

Reserved On: 15Th April, 2020 Delivered ... vs Vedanta Limited & Anr on 20 April, 2020

Author: C. Hari Shankar

Bench: C. Hari Shankar

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* IN THE HIGH COURT OF DELHI AT NEW DELHI
+ O.M.P. (I) (COMM) 88/2020 & I.A. 3697/2020

Reserved on: 15th April, 2020

Delivered on: 20th April, 2020

M/s HALLIBURTON OFFSHORE SERVICES INC.

..... Petitioner

Through: Mr. Sandeep Sethi, Sr. Adv.
With Mr. Piyush Sharma and
Mr. Dhritiman Bhattacharyya,
Advs.

versus

VEDANTA LIMITED & ANR

..... Respondent

Through: Dr. Abhishek Manu Singhvi,
Sr. Adv. with Ms. Anuradha
Dutt, Mr. Anish Kapur and Mr.
Kunal Dutt, Advs.

CORAM:
HON'BLE MR. JUSTICE C. HARI SHANKAR

ORDER

% 20.04.2020

1. Consequent to hearing thereof having been allowed by the Registrar of this Court, detailed arguments were heard, in this matter, by video conferencing, on 15th April, 2020. However, owing to paucity of time, the order could not be dictated, and is, accordingly, being delivered today.

2. This petition, preferred under Section 9 of the Arbitration and Conciliation Act, 1996 (hereinafter referred to as "the 1996 Act"), seeks interim protection, by way of a restraint, against Respondent No. 1, injuncting the said respondent from invoking or encashing eight bank guarantees, five of which are due to expire on 30th June, 2020, and the remaining three on 24th November, 2020, issued by the ICICI Bank (Respondent No 2 herein), in favour of Respondent No. 1, under instructions of the petitioner.

3. The facts, in brief.

4. Consequent to the floating, by Respondent No. 1, of an international tender, for development of three blocks (Mangala, Bhagyam and Aishwarya, together denoted by the acronym "MBA"), and the acceptance of the offer of the petitioner, submitted by way of response thereto, a contract, dated 25th April, 2018, was executed, between the petitioner and Respondent No. 1 for integrated development of the aforesaid three fields. In terms of the said contract, various Performance, Liquidated Damages and Advance bank guarantees were furnished by the petitioner, of which, as already referred to hereinabove, the present petition concerns eight bank guarantees.

5. There are allegations, and counter-allegations, made by the petitioner, and the respondent, against each other, which are, prima facie, arbitrable in accordance with the provision for arbitration, contained in the aforesaid contract, dated 25th April, 2018. Asserting that it intends to invoke the remedy of arbitration, so available to it, the petitioner has moved the present application, before this Court, in terms of Section 9 of the 1996 Act, voicing an apprehension that the contract is likely to be terminated by Respondent No. 1, which would, consequent thereupon, also proceed to invoke and encash the bank guarantees provided by the petitioner, resulting in irreparable prejudice to it.

6. Mr. Sandeep Sethi, learned Senior Counsel appearing for the petitioner has, in this context, drawn my attention to a communication, dated 31st March, 2020, addressed by Respondent No. 1 to the petitioner which, in the submission of Mr. Sethi, indicates that extension of time, to complete the project, had been granted, to the petitioner, till 31st March, 2020. Though a substantial part of the project was completed prior to the said date, Mr. Sethi submits that, owing to a complete lockdown, on industrial activities as well as on movement of persons in the country, including, specifically, the state of Rajasthan - consequent to the n-COVID-2019 pandemic, which continues to affect the country till date - the petitioner was unavoidably handicapped in performing the contract. It is emphasised, in the petition, that performance of the contract required travel of persons from overseas, as well as workmen from various parts of the country. In this scenario, Mr. Sethi points out that his client had addressed communications, dated 18th March, 2020 and 25th March, 2020, to Respondent No. 1, invoking the force majeure clause in the contract dated 25th April, 2018 and seeking the benefit thereof. Mr. Sethi points out that, despite the said situation having been brought to the notice of Respondent No. 1, the said respondent refused to accommodate the petitioner, vide communication dated 31st March, 2020, had reserved its right to take appropriate recourse under the contract, "including, but not limited to termination of subject contract and getting the balance activities completed through alternative resources at the risk and cost of" the petitioner. Though the petitioner responded, to the said communication, the response dated 1st April, 2020, the present application/petition has been moved, invoking Section 9 of the 1996 Act, seeking a restraint, on Respondent No. 1, from invoking, or encashing, the aforesaid eight bank guarantees submitted by the petitioner.

7. Vehemently opposing the prayer of Mr. Sethi, Dr. Abhishek Manu Singhvi, learned Senior Counsel appearing on behalf of Respondent No. 1, submits that, in law, the only ground on which invocation of a bank guarantee can be stayed, is the existence of egregious fraud, for which purpose

Dr. Singhvi relies on *U. P. Cooperative Federation Ltd v. Singh Consultants and Engineers (P) Ltd*¹ and *Svenska Handelsbanken v. Indian Charge Chrome*². Dr. Singhvi submits that the petitioner has levelled a bald and baseless allegation of fraud, against Respondent No. 1, which is entirely insufficient to justify the prayer for restraining the invocation of the bank guarantees in question. Dr. Singhvi has also placed reliance on the decision in *Itek Corporation v. First National Bank of Boston*³, (1988) 1 SCC 174 (1994) 1 SCC 502 566 Fed Supp 1210 which has been approved by the Supreme Court in a number of decisions.

8. Dr. Singhvi further emphasised the fact that the contract envisaged work, to be carried out, by the petitioner, in three wells, to be completed on the 16th January, 2019, 16th March, 2019 and 16th June, 2019 respectively. The delay, thereafter, he submits, has been unconscionable, and has never been condoned by his client, either expressly or impliedly. Dr. Singhvi disputes the submission, of Mr. Sethi, that the communication, dated 31st March, 2020, from his client to the petitioner, could be treated as extending the time, available with the petitioner, for completing the contract, till 31 st March, 2020 and submits that, rather, the said communication merely recorded this submission, as put forth by the petitioner, without accepting the same. Dr. Singhvi submits that his client had written, to the petitioner, on 17th January, 2019, 27th March, 2019, 6th June, 2019 and 5th July, 2019, to complete the work assigned to it, and faults the petitioner for having suppressed all these communications. He further pointed out that it was the petitioner who had initially stated, vide its communication dated 5th December, 2019, that it would complete the work by 31st January, 2020, which date was extended, by the petitioner, on its own account, first till 29th February, 2020 and, thereafter, to 31st March, 2020. Dr. Singhvi submits that his client had never accepted, or agreed, to the said extensions, and had, rather, rejected the said requests, vide its communications dated 9 th December, 2019 and 16th January, 2020, which, too, the petitioner has suppressed. Dr. Singhvi further pointed out, emphatically, that the petitioner had raised the issue of force majeure, for the first time, in its communication dated 25th March, 2020. Dr. Singhvi submits that the petitioner was, therefore, merely seeking to piggyback on the n- COVID-2019 crisis that had befallen the country, and to reap benefits therefrom. The plea of force majeure, therefore, Dr. Singhvi submits, is clearly an afterthought, and cannot constitute a justifiable basis to grant an injunction, as sought by the petitioner. In fact, submits Dr. Singhvi, the project, which had been assigned to the petitioner, stood specifically excepted from the lockdown, as imposed by the Government, vide Circular dated 26th March, 2020, of the Government of India which, too, the submits, the petitioner has concealed. In these circumstances, submits Dr. Singhvi, no case, for grant of any relief to the petitioner, can be said to have been made out.

9. Advancing submissions by way of rejoinder, Mr. Sethi disputes the contention, of Dr. Singhvi, that egregious fraud is the sole ground on which the invocation of a bank guarantee can be stayed. Rather, submits Mr. Sethi, the decisions on which Dr. Singhvi placed reliance, themselves carve out a second circumstance, justifying such stay, namely the existence of special equities. Where refusal to grant stay would result in injustice to the petitioner, Mr. Sethi submits that the existence of special equities stood established. Mr. Sethi places reliance on *Mahatma Gandhi Sahakara Sakkare Karkhane v. National Heavy Engineering Coop. Ltd*⁴ and *U. P. State Sugar Corporation v. Sumac International Ltd*⁵.

(2007) 6 SCC 470 (1997) 1 SCC 568

10. Mr. Sethi further submits that, in the light of the second paragraph of the letter, dated 31st March, 2020 *supra*, addressed by Respondent No. 1 to the petitioner, it did not lie, in the mouth of Respondent No. 1, to dispute the submission, of the petitioner, that it could have completed the work relating to the contract by 31 st March, 2020. (At this juncture, Dr. Singhvi interjected, to reiterate his submission that, vide its earlier communications dated 9th February, 2019 and 16th January, 2020 - which find no place in the petition filed by the petitioner - Respondent No. 1 has rejected the request, of the petitioner, for being granted further time to complete the contract.) Mr. Sethi further submitted that it was not on 24th March, 2020, but on 18th March, 2020, that the petitioner had first raised the issue of force majeure. Insofar as the submission of Dr. Singhvi, regarding the present project having been excepted from the applicability of the lockdown restrictions, was concerned, Mr. Sethi submitted that his client was unaware of any such exception but that, in any event, such an exception would not apply to his client, as the petitioner was not engaged in the production of oil as such, but was engaged in drilling of the wells. Mr. Sethi reiterated that his prayer was only for a temporary injunction against the respondent invoking, or encashing the bank guarantees furnished by his client to the expiry of one week from the lifting of the lockdown, as implemented by the Government of India and the Government of Rajasthan. Mr. Sethi relied on the averments, contained in par 3.22 of the petitioner, to the effect that only 2.1% of the work relating to the Mangla field, 5.5% of the work relating to the Bhagyam field and 2.4% of the work relating to the Aishwariya field, remained, which could easily have been completed before 31st March, 2020, had the restrictions clamped by the lockdown not intervened.

11. Having thus heard learned Senior Counsel at length, I am, *prima facie*, of the view that the extreme submission, advanced by Dr. Singhvi, that judicial interference with invocation, or encashment, of bank guarantees, where they are unconditional, is permissible only in cases of egregious fraud, is not acceptable even on the anvil of the decisions on which Dr Singhvi himself relies. *U. P. Cooperative Federation Ltd*¹ holds that "in order to restrain the operation either of irrevocable letter of credit of confirmed letter of credit or bank guarantee, there should be serious dispute and there should be good *prima facie* case of fraud and special equities in the form of preventing irretrievable injustice between the parties." This dictum was reiterated in *Svenska Handelsbanken*² which went on to clarify, additionally, that the "irretrievable injustice" - or "irretrievable injury" - which would result, were injunction not to be granted, was required to be "of the nature as noticed in the case of *Itek Corporation*³". In *Itek Corporation*³, the Court returned a finding of irretrievable injury/irreparable harm, in the following words (extracted in para 73 of the report in *Svenska Handelsbanken*²):

"Because I find that Itek has demonstrated that it has no adequate remedy at law, and because I find that the allegations of irreparable harm are not speculative, but genuine and immediate, I am satisfied that Itek will suffer irreparable harm if the requested relief is not granted."

13. Dealing with the aspect of irretrievable injury in the backdrop of its earlier decision in *Svenska Handelsbanken*², the Supreme Court, in *U. P. State Sugar Corporation*⁵, held thus:

"The law relating to invocation of such bank guarantees is by now well settled. 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. The bank giving such a guarantee is bound to honour it as per its terms irrespective of any dispute raised by its customer. The very purpose of giving such a bank guarantee would otherwise be defeated. The courts should, therefore, be slow in granting an injunction to restrain the realization of such a bank guarantee. The courts have carved out only two exceptions. A fraud in connection with such a bank guarantee would vitiate the very foundation of such a bank guarantee. Hence if there is such a fraud of which the beneficiary seeks to take advantage, he can be restrained from doing so. The second exception relates to cases where allowing the encashment of an unconditional bank guarantee would result in irretrievable harm or injustice to one of the parties concerned. 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. The two grounds are not necessarily connected, though both may coexist in some cases. In the case of U.P. Coop. Federation Ltd. v. Singh Consultants and Engineers (P) Ltd. [(1988) 1 SCC 174] which was the case of a works contract where the performance guarantee given under the contract was sought to be invoked, this Court, after referring extensively to English and Indian cases on the subject, said that the guarantee must be honoured in accordance with its terms. The bank which gives the guarantee is not concerned in the least with the relations between the supplier and the customer; nor with the question whether the supplier has performed his contractual obligation or not, nor with the question whether the supplier is in default or not. The bank must pay according to the tenor of its guarantee on demand without proof or condition. There are only two exceptions to this rule. The first exception is a case when there is a clear fraud of which the bank has notice. The fraud must be of an egregious nature such as to vitiate the entire underlying transaction. Explaining the kind of fraud that may absolve a bank from honouring its guarantee, this Court in the above case quoted with approval the observations of Sir John Donaldson, M.R. in *Bolivinter Oil SA v. Chase Manhattan Bank* [(1984) 1 All ER 351] (All ER at p. 352): (at SCC p. 197) "The wholly exceptional case where an injunction may be granted is where it is proved that the bank knows that any demand for payment already made or which may thereafter be made will clearly be fraudulent. But the evidence must be clear both as to the fact of fraud and as to the bank's knowledge. It would certainly not normally be sufficient that this rests on the uncorroborated statement of the customer, for irreparable damage can be done to a bank's credit in the relatively brief time which must elapse between the granting of such an injunction and an application by the bank to have it charged."

This Court set aside an injunction granted by the High Court to restrain the realisation of the bank guarantee.

14. On the question of irretrievable injury which is the second exception to the rule against granting of injunctions when unconditional bank guarantees are sought to be realised the court said in the above case that the irretrievable injury must be of the kind which was the subject-matter of the decision in the Itek Corp'n. case [566 Fed Supp 1210] . In that case an exporter in USA entered into an agreement with the Imperial Government of Iran and sought an order terminating its liability on stand by letters of credit issued by an American Bank in favour of an Iranian Bank as part of the contract. The relief was sought on account of the situation created after the Iranian revolution when the American Government cancelled the export licences in relation to Iran and the Iranian Government had forcibly taken 52 American citizens as hostages. The US Government had blocked all Iranian assets under the jurisdiction of 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 realisation of the bank guarantee/letters of credit would cause irreparable harm to the plaintiff. This contention was upheld. To avail of this exception, therefore, exceptional circumstances which make it impossible for the guarantor to reimburse himself if he ultimately succeeds, 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 case [566 Fed Supp 1210] there was a certainty on this issue. Secondly, there was good reason, in that case for the Court to be prima facie satisfied that the guarantors i.e. the bank and its customer would be found entitled to receive the amount paid under the guarantee."

(Emphasis supplied)

14. While, for the sake of propriety, I have noted the legal position, relating to the circumstances and situations in which interim injunctions, restraining the invocation of unconditional bank guarantees, could be granted, any further reference to judicial precedents in this regard may not be either necessary or justify, given the special circumstances in which we are placed today, and the limited nature of the present order. In fact, in para 41 of the report in Gangotri Enterprises Ltd v. U.O.I.6, the Supreme Court, even while noting the above legal position, held that, while there could be no quarrel with the propositions emerging from the above decisions, "every case has to be decided with reference to the facts of the case involved therein".

15. Besides, while egregious fraud is well-encapsulated as one of the two grounds on which invocation of an unconditional Bank 6 (2016) 11 SCC 720 guarantee may be injuncted, the contours of the second ground, of irretrievable or irreparable injury, are, in my opinion, somewhat more elastic. In Himadri Chemicals Industries Ltd v. Coal Tar Refining Co.7, the following six principles, governing injuncting of invocation of unconditional bank guarantees, find place in para 14 of the report:

"(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.

(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."

(Emphasis supplied)

16. After taking stock of earlier authorities on the subject, the recent decision of the Supreme Court in *Standard Chartered Bank (2007) 8 SCC 110 Ltd v. Heavy Engineering Corporation Ltd*⁸ encapsulates the legal position, in para 23 of the report, thus:

"The settled position in law that emerges from the precedents of this Court is that the bank guarantee is an independent contract between bank and the beneficiary and the bank is always obliged to honour its guarantee as long as it is an unconditional and irrevocable one. The dispute between the beneficiary and the party at whose instance the bank has given the guarantee is immaterial and is of no consequence. There are, however, exceptions to this Rule when there is a clear case of fraud, irretrievable injustice or special equities. The Court ordinarily should not interfere with the invocation or encashment of the bank guarantee so long as the invocation is in terms of the bank guarantee."

(Emphasis supplied)

17. In my view, it is not necessary to multiply references to precedents, the law with respect to injunction of encashment, or invocation, of unconditional bank guarantees, being fairly well settled. It is significant, however, that, where the earlier understanding of the expression "special equities", as a circumstance in which invocation of bank guarantees could be inducted, was that such equities were limited to cases where irretrievable injustice resulted, the recent decision in *Standard*

Chartered Bank Ltd⁸ seems to visualise irretrievable injustice, and special equities, as distinct circumstances, the existence of either of which would justify an order of injunction. Viewed any which way, there appears to be no gainsaying the proposition that, where "special equities" exist, the court is empowered, in a given set of facts and circumstances, to injunct invocation, or encashment, of a bank guarantee. Where such special circumstances do exist, no occasion arises, to revert to the general 2019 SCC Online SC 1638 principle regarding the contractually binding nature of a bank guarantee, or the legal obligation of the bank to honour the bank guarantee, these special circumstances having, in all cases, being treated as exceptions to this general principle.

18. Ex facie, the petitioner cannot plead fraud - though the petitioner does attempt to do so, by a side wind as it were, in the petition - as a ground to seek injunction. All that is required to be seen is, therefore, whether "special equities" can be said to exist, as would justify grant of the relief sought by the petitioner.

19. Mr. Sethi was categorical in limiting his prayer to an injunction continuing up to the expiry of one week from the listing of the lockdown, presently in place, consequent to the unfortunate n-COVID-2019 pandemic, which has ravaged the country and, indeed, the world. Dr. Singhvi does not dispute, on facts, the inability - and, indeed, impermissibility - of workmen being able to travel or, indeed, of any personnel being able to move from one place to another, during the period of lockdown. Mr. Sethi submitted, categorically, that, as the stage of work, being performed by the petitioner, was of drilling of the wells, movement of labour and personnel, therefor, was necessary, and it was impossible for the work to continue while the lockdown was in place. He also submitted that, had the lockdown not intervened, his client would have been able to complete the work assigned to it by 31st March, 2020. It is only for this reason, submits Mr. Sethi, that his client is seeking a limited amnesty, against invocation of its bank guarantees, or encashment thereof, till the expiry of one week from the lifting of the lockdown.

20. The countrywide lockdown, which came into place on 24th March, 2020 was, in my opinion, prima facie in the nature of force majeure. Such a lockdown is unprecedented, and was incapable of having been predicted either by the respondent or by the petitioner. Mr. Sethi has submitted, categorically, that, till the date of clamping of the lockdown, on 22nd March, 2020, his client was in the process of proceeding with the project, and that, had the lockdown not be imposed, the project might have been completed by 31 st March, 2020. Prima facie, in my view, special equities do exist, as would justify grant of the prayer, of the petitioner, to injunct the respondent from invoking the bank guarantees of the petitioner, forming subject matter of these proceedings, till the expiry of a period of one week from 3 rd May, 2020, till which date the lockdown has been imposed.

21. Mr. Sethi informs the Court that, after the filing of the petition, Respondent No. 1 has terminated the contract, and has written to the Bank for invocation of the eight bank guarantees forming subject matter of these proceedings. These documents are not on record. It would be necessary for these documents to be brought on record, before this matter was finally decided. At the same time, if no interim protection is granted at this juncture, and the bank guarantees are allowed to be encashed, even while the lockdown is in place, in my view, the injury and prejudice that would result to the petitioner merits being categorised as irretrievable, even if, as Dr. Singhvi would suggest, the

petitioner may still be able to recover the amounts, were it to succeed, finally, in arbitration.

22. We are placed, today, in uncomfortably peculiar circumstances. A pandemic, of the nature which affects the world today, has not visited us during the lifetime of any of us and, hopefully, would not visit us hereinafter either. The devastation, human, economic, social and political, that has resulted as a consequence thereof, is unprecedented. The measures, to which the executive administration has had to resort, to somehow contain the fury of the pandemic, are equally unprecedented. The situation of nationwide lockdown, in which we find ourselves today, has never, earlier, been imposed on the country. The imposition of the lockdown was by way of a sudden and emergent measure, of which no advance knowledge could be credited to the petitioner - or, indeed, to anyone else. As a consequence, submits Mr. Sethi, the petitioner's activities had to suddenly discontinue on 22nd March, 2020, and have not been able to resume ever since.

23. The lockdown, as imposed by the Central and State Government, is presently in place till 3rd May, 2020. Restrictions, on free movement of personnel and normal continuance of activities, had come into place even before 22nd March, 2020. In its communication, dated 18th March, 2020, the petitioner has sought to submit thus:

"The significant, accelerated spread of the disease across the region and the rest of the world approx. 150 Countries including India and its significant impact on day-to-day life and ordinary course of business has received extensive coverage by the press, and worldwide national and international organisation. The outbreak is now qualified as global pandemic. ...

Indian Government authorities have already stipulated restrictions on public transport, public movement and air travel to/from various countries in view of this pandemic outbreak. Therefore, the ongoing activities under the contract are logistically (material and personnel) affected and as a result our personnel and sub-contractors in the affected region/areas will not be able to perform their planned activities and deliveries as planned.

Presently, few of the polymer injection wells were being commissioned with the support of the SNF India teams as the major testing and commissioning activities were completed earlier with support of the France team. But for the remaining polymer injection well, commissioning and start-up support of the expert team from France may be required and with the present travel restrictions imposed by the government, they are unable to travel to India for commissioning and start-up support, which may have substantial impact on the further commissioning and handover of the polymer injection well in MBA project. We are also experiencing similar travel restrictions from other subcontractor as well as which is further impacting the project.

This pandemic is beyond the reasonable control of the Contractor and has a material adverse effect on the performance of Contractor's obligations under the Agreement.

Hence, this event classifies as „Force Majeure and Contractor hereby serves the notice of Force Majeure pursuant to Section 15 of the Agreement and should be entitled for compensation and milestone adjustment under the provisions of the Agreement."

24. In its next letter, addressed to Respondent No. 1 on 25 th March, 2020, after the imposition of the lockdown, the petitioner drew especial attention to the Order, dated 22nd March, 2020, issued by the Government of Rajasthan, declaring complete lockdown in the state which, in the petitioner's submission, further impacted the progress of the project. The petitioner has placed, on record, the Order, dated 22 nd March, 2020, issued by the Government of Rajasthan, declaring complete lockdown in the state from 22nd to 31st March, 2020 - which stands extended till 3rd May, 2020. Without entering into the specifics of the said Order at this stage, it is apparent, from a reading thereof, that there is a near complete cessation on movement, in Rajasthan, save and except for certain limited offices, to which the Order refers.

25. The response, dated 31st March, 2020, of Respondent No 1, to the aforesaid communications by the petitioner, initially candidly acknowledges the impact of the n-COVID-2019 pandemic, and the restrictions which are coming to place as a consequence thereof, in the following words:

"Company understands the current situation and impacts of COVID-19 globally and acknowledges the impact to operations as described in the letter G300HAL-PMGG-L- 00135 from HOSI on 25 March 2020. While the Company understands that there are difficulties and mobilization of resources in a safe manner, we have already clarified to you vide our email dated 25 March 2020 (from Adwait Kulkarni, CCO - Capex Organisation) that the production of petroleum, which is an "Essential Commodity", and hence exempted under various orders relating to the restrictions relating to COVID-19, that had been issued in the central, state and district levels. The various orders specifically permit continuity however we do not see effort from your side to progress your contractual obligations despite all support provided by Company."

Mr. Sethi has sought to contend, with respect to the alleged "exemption", to which the afore-extracted passage, from the communication dated 31st March, 2020, refers, that his client is unaware of any such exemption. The letter, too, does not refer to any specific Order, which could operate so as to normalise the activities of the petitioner. Prima facie, there is substance in the submission, of Mr. Sethi, that, even if petroleum were to be treated as an essential commodity, and the activity of production thereof were exempted from the rigour of the lockdown, the petitioner is not engaged, *stricto sensu*, in the production of petroleum, but is, rather, engaged in drilling of the wells, which activity is substantially, if not entirely, impeded as the result of the imposition of the lockdown.

26. I may note, at this juncture, that, though Dr. Singhvi sought to press, assiduously home, the point that his client had never agreed to the extension, of the time available with the petitioner to perform the contract, till 31st March, 2020, the second sentence, in the second para of the letter,

dated 31st March, 2020 supra, addressed by Respondent No. 1 to the petitioner, reads thus:

"Further to such communications and subsequent discussions, HOSI had presented a cure plan and committed to complete the project by 31 March 2020, and yet it continued to fail on its commitment."

(Emphasis supplied) The tenor of this sentence does seem, prima facie, to indicate that, though, initially, the petitioner might have been in default in adhering to its contractual obligations within the time stipulated therefor, subsequent discussions took place, whereafter the parties had agreed, ad idem, that the project could be completed till 31 st March, 2020.

The submission of Mr Sethi that, had the petitioner been in a position to work beyond the date when the lockdown was imposed, and, thereby, complete the contract by 31st March, 2020, no grievance would have survived, merits consideration.

27. The petition, and the rival submissions advanced by learned Senior Counsel for me, unquestionably throw up issues of some factual and legal complexity, which may necessitate a proper affidavit, by way of response, from the respondent, and detailed consideration of all these aspects, so as to arrive at a firm conclusion as to whether, till the normalisation of activities of the petitioner, consequent to lifting, or relaxation, of the restrictions imposed by the executive administration as a result of the n-COVID-2019 pandemic, the petitioner would be entitled to an injunction, against the respondent, from invocation of the eight bank guarantees forming subject matter of the present petition. For the present, I am convinced, prima facie, that, in view of the submission, of the petitioner, that it was actually working on the project till the imposition of lockdown on 22nd March, 2020, or at least shortly prior thereto, and in view of the sudden and emergent imposition of lockdown, the interests of justice would justify an ad interim injunction, restraining invocation or encashment of the aforesaid eight bank guarantees, till the expiry of exactly one week from 3rd May, 2020, till which date the lockdown stands presently extended. As to whether this interim injunction merits continuance, thereafter, or not, would be examined on the next date of hearing, consequent to pleadings being completed and all requisite material, including all relevant Governmental instructions, being placed on record. The injunction presently being granted, it is reiterated, is purely ad interim in nature, and is being granted only in view of the completely unpredictable nature of the lockdown, and its sudden imposition on 22nd March, 2020, of which the petitioner could not legitimately be treated as having been aware in advance. I am also persuaded, in this regard, by the fact that the government itself has, after imposition of the lockdown, being issuing instructions, from time to time, seeking to mitigate the rigours and difficulties that have resulted, unavoidably, as a result of the imposition of the lockdown. There is no reason, therefore, by the petitioner ought not to be given limited protection, till the next date of hearing, subject to orders which may be passed in these proceedings thereafter.

28. In the circumstances, let notice issue on the present petition, returnable on 11th May, 2020. Notice is accepted, on behalf of the respondents, by Ms. Anuradha Dutt, and is permitted to be served on Respondent No. 2 by e-mail. It shall be the responsibility of the petitioner to obtain the e-mail id of Respondent No. 2, for effecting service. Affidavit of service on Respondent No. 2, with

proof thereof, be filed by the petitioner prior to the next date of hearing. Counter- affidavit, if any, may be filed by the respondents within two weeks, with advance copy to the petitioner, who may file rejoinder thereto, if any, within one week thereof. List before the appropriate bench, as per roster.

29. There shall be an ad interim stay on invocation and encashment of the eight Bank guarantees, tabulated in para 3.4 of the petition, till the next date of hearing. The aspect of continuance of this interim order shall be taken up on the next date of hearing.

30. Needless to say, the petitioner is directed to ensure that the bank guarantees remain alive during the pendency of the present proceedings.

C. HARI SHANKAR, J.

APRIL 20, 2020 HJ