the Bank Guarantee itself which does not permit encashment except for the reasons and grounds stated therein. Since Respondent No.2 has hopelessly failed to establish supply of material either by itself or through its network vendor, the Bank Guarantees cannot be encashed. The contents of the writ petition as well as the preliminary objections and submissions may be read as part and parcel of the present para and are not repeated herein for the sake of brevity.

4. The case of the Petitioner in brief as per the averments made in the affidavit filed by the Petitioner in support of the present writ petition is as under :

a) The Petitioner is a company carrying out business of supply, erection, testing, and commissioning of electrical overhead lines and railway overhead electrical (OHE) works.

The 2nd respondent had approached the Petitioner in February 2021 with a proposal to handle complete supply chain of raw materials and / or manufacturing material required by the Petitioner

for its various projects and further proposed to WP_24169_2023 SN,J create a robust system for the Petitioner by supplying good quality construction material in a timely manner and at a competitive price as compared to the other vendors in the market.

b) Therefore, the Petitioner agreed to enter a contractual relationship with the 2nd Respondent and executed a Purchase Agreement dated 18.02.2021 was signed between the Petitioner and the Respondent No.2 ("Purchase Agreement - I"). Thereafter, the 2nd Respondent demanded bank guarantees to be issued by the Petitioner and as such, 3 Bank Guarantees bearing number BG No.02687IG210000013, BGN0.02687IG210000014, BG No.02687IG210000015 for Rs.50 lakh each were issued on behalf of the Petitioner by the 1st Respondent bank in favour of 2nd Respondent and the expiry of the said bank guarantees was 17.09.2021. However, the same were extended until 17.11.2023.

c) Subsequently, the Petitioner was required to issue further Bank Guarantees and the same were issued from time to time. Resultantly, BG No. 026871G210000018, BG No.026871G210000019 were issued on 06.03.2021 for an WP_24169_2023 SN,J amount of Rs. 1,00,00,000 each, whereas the expiry of claims was 05.06.2024. Similarly, BG No. 026871G210000021, BG No.026871G210000022, BGN0. 026871210000023, BG No. 026871G210000024 and BG No.026871G210000025 were caused to be issued by the Petitioner through the 1st respondent in favour of the 2nd Respondent on 03.04.2021 for an amount of Rs. 1,00,00,000, whereas the expiry of the claims was 02.04.2024.

d) The Petitioner had reached out to 2nd Respondent from time to time and apprised the 2nd Respondent of its requirements at their project sites, however, since the execution of the Purchase Agreement - I, the 2nd Respondent could not fulfill the demands and failed to introduce even a single supplier that could meet the requirements of the Petitioner. Thus, the Petitioner continued to purchase material from its usual suppliers. The 2nd Respondent never provided any services and thus raised no invoices upon the Petitioner and no amount became due, let alone defaulted.

e) Thereafter, the Petitioner was introduced to a Non- Banking Financial Company, namely, Capsave Finance Private WP_24169_2023 SN,J Limited ("Capsave") by the representatives of the 2nd respondent and insisted that the Petitioner will meet their working capital requirements by obtaining a facility from Capsave. Thus, based on the representations and insistence of the 2nd respondent, the Petitioner and Capsave entered into a working capital loan agreement, which was understood to be utilized by the Petitioner for all its working capital requirements including for the payment to be made to the 2nd respondent which was to be made as and when the 2nd Respondent was able to facilitate supply of goods to the Petitioner.

f) Then upon the 2nd respondent's insistence, Purchase Agreement dated 14.11.2021 ("Purchase Agreement - II") was signed between the 2nd respondent and the petitioner and even at the time of executing of Purchase Agreement- II, the 2nd Respondent again represented that the documents being signed are standard documents containing standardized boilerplate clause and copies would be provided later. However, till date copy of the said agreement has not been provided to the Petitioner.

WP_24169_2023 SN,J

g) Furthermore, the 2nd respondent insisted upon issuance of further bank guarantees purportedly for securing payment under the Purchase Agreement - II. Thus, the Petitioner caused for issuance of further bank guarantees on 15.11.2021 bearing no. BG No. 026871G210000069, 026871210000070, 026871G210000071 and 026871G210000072 from the 1st respondent in favour of the 2nd Respondent for an amount of Rs.50,00,000/- each.

h) Subsequently, after the execution of the Purchase Agreement- II, the 2nd respondent failed to provide any reliable vendors / suppliers to the Petitioner. The failure of the 2nd Respondent is evident from Petitioner's email dated 24.11.2022 whereby the Petitioner sent a request for financial quote to the 2nd respondent for certain materials. However, no response was received from the 2nd respondent thereafter. Therefore, the Petitioner utilized the credit line extended by Capsave to meet its other working capital requirements including payment to its own suppliers and consolidation of other working capital loans.

WP_24169_2023 SN,J

i) Thereafter, the 2nd respondent in order to lure the Petitioner into executing further agreements, also represented that they would facilitate the entire process of renewal and enhancement of working capital limit with Capsave and in order to assist the Petitioner in obtaining enhanced limit, it would also give a corporate guarantee an based on the representations of the 2nd Respondent, the parties executed two 'First Amendment to the Purchase Agreement' in relation to Purchase Agreement- I and II on 28.03.2023 ('First Amendment Agreements'). Notably, Capsave was also added as a party to these First Amendment Agreements. Despite entering into such extensive agreements with a new understanding, the 2nd respondent has failed to honour its obligations under the said First Amendment Agreements dated 28.03.2023 and could not connect the Petitioner with any reliable vendor. Alongside, all the bank guarantees issued in favour of the 2nd respondent are all valid till date.

j) Subsequently, Capsave has revealed itself to be unreliable and unethical as a consequence of which, various disputes have arisen between Capsave and the Petitioner.

WP_24169_2023 SN,J Further, as informed by the 2nd respondent, Capsave has also raise huge claims against the Petitioner but the details of the same have not been provided to the Petitioner. Thereafter, the 2nd respondent has unlawfully claimed that it is being pressurized by Capsave for on account of alleged dues of Capsave for which it is liable under the corporate guarantee and the 2nd Respondent has openly threatened the Petitioner with invocation of the bank guarantees issued by the 1st respondent towards the said alleged liability.

k) Furthermore, the 2nd respondent has not parted from a single rupee on account of any transaction with the Petitioner and it is unlawfully seeking to encash the bank guarantee and the 2nd Respondent has issued a letter of invocation dated 28.08.2023, seeking to invoke the entire Bank Guarantees amounting to Rs. 10 crores. The said letter of invocation is grossly and patently

fraudulent and unlawful. Since the Petitioner has never received any supply of material from the 2nd respondent or any of its vendors and no amount is due and payable to the 2nd respondent, the same is not entitled to encash the Bank Guarantees. Hence, this Writ Petition.

WP_24169_2023 SN,J

5. The learned senior counsel Sri S.Ravi mainly puts-forth the following submissions :

"A) Because the Bank has agreed to honor an illegal invocation letter dated 28.08.2023 and encash valuable bank guarantees amounting to Rs. 10.5 crores for an entirely alien purpose/contract which was not contemplated in the Bank Guarantees, and when admittedly not a single rupee is owed to the purported beneficiary and issuer of the invocation, Respondent No.

2.

B. Because the Respondent No. 1 has abandoned all banking norms and it is acting in an entirely arbitrary manner by agreeing to encash fraudulent invocation by the Respondent No. 1 towards liabilities that arise under the corporate guarantee to which the bank guarantee does not apply and neither Petitioner nor Respondent No. 1 are parties, for reasons best known to themselves.

C. Because it is an established principle in law that a Bank Guarantee is a separate and independent document, and it has to be interpreted and invoked in its own terms. The Respondent No. 2 in the present case has tried to invoke the current Bank Guarantee de hors the terms of the Bank Guarantee.

D. Because the First Amendment to the Purchase Agreement is a complete rewrite of the terms and WP_24169_2023 SN,J contractual relationship of the parties as under the Purchase Agreement -I & II. Further, the First Amendment to the Purchase Agreement, being a tri- partite agreement, novates the Purchase Agreement I & II, thereby making it a new agreement as opposed to an "amendment".

E. Because as per the terms of the Bank Guarantee, the Respondent No.2 has the right to invoke the Bank Guarantee in case of breach of the Petitioner in terms of the Purchase Agreement 1 & 2 and their amendments. The First amendment to the Purchase Agreement being a completely new and tri- partite agreement is not covered within the terms of the Bank Guarantee. F. Because even in terms of the First Amendment to the Purchase Agreement, there has been no supply of construction material from the Respondent No.2 or any of its suppliers/vendors to the Petitioner. Consequently, no invoice has been raised by the Respondent No.2 on the Petitioner. Hence, no amount remains due and payable to the Respondent No.2 or Capsave in terms of the Purchase Agreement - I & II and the First Amendment to the Purchase Agreement. G. Because in terms of the First Amendment to the Purchase Agreement, Capsave has the sole right to invoke the Bank Guarantee and benefit under the same. Thus, under no circumstances does the Respondent WP_24169_2023 SN,J No.2 has the right to invoke and encash the Bank Guarantee.

H. Because the Respondent No. 2 has invoked the Bank Guarantee with the fraudulent intent to extort money from the Petitioner herein. Since there has been no supply made by the Respondent No.2 or any of its vendors and no invoice has been raised by the Respondent No. 2 on the Petitioner herein, no sum remains due and payable. Thus, such unjust enrichment is neither permitted under the law or in terms of the Purchase Agreement - 1 & II and the First Amendment to the Purchase Agreement.

I. Because in any event, de hors the terms of the Agreement between the parties and the fraud perpetrated by the Respondent No.2, it is submitted that in the present case even the first tenet of meeting the terms of the Bank Guarantee for invocation of bank guarantee has also not been met. The Respondent No.1 Bank cannot encash the guarantee contrary to its own terms, irrespective of any disputes between the Petitioner and Respondent No.2 J. Because the Respondent No.2 has categorically stated in their email dated 23.08.2023, that there is an extreme pressure from Capsave due to which Respondent No.2 shall be invoking the Bank Guarantees. Thus, it is evident that Respondent No.2 has solely invoked the Bank Guarantee to hedge their WP_24169_2023 SN,J liability, not arising from the Purchase Agreement I & II or the First Amendment to the Purchase Agreement. K. Because any amount due against Capsave is solely arising out of disbursement against invoices raised by the supplier network of the Petitioner herein. Suffice it is to say that since no working capital loan was disbursed against the invoices raised by the Respondent No. 2, neither the Respondent No.1 has the authority to encash the Bank Guarantees, nor the Respondent No. 2 has any locus to invoke the Bank Guarantees." The learned senior counsel basing on the aforesaid submissions contends that the writ petition should be allowed as prayed for.

DISCUSSION AND CONCLUSION :

6. It is the specific case of the Petitioner that the 1st Respondent Bank has agreed to honour an illegal invocation letter dt. 28.08.2023 and encash valuable bank guarantees amounting to Rs.10.5 crores for an entirely alien purpose/ contract which was not contemplated in the Bank Guarantees and when admittedly according to the Petitioner not a single rupee is owed to the purported beneficiary and issuer WP_24169_2023 SN,J of the invocation i.e., the Respondent No.2. It is further the specific case of the Petitioner that the Respondent No.2 in the present case tried to invoke the current Bank Guarantee de hors the terms of the Bank Guarantee and that the 2nd Respondent had invoked the Bank Guarantee with a fraudulent intent to extort money from the Petitioner herein since there had been no supply made by Respondent No.2 or any of its vendors and no invoice has been raised by the Respondent No.2 on the Petitioner herein and no sum remains due and payable and further that the 2nd Respondent perpetrated the fraud de hors the terms of the Agreement between the parties. It is further contended by the Petitioner that the present writ petition falls within the territorial jurisdiction of High Court at Hyderabad as the concerned branch of Respondent No.1 is situated within its jurisdiction.

7. A bare perusal of the record indicates that the bank guarantee dated 18.02.2021 in respect of B.G. No.026871G210000013 for an amount of Rs.50 lakhs in WP_24169_2023 SN,J particular the first paragraph and the last paragraph of the said bank guarantee is extracted hereunder:

"We, the Bank hereby irrevocably agree and undertake to immediately, on the Beneficiary's first demand credit the full amount(s) demanded from us (the "Demand Amount") to your account no. 409001026292 with RBL Bank Ltd, Prestige Towers, Bangalore, IFSC:RATN0000156 ("Account") (or any other account as specified in your demand]. Such payment will be made by us to the Account, irrevocably and unconditionally, without any contestation, protest or delay on our part and without any demur, set off, counter-claims, deductions or withholding charges or taxes of any kind now or hereafter imposed, levied, collected, withheld or addressed by any governmental and or any other authority whatsoever, and irrespective of any dispute, litigation or any other analogues proceeding between the Customer and the Beneficiary The demand can be made for any amount, including any partial claims.

This Guarantee shall be governed by the laws of India. The courts of Bangalore shall have exclusive jurisdiction to settle any dispute and/or claim arising out of or in connection with this Bank Guarantee (including a dispute regarding the existence, validity or expiry of this Bank Guarantee) (a "Dispute").

WP_24169_2023 SN,J We agree that the courts of Bangalore are the most appropriate and convenient courts to settle the Disputes and accordingly we agree to unconditionally submit ourselves to the jurisdiction of such courts and shall not argue to the contrary. This paragraph on jurisdiction is for your benefit only and as a result, you shall not be prevented from taking proceedings relating to a Dispute in any other courts with jurisdiction. To the extent allowed by law, you may initiate concurrent proceedings in any number of jurisdictions. You may further initiate proceedings to enforce any judgment obtained by you, before any jurisdiction as decided by you.

Notwithstanding anything contained hereinabove:

1. Our liabilities under this Bank Guarantee is Rs 50,00,000/- (Rupee Fifty lakhs Only)
2. This Bank Guarantee shall be valid up to 17.08.2021
3. We are liable to pay under this Bank Guarantee or any part thereof under this Bank Guarantee only and if we receive (if you serve upon us) a written claim on or before, 17.08.2021 thereafter we shall be discharged from all liabilities under this Bank Guarantee irrespective of whether the original Bank guarantee is returned to us or not.

WP_24169_2023 SN,J

8. The Commercial Courts Act, 2015, Act No.4 of 2016 dated 31.12.2015, Section 2(c)(i) defines Commercial Dispute which reads as under :

"2. Definitions.--(1) In this Act, unless the context otherwise requires,--

2(c) "commercial dispute" means a dispute arising out of--

2(c)(i) ordinary transactions of merchants, bankers, financiers and traders such as those relating to mercantile documents, including enforcement and interpretation of such documents;

9. On perusal of the record it is evident that it is the specific case of the Petitioner that the Respondent No.1 being a Public Sector Bank flouted all applicable banking norms by agreeing to encash a fraudulently invoked bank guarantee in favour of a party to whom no dues are owed, eroding the legal and fundamental rights of the Petitioner. Clause 'C' of the first amendment to the purchase agreement dated 18.02.2021 is made and entered at Delhi on 28.03.2023 between the Petitioner/Borrower and the Respondent No.2 herein and two others i.e., (1) Zetwerk Manufacturing Businesses a Private Limited Company WP_24169_2023 SN,J incorporated under Companies Act, 2013 having its registered office at Bangalore i.e., Supplier/Corporate Guarantor and (2) Capsave Finance Private Limited a Private Limited Company incorporated under Companies Act, 2013 having its registered office at Mumbai i.e., the Lender/CFPL and Clause (c) of the first amendment to the Purchase Agreement dt. 18.02.2021 is extracted hereunder :

"To secure the requirement for inter alia, purchase of goods, services and facilitation and/or provision of credit, the Borrower has procured/provided for the benefit of the Corporate Guarantor and its successors, administrators, attorneys and assigns an unconditional and irrevocable has provided a bank guarantee issued by the Indian Bank having Registered Office at Hanamkonda, 100 ft Road Branch, 35-6-823 (Now) TV Tower Colony, Beside SPR School, Hanamkonda District, Telangana having its registered/Head Office at 254-260, Avvalshanmugam Salal, Royapettah, Channai - 600014. (hereinafter referred to as the 'Bank') having bank guarantee number 02687IG210000013, 02687IG210000014, 02687IG210000015 issued on 18.02.2021 for Rs.50,00,000/- each and 02687IG210000018, WP_24169_2023 SN,J 02687IG210000019 issued on 06.03.2021 for Rs.1,00,00,000/- each and 02687IG210000021, 02687IG210000022, 02687IG210000023, 02687IG210000024 issued on 03.04.2018 1,00,00,000/- each respectively for a total BG amount of INR 7,50,00,000/- (Indian Rupees Seven Crore Fifty Lakh only) ("Bank Guarantee", which shall mean to include any Bank Guarantees by way of extensions, additions and amendments and/or modifications or replacements, as acceptable to CFPL, at all times).

10. A bare perusal of the bank guarantee dated 18.02.2021 (referred to and extracted above) for an amount of Rs.50 lakhs issued by the Petitioner in favour of the 2nd Respondent herein, clearly stipulates that the Courts in Bangalore shall have exclusive jurisdiction to settle any disputes or claims arising out of or in connection with the Bank Guarantee.

11. A bare perusal of the bank guarantee number 02687IG210000013 and other bank guarantees pertaining to the subject issue indicate that the bank guarantees in question are unconditional bank guarantees and not conditional bank guarantees, but it WP_24169_2023 SN,J is the specific plea of the Petitioner that they are conditional bank guarantees and that the Respondent No.2 failed to supply material in terms of the Bank Guarantees and in terms of the Agreement which forms the very basis of the Bank Guarantees.

12. The specific averments made by the Petitioner at Paras 13, 19, 44 and 45 are extracted hereunder :

"13. That thereafter the Petitioner had reached out to Respondent No.2 from time to time and apprised the Respondent No.2 of its requirements at their project sites, however, since the execution of the Purchase Agreement-1 the Respondent No.2 could not fulfil the demands and failed to introduce even a single supplier that could meet the requirements of the Petitioner. Thus, the Petitioner continued to purchase material from its usual suppliers. The Respondent No. 2 never provided any services and thus raised no invoices upon the Petitioner and no amount became due, let alone defaulted.

19. That even after the execution of Purchase Agreement - II, the Respondent No.2 miserably failed to provide any reliable vendors / suppliers to the Petitioner. The failure of the Respondent No.2 is evident from Petitioner's email dated 24.11.2022 whereby the Petitioner sent a request for financial quote to the WP_24169_2023 SN,J Respondent No.2 for certain materials. At first, the Respondent No.2 assured the Petitioner that they would revert at the earliest, however, no response was received from the Respondent No.2 thereafter. In the meantime, the Petitioner utilized the credit line extended by Capsave to meet its other working capital requirements including payment to its own suppliers and consolidation of other working capital loans. For each of those payments, the Petitioner sent a request to Capsave, who then released the payment in favour of the third parties. Copy of email dated 24.11.2022 is annexed herewith and marked as Annexure P5.

44. Further, without prejudice to any of the above, the purpose of the Bank Guarantees is to secure the payment of Respondent No.2 pursuant to material supplied by them through their vendors. Even if it is assumed that the Respondent No.2 has the right to encash the Bank Guarantees, in no case can the purpose of such encashment be the pre-payment of their liability to Capsave under the Corporate Guarantee issued by Respondent No.2.

45. That in terms of the established principles of contract law, Bank Guarantees ought to be used only as per its terms and only for the purposes mentioned therein. Since the Bank Guarantees could only be enforced in terms of the Purchase Agreements and amendments thereto, the Respondent No.2 is WP_24169_2023 SN,J rendered with no right for encashment of Bank Guarantees as no invoices have been raised by the Respondent No.2 or any of its network vendors on the Petitioner. However, the Respondent No.1 is ignoring all applicable banking norms and has openly indicated that it will honor invocation by the Respondent No.2 despite being aware of the facts.

13. A bare perusal of the specific averments made by the Petitioner at paras 13, 19, 44 and 45 (referred to and extracted above) and the other averments made by the petitioner in the affidavit filed by the petitioner in support of the present writ petition clearly indicate that all these issues have to be adjudicated before a competent civil court since admittedly the same involve disputed questions of fact, since it is specifically pleaded and contended by the 1st Respondent at Para 9 of the counter affidavit that the Petitioner and Respondent No.2 have suppressed the material fact of the transactions in between them and also M/s. Capsave Finance Private Limited and execution of the Corporate Guarantee by the Respondent No.2 and secured the bank guarantees from the 1st Respondent and further that the subject matter requires a detailed WP_24169_2023 SN,J enquiry to find out whether the material supplied had been supplied by Respondent No.2 and to conduct enquiry and find out whether the bank guarantees are invoked in respect of the liability that has arisen out of the material supplied by the Respondent No.2 to the Petitioner.

14. The Apex Court in the judgement dated 28.09.2016 reported in (2016) 10 SCC 46 in Gujarat Maritime Board Vs. Larsen and Toubro Infrastructure Development Projects Ltd., & Another at paras, 1, 3, 9, 12, 13 and 69.1 to 70.3 observed as under :

"Leave Granted: Whether the High Court is justified in exercising its discretionary jurisdiction under Article 226 of the Constitution of India for restraining the appellant from invoking an unconditional bank guarantee executed by the first respondent, is the main issue arising for consideration in this case.

3. On 07.05.2010, the first respondent requested for change of location from Sutrapada to Kachchigarh and the bank guarantee was extended. At the instance of the first respondent, the Yes Bank Limited furnished a bank guarantee to the appellant on 26.11.2011 for an amount of Rs.5 crores. The relevant conditions read as follows:

WP_24169_2023 SN,J "(a) We, YES BANK Ltd. Do hereby guarantee and undertake to pay to GMB an amount not exceeding Rs 5,00,00,000/- (Rupees Five Crores only) as against breach by the Lead Promoter for the development of Kachchigarh Port. The decision of GMB as to any breach having been committed and loss/damages caused or suffered shall be absolute and binding on us.

(b) We, YES BANK Ltd, do hereby undertake to without any reference to the Lead Promoter or any other person and irrespective of the fact whether any dispute is pending between GMB and the Lead Promoter or any court of Tribunal or arbitrator relating thereto, pay the amount due and payable under this guarantee without any demur, merely on demand from GMB stating that the said Lead Promoter's failure to perform the covenants of the same. Any such written demand made by GMB on the Bank shall be conclusive, absolute and unequivocal as regards the amount due and payable by the Bank under this guarantee. However, Bank's liability under this guarantee shall be restricted to an amount not exceeding Rs 5,00,00,000/- (Rupees Five Crores only)."

9. Unfortunately, the High Court went wrong both in its analysis of facts and approach on law. A cursory reading of LoI would clearly show that it is not a case of forfeiture of security deposit "... if the contract had frustrated on account of impossibility..." but invocation of the performance bank guarantee. On law, the High Court ought to have noticed that the bank guarantee is an independent contract between the guarantor-bank and the guarantee-appellant. The guarantee is unconditional. No doubt, the performance guarantee is against the breach by the lead promoter, viz., the first respondent. But between the bank and the appellant, the specific condition incorporated in the bank guarantee is that the decision of the appellant as to the breach is binding on the bank. The justifiability of the decision is a different matter between the WP_24169_2023 SN,J appellant and the first respondent and it is not for the High Court in a proceeding under Article 226 of the Constitution of India to go into that question since several disputed questions of fact are involved.

10.....

69.1. The Court may not examine the issue unless the action has some public law character attached to it. 69.2. Whenever a particular mode of settlement of dispute is provided in the contract, the High Court would refuse to exercise its discretion under Article 226 of the Constitution and relegate the party to the said mode of settlement, particularly when settlement of disputes is to be resorted to through the means of arbitration.

69.3. If there are very serious disputed questions of fact which are of complex nature and require oral evidence for their determination. 69.4. Money claims per se particularly arising out of contractual obligations are normally not to be entertained except in exceptional circumstances.

70. Further, the legal position which emerges from various judgments of this Court dealing with different situations/aspects relating to contracts entered into by the State/public authority with private parties, can be summarised as under:

70.1. At the stage of entering into a contract, the State acts purely in its executive capacity and is bound by the obligations of fairness.

70.2. State in its executive capacity, even in the contractual field, is under obligation to act fairly and cannot practise some discrimination.

70.3. Even in cases where question is of choice or consideration of competing claims before entering into the field of contract, facts have to be investigated and found before the question of a violation of Article 14 of the Constitution could arise. If those facts are WP_24169_2023 SN,J disputed and require assessment of evidence the correctness of which can only be tested satisfactorily by taking detailed evidence, involving examination and cross- examination of witnesses, the case could not be conveniently or satisfactorily decided in proceedings under Article 226 of the Constitution. In such cases the Court can direct the aggrieved party to resort to alternate remedy of civil suit, etc.

12. An injunction against the invocation of an absolute and an unconditional bank guarantee cannot be granted except in situations of egregious fraud or irretrievable injury to one of the parties concerned. This position also is no more res integra.

The Apex Court in the Judgment reported in 2007(8) SCC 110 in Himadri Chemicals Industries Limited v. Coal Tar Refining Company[2], at paragraph -14, observed as under:

"14. From the discussions made hereinabove relating to the principles for grant or refusal to grant of injunction to restrain enforcement of a bank guarantee or a letter of credit, we find that the following principles should be noted in the matter of injunction to restrain the encashment of a bank guarantee or a letter of credit:

(i) While dealing with an application for injunction in the course of commercial dealings, and when an unconditional bank guarantee or letter of credit is given or accepted, the beneficiary is entitled to realise such a bank guarantee or a letter of credit in terms thereof irrespective of any pending disputes relating to the terms of the contract.

(ii) The bank giving such guarantee is bound to honour it as per its terms irrespective of any dispute raised by its customer.

WP_24169_2023 SN,J

(iii) The courts should be slow in granting an order of injunction to restrain the realisation of a bank guarantee or a letter of credit.

(iv) Since a bank guarantee or a letter of credit is an independent and a separate contract and is absolute in nature, the existence of any dispute between the parties to the contract is not a ground for issuing an order of injunction to restrain enforcement of bank guarantees or letters of credit.

(v) Fraud of an egregious nature which would vitiate the very foundation of such a bank guarantee or letter of credit and the beneficiary seeks to take advantage of the situation.

(vi) Allowing encashment of an unconditional bank guarantee or a letter of credit would result in irretrievable harm or injustice to one of the parties concerned."

13. The guarantee given by the bank to the appellant contains only the condition that in case of breach by the lead promoter, viz., the first respondent of the conditions of LoI, the appellant is free to invoke the bank guarantee and the bank should honour it ...

"without any demur, merely on a demand from GMB (appellant) stating that the said lead promoter failed to perform the covenants...". It has also been undertaken by the bank that such written demand from the appellant on the bank shall be ...
"conclusive, absolute and unequivocal as regards the amount due and payable by the

bank under this guarantee". Between the appellant and the first respondent, in the event of failure to perform the obligations under the LoI dated 06.02.2008, the appellant was entitled to cancel the LoI and invoke the bank guarantee. On being satisfied that the first respondent has failed to perform its obligations as covenanted, the appellant cancelled the LoI and resultantly invoked the bank guarantee. Whether the cancellation is legal and proper, and whether on such cancellation, the bank guarantee could have been invoked on the extreme situation of the first respondent justifying its inability to perform its obligations under the LoI, etc., are not within the WP_24169_2023 SN,J purview of an inquiry under Article 226 of the Constitution of India. Between the bank and the appellant, the moment there is a written demand for invoking the bank guarantee pursuant to breach of the covenants between the appellant and the first respondent, as satisfied by the appellant, the bank is bound to honour the payment under the guarantee.

15. The Apex Court in the judgment dated 07.08.200 reported in (2007) 8 SCC 110 in Himadri Chemicals Industries Ltd., Vs. Coal Tar Refining Company at para

14 observed as under :

"14. From the discussions made hereinabove relating to the principles for grant or refusal to grant of injunction to restrain enforcement of a Bank Guarantee or a Letter of Credit, we find that the following principles should be noted in the matter of injunction to restrain the encashment of a Bank Guarantee or a Letter of Credit :-

(i) While dealing with an application for injunction in the course of commercial dealings, and when an unconditional Bank Guarantee or Letter of Credit is given or accepted, the Beneficiary is entitled to realize such a Bank Guarantee or a Letter of Credit in terms thereof irrespective of any pending disputes relating to the terms of the contract.

(ii) The Bank giving such guarantee is bound to honour it as per its terms irrespective of any dispute raised by its customer.

(iii) The Courts should be slow in granting an order of injunction to restrain the realization of a Bank Guarantee or a Letter of Credit.

(iv) Since a Bank Guarantee or a Letter of Credit is an independent and a separate contract and is absolute in nature, the existence of any dispute between the parties WP_24169_2023 SN,J to the contract is not a ground for issuing an order of injunction to restrain enforcement of Bank Guarantees or Letters of Credit.

(v) Fraud of an egregious nature which would vitiate the very foundation of such a Bank Guarantee or Letter of Credit and the beneficiary seeks to take advantage of the situation.

(vi) Allowing encashment of an unconditional Bank Guarantee or a Letter of Credit would result in irretrievable harm or injustice to one of the parties concerned.

16. The Apex Court in the judgment dated 08.10.1999, reported in (1999) 8 SCC 436 in Hindustan Construction Company Ltd., Vs. State of Bihar & Others at Paras 3, 7 and 9 observed as under :

"3. Both the Bank Guarantees were invoked by the defendants and it was, at this stage, that HCCL filed a suit on 21.10.1992 in the Bombay High Court against State bank of India, State bank of Patiala and Indian Bank (defendants 1 to 3) and the State of Bihar and its officers (defendants 4 to 6) for various reliefs, including principal relief that defendants 1 to 3 may be restrained from making payment of the amount covered by the aforesaid Bank Guarantees to defendants 4 to 6. An interim order was passed by the Single Judge in the suit on 27.10.1992 and under this interim order, the defendants were restrained from invoking the Bank Guarantees and the Banks were restrained from making payment of the amount covered by the Bank Guarantees to the defendants. The interim order was confirmed on 9.2.1996.

7. The defendants have filed a separate appeal against that part of the order by which the injunction order in respect of the "Performance Guarantee" has been upheld by the Division Bench. It is contended on their WP_24169_2023 SN,J behalf that the "Performance Guarantee", which constituted a separate and distinct contract between the defendants and the Bank, was unconditional and unequivocal and since the Bank had undertaken to pay the amount covered by that Guarantee to the defendants on their demand, the injunction order, granted by the High Court, was liable to be set aside.

9. What is important, therefore, is that the Bank Guarantee should be in unequivocal terms, unconditional and recite that the amount would be paid without demur or objection and irrespective of any dispute that might have cropped up or might have been pending between the beneficiary under the Bank Guarantee or the person on whose behalf the Guarantee was furnished. The terms of the Bank Guarantee are, therefore, extremely material. Since the Bank Guarantee represents an independent contract between the Bank and the beneficiary, both the parties would be bound by the terms thereof. The invocation, therefore, will have to be in accordance with the terms of the Bank Guarantee; or else, the invocation itself would be bad."

17. A bare perusal of the terms of the subject Bank Guarantees clearly indicate that the Bank Guarantees had been issued by the Petitioner in favour of the 2nd Respondent in relation to supply of materials and services or from any of its network suppliers referred to as beneficiary which shall mean to include its successors, administrators, attorneys and assignees and further that the Bank Guarantees are for the supply of material by 2nd Respondent herein to the Petitioner WP_24169_2023 SN,J herein and in the event of any breach of Agreement by the Petitioner the beneficiary shall have all the rights to recover the overdue amounts including interest and all other charges if any through the invocation of the guarantee. It is however, Petitioner's plea that since the

Petitioner's contract with Respondent No.2 was for supply of goods and since the Respondent No.2 failed to supply the goods to the Petitioner, there cannot be any invocation of Bank Guarantee.

18. This Court opines that as stated in the Counter Affidavit filed by the 1st Respondent at para 9 the subject issue requires a detailed enquiry to find out whether the material is supplied by the Respondent No.2 and whether the Bank Guarantees are invoked in respect of the liability that has arisen out of the material supplied by the Respondent No.2 to the Petitioner. This Court takes note that the dispute between the Petitioner and the 2nd Respondent is purely commercial in nature and the Agreement between the parties is contractual in nature and the appropriate remedy available to the Petitioner is to WP_24169_2023 SN,J approach the Court of competent jurisdiction for appropriate relief for Breach of Contract as per Sec.2(c)(i) of the Commercial Courts Act, 2015.

19. This Court opines that to restrain invocation of Bank Guarantee the following grounds must be made out :

- a) There should be a serious dispute.
- b) There should be good prima-facie case of fraud.
- c) Special equities in form of preventing irretrievable injustice has to be established.
- d) Fraud should be in connection with such Bank Guarantee.
- e) Irretrievable harm or injustice to one party has to be established.

20. In the present case the Petitioner failed to establish any of the grounds 'a' to 'e' referred to above and hence this Court is of firm opinion that "existence of any dispute between the parties to the contract is not a ground to restrain enforcement of bank guarantee".

WP_24169_2023 SN,J

21. The Apex Court in Rajasthan State Industrial Development & Investment Corporation Vs. Diamond and Gem Development Corporation Ltd., held as follows:

"There can be no dispute to the settled legal proposition that matters/disputes relating to contract cannot be agitated nor terms of the contract can be enforced through writ jurisdiction under Article 226 of the Constitution. Thus, writ court cannot be a forum to seek any relief based on terms and conditions incorporated in the agreement by the parties".

22. The Apex Court in Kerala State Electricity Board Vs. Kurien Ekalathil reported in (2000) 6 SCC 293 laid down the dicta relating to the maintainability of a writ petition which in effect seeks the interpretation of a contract and the Apex Court at para 10 and 11 observed as under :

"10. We find that there is a merit in the first contention of Mr Raval. Learned counsel has rightly questioned the maintainability of the writ petition. The interpretation and implementation of a clause in a contract cannot be the subject-matter of a writ petition. Whether the WP_24169_2023 SN,J contract envisages actual payment or not is a question of construction of contract. If a term of a contract is violated, ordinarily the remedy is not the writ petition under Article 226. We are also unable to agree with the observations statutory. Clearly, the High Court fell into an error in coming to the conclusion that the contract in question was statutory in nature.

11. A statute may expressly or impliedly confer power on a statutory body to enter into contracts in order to enable it to discharge its functions. Dispute arising out of the terms of such contracts or alleged breaches have to be settled by the ordinary principles of law of contract. The fact that one of the parties to the agreement is a statutory or public body will not by itself affect the principles to be applied. The disputes about the meaning of a covenant in a contract or its enforceability have to be determined according to the usual principles of the Contract Act. Every act of a statutory body need not necessarily involve an exercise of statutory power. Statutory bodies, like private parties, have power to contract or deal with property. Such activities may not raise any issue of public law. In the present case, it has not been shown how the contract is statutory. The contract between the parties is in the realm of private law. It is not a statutory contract. The disputes relating to interpretation of the terms and conditions of such a contract could not have been agitated in a petition under Article 226 of the WP_24169_2023 SN,J Constitution of India. That is a matter for adjudication by a civil court or in arbitration if provided for in the contract. Whether any amount is due and if so, how much and refusal of the appellant to pay it is justified or not, are not the matters which could have been agitated and decided in a writ petition. The contractor should have relegated to other remedies."

23. It is borne on record that the present case is not a case of statutory contract and it is purely a private contract. This Court opines that the present petition is in the exclusive domain of the private law since the subject issue involved is purely a private contract.

24. The Apex Court in the judgment reported in (2021) 10 SCC 690 in Union of India Vs. Puna Hinda while accepting the jurisdiction of High Court to be wide, held in paragraph No.24, that in respect of pure contractual matters in the field of private law, where the dispute has no statutory flavour, the issues are better left to be adjudicated outside the scope of Article 226 of the Constitution of India.

25. The Apex Court in the judgment in ABL International Ltd., Vs. Export Credit Guarantee WP_24169_2023 SN,J Corporation of India Ltd., reported in (2004) 3 SCC 553 at para Nos.28 observed as under :

"28. However, while entertaining an objection as to the maintainability of a writ petition under Article 226 of the Constitution of India, the court should bear in mind the fact that the power to issue prerogative writs under Article 226 of the Constitution is plenary in nature and is not limited by any other provisions of the Constitution. The High Court having regard to the facts of the case, has a discretion to entertain or not to entertain a writ petition. The Court has imposed upon itself certain restrictions in the exercise of this power [See: Whirlpool Corporation vs. Registrar of Trade Marks, Mumbai & Ors. [1998 (8) SCC 1]. And this plenary right of the High Court to issue a prerogative writ will not normally be exercised by the Court to the exclusion of other available remedies unless such action of the State or its instrumentality is arbitrary and unreasonable so as to violate the constitutional mandate of Article 14 or for other valid and legitimate reasons, for which the court thinks it necessary to exercise the said jurisdiction.

26. In the State of Bihar Vs. Jain Plastics & Chemicals Ltd., reported in (2002) 1 SCC 216, the Apex Court was to adjudicate upon the issue whether the High Court ought not to have exercised its jurisdiction under Article 226 of the Constitution of India for granting WP_24169_2023 SN,J relief in case of alleged breach of contract. The Apex court held that the writ petition under Article 226 of the Constitution of India is not the proper proceeding for adjudicating such disputes. Under the law, it was open to the Respondent therein, to approach the Court of competent jurisdiction for appropriate relief for breach of contract. It is settled law that when an alternative and equally efficacious remedy is available to a litigant, he should be required to pursue that remedy and not invoke the writ jurisdiction of the High Court. Equally, the existence of an alternative remedy does not effect the jurisdiction of the Court to issue a writ, but ordinarily, that would be a good ground in refusing to exercise the discretion under Article 226 of the Constitution of India.

27. In Joshi Technologies International Inc., Vs. Union of India reported in (2015) 7 SCC 728, para 65 to 69, the Apex Court held that if the entirety of the matter is governed by a contract and falls under Contract Law, the matter cannot be decided by a Writ Court.

WP_24169_2023 SN,J

28. As per the observations of the Apex Court in judgment dated 20.04.2021 reported in (2021) 6 SCC 771 in M/s. Radhakrishnan Industries Vs. State of Himachal Pradesh, which referred to Whirlpool Corporation Vs. Registrar of Trade Marks reported in (1998) 8 SCC 1 and the said view had been reiterated in a recent full bench judgment reported in 2021 SCC Online SC 801 in "Magadh Sugar & Energy Ltd. Vs. State of Bihar and others". The principles governing the exercise of writ jurisdiction by the High Court in the presence of an alternate remedy had been summarized in the said Judgment at para 28 and the same is extracted hereunder:

"28. The principles of law which emerge are that:

(i) The power under Article 226 of the Constitution to issue writs can be exercised not only for the enforcement of fundamental rights, but for any other purpose as well;

(ii) The High Court has the discretion not to entertain a writ petition. One of the restrictions placed on the power of the High Court is where an effective alternate remedy is available to the aggrieved person;

(iii) Exceptions to the rule of alternate remedy arise where (a) the writ petition has been filed for the enforcement of a fundamental right protected by Part III of the Constitution; (b) there has been a violation of the principles of natural justice; (c) WP_24169_2023 SN,J the order or proceedings are wholly without jurisdiction; or (d) the vires of a legislation is challenged;

(iv) An alternate remedy by itself does not divest the High Court of its powers under Article 226 of the Constitution in an appropriate case though ordinarily, a writ petition should not be entertained when an efficacious alternate remedy is provided by law;

(v) When a right is created by a statute, which itself prescribes the remedy or procedure for enforcing the right or liability, resort must be had to that particular statutory remedy before invoking the discretionary remedy under Article 226 of the Constitution. This rule of exhaustion of statutory remedies is a rule of policy, convenience and discretion; and

(vi) In cases where there are disputed questions of fact, the High Court may decide to decline jurisdiction in a writ petition. However, if the High Court is objectively of the view that the nature of the controversy requires the exercise of its writ jurisdiction, such a view would not readily be interfered with."

29. In the present case, this Court opines that the case of the Petitioner falls in Clause (ii), (iv), (v) and

(vi) and does not fit in any of the exceptions to the Doctrine of Alternate Remedy and the purported irretrievable injustice alleged by the Petitioner is not an injustice but a consequence specifically agreed upon by the Petitioner in terms of the Bank Guarantees.

WP_24169_2023 SN,J

30. Taking into consideration:

(a) The aforesaid facts and circumstances of the case

(b) The observations and the view of the Apex Court in the various judgements i.e., (1) (2016) 10 SCC 46 in "Gujarat Maritime Board Vs. Larsen and Toubro Infrastructure Development Projects Ltd., and another, (2) (2007) 8 SCC 110 in Himadri Chemicals Industries Limited v. Coal Tar Refining Company (3) (1999) 8 SC 436 in Hindustan Construction Company Ltd., Vs. State of Bihar & others, (4) (2000)

6 SCC 293 in Kerala State Electricity Board Vs. Kurien Ekalathil, (5) (2021) 10 SCC 690 in Union of India Vs. Puna Hinda, (6) (2004) 3 SCC 553 in ABL International Ltd., Vs. Export Credit Guarantee Corporation of India Ltd., (7) (2002) 1 SCC 216 in State of Bihar Vs. Jain Plastics & Chemicals Ltd., (8) (2015) 7 SCC 728 in Joshi Technologies International Inc., Vs. Union of India, (9) (2021) 6 SCC 771 in M/s. Radhakrishnan Industries Vs. State of Himachal Pradesh, (10) (1998) 8 SCC 1 in Whirlpool Corporation Vs. Registrar of Trade Marks, (11) 2021 SCC Online SC 801 in "Magadh Sugar & Energy Ltd., Vs. WP_24169_2023 SN,J State of Bihar and others, (referred to and extracted above),

(c) Duly taking into consideration the averments made in the counter affidavit filed by 1st and 2nd respondent (referred to and extracted above) This Court opines that the writ petitioner is not entitled for the relief as prayed for in the present writ petition and the interim order dated 30.08.2023 passed in W.P.No.24169 of 2023 stands vacated and the writ petition is dismissed.

31. It is, however, observed that nothing in this judgment shall be construed as having expressed any opinion on the merits of the dispute. The Petitioner is at liberty to take recourse to appropriate remedy, in accordance to law. This Court passed interim orders in favour of the Petitioner on 30.08.2023 directing the Respondent No.1 or their Agents, Assigns, Associates, Authorized Representatives not to encash the Bank Guarantees bearing No.02687IG210000013, 02687IG210000014, 02687IG210000015, 02687IG210000018, 02687IG210000019, WP_24169_2023 SN,J 02687IG210000021, 02687IG210000022, 02687IG210000023, 02687IG210000024, 02687IG210000025, 02687IG210000069, 02687IG210000070, 02687IG210000071, 02687IG210000072 and the said orders are in force till the date of pronouncement of the judgement, but however, considering the peculiar facts and circumstances, let the same order remain in force for a period of four (04) weeks from the date of receipt of the copy of the order to enable the Petitioner to take appropriate remedy, in accordance with the law. However, there shall be no order as to costs.

Miscellaneous petitions, if any, pending in this Writ Petition, shall stand closed.

_____ SUREPALLI NANDA,J Dated: 03.06.2024 Note: L.R. copy to be marked b/o yvkr/ktm WP_24169_2023 SN,J IN THE HIGH COURT OF TELANGANA AT HYDERABAD (L.R.copy to be marked) Date:03.06.2024.

Yvkr/ktm