

REPORTABLE**IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION****Civil Appeal No 7005 of 2017****Andhra Pradesh Pollution Control Board****Appellant(s)****Versus****CCL Products (India) Limited****Respondent(s)****JUDGMENT****Dr Dhananjaya Y Chandrachud, J**

1 Admit.

2 This appeal arises from a judgment of the National Green Tribunal¹ at its Southern Zone Bench at Chennai dated 16 August 2016. The Tribunal allowed the appeal of the respondent in part and held that the invocation of the bank guarantees furnished to the appellant at the behest of the respondent was unwarranted and that the amount should be refunded to the respondent.

3 Since reliefs in terms of the other prayers were declined by the Tribunal, the issue which falls for consideration is whether the Tribunal was justified in interfering with the invocation of three bank guarantees issued to the appellant and

1 “Tribunal”

in directing the appellant to refund the amounts covered by them to the respondent.

4 The respondent commenced its operations in 1995 for the manufacture and sale of instant coffee. It was granted consent under the Water (Prevention and Control of Pollution) Act 1974. On 6 August 2008, the Union Government amended the Environment (Protection) Rules, 1986 to specify discharge standards for the coffee industry.

5 Complaints were received by the appellant and by the District Collector, Guntur in regard to the environmental pollution caused by the appellant. A notice to show cause was issued by the appellant to the respondent on 2 August 2011. A Task Force Committee was constituted by the appellant which, after hearing the respondent, issued directions to it on 12 August 2011. Based on the recommendations of the Task Force Committee, the following directions were issued to the respondent on 26 August 2011:

“Part A

Improvement of existing system

- a. The industry shall submit the efficiency of the ETP for the treatment of effluents to the board standards.
- b. The Industry shall revamp the existing APC installed to the boilers to meet the board specified standards.

Part B

- a. Fixation of flow meters at various points to ensure continuous operation of existing systems
- b. The industry shall install separate energy meters for all the pollution control equipments installed and submit the records to the RO, Guntur every month.

Part C

- a. The industry shall store the treated effluents in lined lagoons only, for storing the effluents during rainy season.
- b. The industry shall use the treated effluents in industry's own land.
- c. The industry shall provide separate storm water drains so that the colored effluents do not mix with the rain water.

- d. The industry shall empty the stored effluents in unlined lagoons and lagoons shall be dismantled.
- e. The industry shall not discharge any effluents outside the premises under any circumstances.
- f. The industry shall submit an action plan for removal of colour within 30 days."

6 In addition, the appellant directed the respondent to furnish three bank guarantees: two in the amount of Rs 10,00,000 each and the third in the amount of Rs 5,00,000 to secure compliance with the conditions specified in Part A, Part B and Part C above in regard to the functioning of the respondent.

7 On 6 September 2011, three bank guarantees executed by the State Bank of India were furnished to the appellant. The bank guarantee in the amount of Rs 5,00,000 was in order to secure compliance with the conditions stipulated in the consent for the establishment and operation of the respondent in terms of the applicable environmental standards. The bank guarantee covered Part C of the directions that were issued on 26 August 2011 which were embedded in the guarantee. The guarantee contained the following stipulation:

"In accordance to the norms laid down by the Board as committed by M/S CCL PRODUCTS (INDIA) LIMITED.

In pursuance of the above, we M/S. CCL PRODUCTS (INDIA) LIMITED, Guarantee the observance and performance by the company of the various terms and obligations as provided in the commitment made above and undertake to pay to the Board subject to a maximum sum not exceeding Rs 5,00,000/- (Rupees five lakhs only) on demand and in the event of company failing to comply with the above conditions/Directions."

The respondent further undertook that:

"Notwithstanding anything contain herein:

- a) Our liability under this Bank Guarantee shall not exceed Rs. 5,00,000/-
- b) This Bank Guarantee shall be valid upto 06.09.2013.
- c) We are liable to pay the guaranteed amount any part thereof under this Bank Guarantee only and only if you serve

upon us a written claim or demand on or before 06.09.2013”

8 The second bank guarantee covered Part B of the stipulation which the Task Force Committee had required the respondent to fulfill on 26 August 2011.

The bank guarantee contained the following stipulations:

“In pursuance to the above, we M/S. CCL PRODUCTS (INDIA) LIMITED, Guarantee the observance and performance by the company of the various terms and obligations as provided in the commitment made above and undertake to pay to the Board subject to a maximum sum not exceeding Rs. 10,00,000/- (Rupees Ten lakhs only) on demand and in the event of company failing to comply with the above conditions / Directions.

Out liability under the Guarantee is restricted to Rs. 10,00,000/- (Rupees Ten lakhs only). Our Guarantee shall remain in force until 06.09.2013, unless a suit or action to enforce a claim under this guarantee is filed in writing against us before the date of expiry, all our rights under this guarantee shall be forfeited and we shall be relieved and discharged from all liabilities whatsoever there under.”

Notwithstanding anything contain herein:

- a) Our liability under this Bank Guarantee shall not exceed Rs. 10,00,000/-
- b) This Bank Guarantee shall be valid upto 06.09.2013.
- c) We are liable to pay the guaranteed amount any part thereof under this Bank Guarantee only and only if you serve upon us a written claim or demand on or before 06.09.2013.”

9 The third bank guarantee in the amount of Rs 10,00,000 covered Part A of the stipulations which the Task Force Committee had required the respondent to fulfill on 26 August 2011.

The bank guarantee contained the following stipulation:

“In pursuance to the above, we M/S CCL PRODUCTS (INDIA) LIMITED, Guarantee the observance and performance by the company of the various terms and obligations as provided in the commitment made above and undertake to pay to the Board subject to a maximum sum not exceeding Rs. 10,00,000/- (Rupees Ten lakhs only) on

demand and in the event of company failing to comply with the above conditions / Directions.

Our liability under the Guarantee is restricted to Rs. 10,00,000/- (Rupees Ten lakhs only). Our Guarantee shall remain in force until 06.09.2013, unless a suit or action to enforce a claim under this guarantee is filed in writing against us before the date of expiry, all our rights under this guarantee shall be forfeited and we shall be relieved and discharged from all liabilities whatsoever there under.

Notwithstanding anything contain herein :

- a) Our liability under this Bank Guarantee shall not exceed Rs. 10,00,000/-
- b) This Bank Guarantee shall be valid upto 06.09.2013
- c) We are liable to pay the guaranteed amount any part thereof under this Bank Guarantee only and only if you serve upon us a written claim or demand on or before 06.09.2013.”

10 On 12 September 2012, the appellant recorded in a communication to its Environmental Engineer in the regional office at Guntur that:

“The status of compliance of was reviewed in the Task Force Committee Meeting held on 07.03.2012 and directions were issued to the industryfor compliance.

The Board officials inspected the industry on 21.07.2012 and 23.08.2012 and observed certain violations. In view of the non-compliance of the industry with the directions issued by the Board, it is decided to invoke the bank guarantee of Rs. 25 Lakhs in favour of the Board.

The EE, RO, Guntur is directed to address the Bank to invoke Bank Guarantee of Rs. 25.0 lakhs in favour of the Board and obtain the amount by way of Demand Draft drawn in favour of the Member Secretary, A.P. Pollution Control Board, Hyderabad immediately. The original bank guarantee is to be returned to the Bank after obtaining the demand draft.”

In pursuance of the above communication, the bank guarantees were invoked on 12 September 2012 and the amount of Rs 25,00,000 covered by three bank guarantees was paid over to the appellant by the State Bank of India.

11 Aggrieved by the actions of the appellant invoking the bank guarantees, the respondent moved the Tribunal.

12 The Tribunal by its judgment dated 16 August 2016 held that the principles of natural justice were required to be followed prior to invoking the bank guarantees. Finding fault with the appellant for failing to do so, the Tribunal held that the invocation was unwarranted and the amount which has been received by the appellant should be refunded to the respondent.

13 In the view of the Tribunal, the purpose of the bank guarantees was not “commercial, contractual or industrial” since the guarantees were issued to secure compliance with the directions of the appellant regarding environmental norms that must be complied with by the respondent. Hence, it came to the conclusion that before invoking the bank guarantees, it was incumbent upon the appellant to serve a notice and to furnish a hearing to the respondent.

14 Assailing the judgment of the Tribunal, it has been urged by Mr T V S Raghavendra Sreyas, learned counsel appearing on behalf of the appellant that first, the Tribunal erred in applying the principles of natural justice as a condition to invoke the guarantees. This, it has been submitted, is contrary to the settled legal position. Second, it has been urged that the finding by the Tribunal that there was a breach on the part of the appellant to furnish a reasonable opportunity to the respondent is belied by the documentary material which shows that notices were issued by the appellant to the respondent and that the respondent was in fact heard by the Task Force Committee. Reliance was placed on the notice to show cause that was issued by the appellant on 9 January 2012 and the response filed by the respondent on 16 January 2012. Third, it was urged that even after the

invocation of the bank guarantees, the respondent addressed a letter dated 20 September 2012 to the appellant expressing its grievance against the invocation. Hence, it was submitted that the respondent cannot feign ignorance about the fact that the bank guarantees have been invoked. Finally, it was submitted that the appellant was constrained to issue a further direction to the respondent for furnishing an additional bank guarantee of Rs 77.50 lakhs on 12 September 2012, the date on which the bank guarantee was invoked. Insofar as this part of the direction is concerned, it was urged that the challenge was not pressed before the Tribunal. On these counts, it was urged that the Tribunal was in error in interfering with the invocation of the bank guarantees.

15 On the other hand, Mr Sajan Poovayya, learned Senior Counsel appearing on behalf of the respondent submitted that first, the tenor of the bank guarantees indicate that they were not unconditional. It was urged that the bank guarantees were furnished to secure compliance with the specific obligations which were imposed upon the respondent in Parts A, B and C of the Task Force Committee's recommendation dated 26 August 2011. In the present case, it was urged that the demand which was made to the State Bank of India was not in terms of the conditions specified in the bank guarantees. Second, it was urged that the respondent has complied with the recommendations of the Task Force Committee and even at this stage, it would be appropriate if the Tribunal is called upon to verify compliance. Third, it was urged that the letter of invocation has emerged before this Court for the first time and had not been produced before the Tribunal. On these grounds, it was urged that the judgment of the Tribunal interfering with the invocation of the bank guarantees does not warrant interference.

16 At the outset, we must deal with the fundamental basis of the decision of the Tribunal in setting aside the invocation of the bank guarantee. The Tribunal held that the purpose of the bank guarantee was not commercial or industrial but was to secure compliance by the appellant with environmental norms that had been prescribed. Hence, in the view of the Tribunal, the appellant should have furnished a hearing to the respondent before the bank guarantees were invoked.

17 We are unable to subscribe to the legal position which has been formulated by the Tribunal. A bank guarantee constitutes an independent contract between the issuing bank and the beneficiary to whom the guarantee is issued. Such a contract is independent of the underlying contract between the beneficiary and the third party at whose behest the bank guarantee is issued.

18 The principle which we have adopted accords with a consistent line of precedent of this Court. In **Ansal Engineering Projects Ltd. v Tehri Hydro Development Corporation Ltd.**² a three judge Bench of this Court held thus:

“4. It is settled law that bank guarantee is an independent and distinct contract between the bank and the beneficiary and is not qualified by the underlying transaction and the validity of the primary contract between the person at whose instance the bank guarantee was given and the beneficiary. Unless fraud or special equity exists, is pleaded and prima facie established by strong evidence as a triable issue, the beneficiary cannot be restrained from encashing the bank guarantee even if dispute between the beneficiary and the person at whose instance the bank guarantee was given by the bank, had arisen in performance of the contract or execution of the works undertaken in furtherance thereof. The bank unconditionally and irrevocably promised to pay, on demand, the amount of liability undertaken in the guarantee without any demur or dispute in terms of the bank guarantee...”

5. ...The court exercising its power cannot interfere with enforcement of bank guarantee/letters of credit except only in cases where fraud or special equity is prima facie made out in

the case as triable issue by strong evidence so as to prevent irretrievable injustice to the parties.”

The same principle was followed in **State Bank of India v Mula Sahakari Sakhar**

Karkhana Ltd³ where a two judge Bench of this Court held thus:

“33. It is beyond any cavil that a bank guarantee must be construed on its own terms. It is considered to be a separate transaction.

34. If a construction, as was suggested by Mr Naphade, is to be accepted, it would also be open to a banker to put forward a case that absolute and unequivocal bank guarantee should be read as a conditional one having regard to circumstances attending thereto. It is, to our mind, impermissible in law.”

A bank guarantee constitutes an independent contract. In **Hindustan Construction**

Co. Ltd. v. State of Bihar⁴, a two judge Bench of this Court formulated the condition

upon which the invocation of the bank guarantee depends in the following terms:

“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.**”

(Emphasis supplied)

19 The settled legal position which has emerged from the precedents of this Court is that absent a case of fraud, irretrievable injustice and special equities, the Court should not interfere with the invocation or encashment of a bank guarantee so long as the invocation was in terms of the bank guarantee.

³ (2006) 6 SCC 293

⁴ (1999) 8 SCC 436

20 In the present case, the bank undertook to the appellant that it would pay the guaranteed amount on demand, subject to the overall amount stipulated in each of the three bank guarantees. It was not for the bank to determine as to whether the invocation of the bank guarantees was justified so long as the invocation was in terms of the bank guarantee. A demand once made would oblige the bank to pay under the terms of the bank guarantee. The State Bank of India correctly understood its legal obligations and paid over the amount to the appellant. In this view of the matter and having regard to the terms of the bank guarantees, we are of the view that the principle of law which has been formulated by the Tribunal cannot be accepted as reflecting the correct legal position.

21 That apart, we are unable to accept the finding of the Tribunal that the respondent was kept in the dark on the invocation. It is evident that following the invocation of the bank guarantees, the respondent itself addressed a communication on 20 September 2012 to the Member Secretary of the appellant. The communication contains a specific reference to the invocation of the bank guarantees. That apart, it is evident from the material on the record that the appellant had issued a notice to show cause to the respondent to which the respondent also submitted a response. The purpose and object of the bank guarantees was to enable the appellant to secure compliance with environmental standards prescribed in accordance with law. The appellant has invoked the bank guarantees issued by the respondent because of the failure of the respondent to discharge the obligations imposed upon it by the Task Force Committee on 26 August 2011

22 For the above reasons, we are of the view that the Tribunal has erred in interfering with the invocation of the bank guarantees and in directing the appellant to refund the amount of Rs 25 lakhs covered by the three guarantees. While invoking the bank guarantees, the appellant has clearly adverted to the fact that the status of compliance was reviewed in the Task Force Committee Meeting; and that the officials of the appellant had inspected the industry and had observed certain violations. The invocation of the bank guarantees was therefore in terms of the conditions stipulated in the bank guarantees.

23 The invocation of the bank guarantees was the subject matter of the present appeal. We allow the appeal and set aside the impugned judgment and order of the Tribunal. There shall be no order as to costs.

24 Pending application(s), if any, shall stand disposed of.

.....J.
(Dr Dhananjaya Y Chandrachud)

.....J.
(Indira Banerjee)

New Delhi
July 22, 2019

ITEM NO.25

COURT NO.10

SECTION XVII

S U P R E M E C O U R T O F I N D I A
R E C O R D O F P R O C E E D I N G S

Civil Appeal No(s). 7005/2017

ANDHRA PRADESH POLLUTION CONTROL BOARD

Appellant(s)

VERSUS

CCL PRODUCTS (INDIA) LTD.

Respondent(s)

Date : 22-07-2019 This appeal was called on for hearing today.

CORAM :

HON'BLE DR. JUSTICE D.Y. CHANDRACHUD
HON'BLE MS. JUSTICE INDIRA BANERJEE

For Appellant(s)

Mr. T. V. S. Raghavendra Sreyas, AOR
Mrs. Gayatri Gulati Sreyas, Adv.
Ms. Sneh Dhillon, Adv.

For Respondent(s)

Mr. Sajjan Poovayya, Sr. Adv.
Mr. G. Ramakrishna Prasad, AOR
Mr. Suyodhan Byrapaneni, Adv.
Ms. Pilza Moonis, Adv.
Ms. Priyanka M.P., Adv.
Mr. Pratibhanu Singh Kharola, Adv.

UPON hearing the counsel the Court made the following
O R D E R

Admit.

The appeal is allowed in terms of the signed reportable judgment.

Pending application(s), if any, shall stand disposed of.

(MANISH SETHI)
COURT MASTER (SH)

(SAROJ KUMARI GAUR)
BRANCH OFFICER

(Signed reportable judgment is placed on the file)