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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Date of decision: 29.05.2025

+ **O.M.P. (I) (COMM.) 165/2025**

M/S SCHINDLER INDIA PRIVATE LIMITEDPetitioner

Through: Mr. Saurabh Kripal, Sr. Adv. with Mr.
Joel, Mr. Ujjval Gupta, Mr. Shivank
Aggarwal, Mr. Dhruv Chatrath, Advs.

versus

PARNIKA COMMERCIAL AND ESTATES PRIVATE LIMITED &
ANR.Respondents

Through: Mr. Rajshekhar Rao, Sr. Adv. with
Mr. Chitvan Singhal, Ms. Muskan
Gupta, Mr. Ajay Sabharwal, Mr.
Abeere Malik, Advs.

CORAM:

HON'BLE MR. JUSTICE JASMEET SINGH

: **JASMEET SINGH, J (ORAL)**

1. This is a petition filed under Section 9 of the Arbitration and Conciliation Act, 1996, seeking ad interim injunction restraining the respondent No. 1 from invoking two bank guarantees, i.e. the Advance Bank Guarantee ("ABG") and the Performance Bank Guarantee ("PBG"), totaling to Rs.1,14,40,676/-, issued in favour of the respondent.
2. *Vide* the Order dated 07.05.2025 passed by this Court, in paragraph Nos. 13, 14, 15 and 16, while staying the bank guarantees, it was held as under:

"13. As per the averments of the petitioner, the respondent no.1 has not completed the office building or made it ready for



the installation of lifts and escalators.

14. Further, the advance bank guarantee was furnished with respect to the lifts and escalators to be supplied by the petitioner. The advance amount has been utilized and the petitioner has already supplied 03 lifts and 01 escalator. As regards, the PBG is concerned, the respondent no. 1 has attributed the delay of the completion of Work Order on the petitioner, however, prima facie, I am of the view that a ready site was essential for the completion of the work order and in the absence of a complete site, the supply and installation of the remaining lifts and escalators could not have been done.

15. The fact whether the petitioner was in violation of its obligations under the Work Order dated 25.07.2023, will be adjudicated once the respondent no. 1 files its reply.

16. I am satisfied that the petitioner has a prima facie case and the balance of convenience lies in favor of the petitioner. The invocation of bank guarantee(s), would be causing irreparable loss and injury to the petitioner.”

3. Thereafter, a reply has been filed by the respondents and the matter has been taken up for hearing.
4. Mr. Kripal, learned senior counsel for the petitioner, has drawn my attention to the terms of the ABG and the PBG, which read as under:



ADVANCE PAYMENT BANK GUARANTEE

To,

Parnika Commercial And Estates Pvt Ltd.
D-64, 6TH FLOOR HIMALAYA HOUSE
23 K.G MARG, NEW DELHI-110001

In consideration of Parnika Commercial & Estates Pvt Ltd. a society registered under Karnataka Societies Registration Rules 1960 (under Section 17 of Karnataka Rules 1960) and having its registered Office at D-64, 6TH FLOOR HIMALAYA HOUSE 23 K.G MARG, NEW DELHI-110001 (hereinafter referred to as 'THE OWNER') having at the request of M/s. Schindler India Pvt. Ltd., Schindler House, Main Street, Hiranandani Gardens, Powai, Mumbai - 400076 carrying business in style of M/s. Schindler India Pvt. Ltd. (Hereinafter referred to as 'THE CONTRACTOR') agreed to lend an advance payment as per Work/Purchase Order No. PCEPL/SITE/SAFDARJUNG/WO/2023-24/149 Dt. 25/07/23 for the SUPPLY INSTALLATION TESTING AND COMMISSIONING OF 20 units of Lifts & Escalators at Safdarjung Railway Station, Near Moti Bagh (hereinafter referred to as 'the said Works') for the sum of Rs.57,20,338/- (Rupees Fifty-Seven Lakhs Twenty Thousand Three Hundred Thirty-Eight only) exclusive of taxes on the terms and conditions inter alia that the CONTRACTOR shall furnish to the OWNER, a Guarantee from the Bank for a sum of Rs.57,20,338/- (Rupees Fifty-Seven Lakhs Twenty Thousand Three Hundred Thirty-Eight only) exclusive of taxes.

We, Citibank, N.A. India Branches, a national banking association duly constituted and in existence in accordance with the laws of the United States of America now in force, having its principal office in India at First International Financial Centre - II (FIFC -II) G Block, Plot C - 54 & 55, Sandra Kurla Complex Bandra (E), Mumbai 400051 and, for the purposes of this Guarantee, acting through its branch, namely *Citibank N.A. New Delhi branch, presently situated at 1st Floor, DLF Capitol Point, Baba Kharag Singh Marg, Connaught Place, New Delhi, 110001*, where claims are to be lodged and are payable, (hereinafter referred to as "Citibank" or "Bank" or "Guarantor" which term shall mean and include, unless to repugnant to the context or meaning thereof, its successors and permitted assigns), do hereby undertake to pay to the OWNER an amount not exceeding Rs.57,20,338/- (Rupees Fifty-Seven Lakhs Twenty Thousand Three Hundred Thirty-Eight only) in case the CONTRACTOR fails to repay the Mobilization Advance or by reason of any breach of the said terms and conditions indicated in the Works between CONTRACTOR and OWNER.

The Bank does hereby undertake to pay the amount due and payable under this Guarantee without any demur, merely on receipt of a demand in writing from the OWNER on or before 31-12-2024 stating that the amount claimed is due by way of failure on the part of the CONTRACTOR to refund the Advance Payment or loss or damage caused to or would be caused to or suffered by the OWNER for reason of any breach by the Contractor of any of the terms or conditions contained in the said Works. Any such written demand made on the Bank along with a written communication from the OWNER shall be conclusive as regards the amount due and payable by the Bank under this Guarantee, however, our liability under this Guarantee shall be restricted to the amount not exceeding Rs.57,20,338/- (Rupees Fifty-Seven Lakhs Twenty Thousand Three Hundred Thirty-Eight only).

The Bank further agrees that the Guarantee herein contained shall remain in full force and effect during the period that will be taken for the Performance of the said Works between the OWNER and the CONTRACTOR and that it shall continue to be enforceable till all the dues of the OWNER under or by virtue of the said Works have been fully performed or Mobilization Advance repaid and its claim satisfied or discharged and the OWNER certifies that the terms and conditions of the said Works have been fully and properly carried out by the CONTRACTOR and accordingly discharges this Guarantee or till 31-12-2024,

Bank Guarantee No 5545609346 Dated 29-Aug-23 Bar Sheet No. 42355 AES Number IN-DL58321211529126V Citibank N.A. New Delhi Page 2 of 3





BANK GUARANTEE FOR PERFORMANCE

To,

Parnika Commercial And Estates Pvt Ltd.
D-64, 6TH FLOOR HIMALAYA HOUSE
23 K.G MARG, NEW DELHI-110001

THIS Bank Guarantee is being executed on this 29th day of August 2023.

We, Citibank, N.A. India Branches, a national banking association duly constituted and in existence in accordance with the laws of the United States of America now in force, having its principal office in India at First International Financial Centre - II (FIFC -II) G Block, Plot C - 54 & 55, Sandra Kurla Complex Bandra (E), Mumbai 400051 and, for the purposes of this Guarantee, acting through its branch, namely *Citibank N.A. New Delhi branch, presently situated at 1st Floor, DLF Capitol Point, Baba Kharag Singh Marg, Connaught Place, New Delhi, 110001*, where claims are to be lodged and are payable, (hereinafter referred to as "Citibank" or "Bank" or "Guarantor" which term shall mean and include, unless to repugnant to the context or meaning thereof, its successors and permitted assigns), do hereby issue this guarantee in favour of Parnika Commercial & Estates Pvt Ltd., having its registered office address at D-64, 6TH FLOOR HIMALAYA HOUSE 23 K.G MARG, NEW DELHI-110001 (hereinafter referred to as "the Contractor", which expression shall unless contrary or repugnant to the context or meaning thereof be deemed to include its successors and permitted assign).

You as the Contractor have appointed M/s. Schindler India Pvt Ltd., having its office at Schindler House, Main Street Hiranandani Gardens, Powai, Mumbai - 400076 (hereinafter referred to as "The Sub-contractor", which expression shall unless contrary or repugnant to the context, or meaning thereof be deemed to include their legal representatives, successors and permitted assigns) for the Supply Installation, Testing, Commissioning and Handing Over for 20 Nos of Lift And Escalators at Safdarjung Railway Station, Near Moti Bagh the terms and the requirements of order no PCEPL/SITE/SAFDARJUNG/WO/2023-24/149 Dt. 25/07/2023 placed by you (here in after called "the Contract"). One of the requirements of the Contract between you and the Subcontractor is that a Performance Guarantee shall be lodged with you by the Sub-contractor for their due performance and proper fulfilment of the terms and conditions of the contract, such Performance Guarantee being 5 % of the Contract value i.e. for an AMOUNT of Rs. 57,20,338 /- (Rupees Fifty-Seven Lakhs Twenty Thousand Three Hundred Thirty-Eight Only).

The Sub-contractor has approached Citibank, N.A., and in consideration of the arrangement arrived at between the Sub-contractor and the bank, the Bank has agreed to guarantee as hereinafter mentioned in favour of Contractor.

Now this deed of Guarantee witnessed as follows: -

The Bank on behalf of the Sub-contractor here by undertakes to pay on receipt of written demand from you unconditionally and without demur, delay, the AMOUNT due and payable under this Guarantee, up to but not exceeding Rs. 57,20,338 /- (Rupees Fifty-Seven Lakhs Twenty Thousand Three Hundred Thirty-Eight Only) merely on receipt of a written demand from you on the failure of the Sub-contractor provided however that such a demand is received by the bank in writing on or before 31-12-2024. The decision of the Contractor on all the matters concerning the terms and conditions of the Contract (between the Contractor and the Sub-contractor) shall be final and binding on the bank.

Bank Guarantee No 5546609346 Dated 29-Aug-23 Bar Sheet No. 42356 AES Number IN-DL58335161460189V Citibank N.A. New Delhi Page 2 of 3





5. As regards ABG is concerned, it is submitted that the ABG was issued for supply of 20 lifts and 4 escalators. Even though the petitioner has supplied 3 lifts and 1 escalator only, the balance lifts and escalators could not be supplied as the infrastructure of the respondent, i.e. where the lifts were to be installed, was not ready. Hence, no fault lies on behalf of the petitioner.
6. As regards the PBG is concerned, it is submitted that the terms of the PBG show that it was a conditional bank guarantee and could only be invoked on the failure of the petitioner not performing its obligations. However, in the present case, the invocation of the PBG is not in accordance with the terms of the PBG. It is further submitted that the petitioner has always been ready and willing to perform its obligations.
7. I have heard learned counsels for the parties and perused the material available on record.
8. The invocation notice of the ABG reads as under:



PARNIKA
Commercial & Estates (P) Ltd.
An ISO 9001/2008 Co.
CIN No.U74899DL1989PTC038223

To
Citibank NA.,
First Floor, DLF Capitol Point,
Baba Kharak Singh Marg,
Connaught Place, New Delhi-110001

Subject: Bank Guarantee bearing no. 5545609346 dated 02.01.2025(original B.G. was issued on 29.08.2023)

Sir,

We hereby invoke subject bank guarantee and demand the amount of Rs. 57,20,338/- which is due by way of failure on the part of M/s Schindler India Private Limited to refund the Advance Payment and/or loss or damage caused to or would be caused to or suffered by M/s Parnika Commercial & Estates Pvt. Ltd. for the reason of breach committed by M/s Schindler India Private Limited, of the terms and conditions contained in the Work Order dated 25.07.2023 bearing no. PCEPL/SITE/SAFDARJUNG/WO/2023-24/149.
Kindly treat this utmost urgent.

Yours Sincerely,
Parnika Commercial & Estates Pvt. Ltd.

For Parnika Commercial & Estates Pvt. Ltd.

(Authorised Signatory) 
Authorised Signatory

Encl:- Bank Guarantee bearing no. 5545609346 dated 02.01.2025 in original with all extensions

TRADE OPERATIONS
CONTENT NOT VERIFIED
MS 547-6 P 1-21
CITIBANK N.A.
NEW DELHI

D-64, 6th Floor Himalaya House,
23, K.G.Marg, New Delhi-110001. Tel: 011-23356422
Fax: 011-23315101, E-mail : ho@parnika.co.in



9. The law on bank guarantees is well settled. The Hon'ble Supreme Court in ***Ansal Engineering Projects Ltd. v. Tehri Hydro Development Corporation Ltd. & Anr., (1996) 5 SCC 450***, held as under:

“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. The object behind is to inculcate respect for free flow of commerce and trade and faith in the commercial banking transactions unhedged by pending disputes between the beneficiary and the contractor.”

10. On perusal, it is clear that once the bank guarantee is unconditional and irrevocable, the only requirement is of the beneficiaries of bank guarantee to make a demand.
11. Reliance is placed by the petitioner on the decision of the Hon'ble



Supreme Court in ***Hindustan Construction Co. Ltd. v. State of Bihar & Ors., (1999) 8 SCC 436***. The relevant paragraph reads as under:

“14. This condition clearly refers to the original contract between the HCCL and the defendants and postulates that if the obligations, expressed in the contract, are not fulfilled by HCCL giving to the defendants the right to claim recovery of the whole or part of the "Advance Mobilisation Loan", then the Bank would pay the amount due under the Guarantee to the Executive Engineer. By referring specifically to Clause 9, the Bank has qualified its liability to pay the amount covered by the Guarantee relating to "Advance Mobilisation Loan" to the Executive Engineer only if the obligations under the contract were not fulfilled by HCCL or the HCCL has misappropriated any portion of the "Advance Mobilisation Loan". It is in these circumstances that the aforesaid clause would operate and the whole of the amount covered by the "Mobilisation Advance" would become payable on demand. The Bank Guarantee thus could be invoked only in the circumstances referred to in Clause 9 whereunder the amount would become payable only if the obligations are not fulfilled or there is misappropriation. That being so, the Bank Guarantee could not be said to be unconditional or unequivocal in terms so that the defendants could be said to have had an unfettered right to invoke that Guarantee and demand immediate payment thereof from the Bank. This aspect of the matter was wholly ignored by the High Court and



it unnecessarily interfered with the order of injunction, granted by the Single Judge, by which the defendants were restrained from invoking the Bank Guarantee.”

12. On perusal, I am of the view that the decision in ***Hindustan Construction Co. Ltd. (supra)*** is of no assistance to the petitioner as the bank guarantee itself was conditional to the terms of the Contract in the said case.
13. The disputes - whether the infrastructure of the respondent was ready or not and whether the non-supply of the balance lifts and escalators by the petitioner was due to the fault of the respondent or not - are issues which the Arbitral Tribunal will decide as and when appointed.
14. As of today, the ABG is unconditional and the invocation is in terms of the ABG and hence, the same must be encashed.
15. The next question that arises is with regard to the PBG.
16. It is stated that the PBG could only be invoked if there was a failure on part of the petitioner to perform its obligations.
17. The invocation notice of the PBG reads as under:



PARNIKA
Commercial & Estates (P) Ltd.
An ISO 9001/2008 Co.
CIN No.U74899DL1989PTC038223

To
Citibank NA.,
First Floor, DLF Capitol Point,
Baba Kharak Singh Marg,
Connaught Place, New Delhi-110001

Subject: Bank Guarantee bearing no. 5546609346 dated 02.01.2025(original B.G. was issued on 29.08.2023)

Sir,

We hereby invoke subject bank guarantee and demand the amount of Rs. 57,20,338/- which is due on account of the loss or damage caused to or would be caused to or suffered by M/s Parnika Commercial & Estates Pvt. Ltd. for the reason of breach committed by M/s Schindler India Private Limited, of the terms and conditions contained in the Work Order dated 25.07.2023 bearing no. PCEPL/SITE/SAFDARJUNG/WO/2023-24/149.
Kindly treat this utmost urgent.

Yours Sincerely,
Parnika Commercial & Estates Pvt. Ltd.
For Parnika Commercial & Estates Pvt. Ltd.


(Authorised Signatory) Authorised Signatory

Encl:- Bank Guarantee bearing no. 5546609346 dated 02.01.2025 in original with all extensions

TRADE OPERATIONS
CONTENT NOT VERIFIED
2025 JAN -6 P 1:21
CITIBANK N.A.
NEW DELHI

D-64, 6th Floor Himalaya House,
23, K.G.Marg, New Delhi-110001. Tel: 011-23356422
Fax: 011-23315101, E-mail : ho@parnika.co.in



18. A perusal of the invocation of the PBG shows that the respondent has categorically stated that there has been a loss/ damage caused on behalf of the petitioner due to non performance of its contractual obligations.
19. In issues relating to bank guarantees, it is not for the Courts to see whether there was a failure of the petitioner in performance of its obligations or not. The failure has to meet the opinion of the respondent alone. Mere averment in the invocation that the petitioner has caused loss/damage due to breach is good enough. The determination of the reasons of the respondent come to the opinion that the petitioner has committed breach of its obligations, is an issue which the arbitrator shall decide as and when appointed.
20. For the said reasons, there is no merit in the petition and the same is dismissed and the interim order stands vacated.
21. The petition is disposed of.

JASMEET SINGH, J

MAY 29, 2025/sp

(Corrected and released on 04.06.2025)

Click here to check corrigendum, if any