2024:CGHC:28722-DB

AFR

HIGH COURT OF CHHATTISGARH, BILASPUR

WA No. 498 of 2023

- M/s BGR Energy Systems Ltd. Having Registered Office At No. 443, Anna Salai, Teynampet, Chennai 600018 Through Its Authorized Representative G. Sankara Naarayanan, Aged 54 Years. S/o Gopalan, Working As General Manager (Legal) At BGR Energy Systems Limited, Having Its Corporate Office At 443, Anna Salai, Teynampet, Chennai -600018, Tamil Nadu

---- Appellant

Versus

1. Chhattisgarh State Power Generation Co. Ltd. Through Its Managing Director Having Its Registered Office At 1st Floor, 101, Vidyut Sewa Bhawan, Dangania, Raipur -492013, Chhattisgarh.
2. State Bank of India Through The Manager, Industrial Finance Branch, Ground Floor, KRM Plaza, No. 2, Harrington Road, Chetpet, Chennai, Tamil Nadu -600031

---- Respondent

For Appellant	:	Mr. Kartik Seth (through Video Conferencing), Ms. Ayushi Agrawal, Mr. Abhishek Gupta, Ms. Medha Shrivastava and Ms. Maithali Moondra, Advocates.
For Respondent/CSPGCL	:	Mr. Jayant Bhushan, Senior Advocate (through Video Conferencing) assisted by Mr. Abhinav Kardekar, Mr. Ayush Singh Solanki, Mr. Amartya Bhushan and Mr. Pranav Khandelwal, Advocates.
For Respondent/Bank	:	Mr. P.R. Patankar, Advocate.

WPC No. 3645 of 2023

- M/s BGR Energy Systems Limited Having Registered Office At No. 443, Anna Salai, Teynampet, Chennai 600018, Tamil Nadu Through Its Authorized Signatory Shri Ashutosh Vijay Dahihandekar, S/o Shri

Vijay Dahihandekar, Aged About 55 Years Working As General Manager (Mechanical) At Ennore, Tps Address No. 443, Anna Salai, Teynampet, Chennai 600018, Tamil Nadu

---- Petitioner

Versus

1. State of Chhattisgarh Through Its Principal Secretary, Department of Law And Legislative Affairs Mantralaya Mahanadi Bhawan, Nava Raipur, Raipur 492101, Chhattisgarh.
2. Chhattisgarh State Power Generation Co. Ltd. Through Its Managing Director, Having Registered Office At 1st Floor, 101, Vidyut Sewa Bhawan, Dangania, Raipur 492013, Chhattisgarh.

---- Respondents

(Cause Title taken from Case Information System)

For Petitioner	:	Mr. Kartik Seth (through Video Conferencing), Ms. Ayushi Agrawal, Mr. Abhishek Gupta, Ms. Medha Shrivastava and Ms. Maithali Moondra, Advocates.
For Respondent/State	:	Mr. Y.S.Thakur, Additional Advocate General
For Respondent/CSPGCL	:	Mr. Abhinav Kardekar & Mr. Ayush Singh Solanki, Advocates.
Date of Hearing	:	24/07/2024
Date of Judgment	:	02/08/2024

Hon'ble Mr. Ramesh Sinha, Chief Justice
Hon'ble Mr. Ravindra Kumar Agrawal, Judge

C.A.V. Judgment

Per Ramesh Sinha, Chief Justice

1. Since parties to the petition as well as in the appeal are same and the issue is also related to each other, thus, they are being disposed of by this common judgment.

2. The writ petitioner {in WP(C) No. 3645 of 2023} has prayed for the following reliefs:

> *10.1 Issue a writ of mandamus or any other appropriate writ, order or direction in the nature thereof, declaring Section 17A of the Chhattisgarh Madhyastham Adhikaran Adhiniyam, 1983 as illegal and deserves to struck down;*
>
> *10.2 Issue any other appropriate writ, order or direction as the nature and circumstances of the present case may require;*
>
> *10.3 Pass any further order(s) as this Court may deem fit and appropriate."*

3. In WA No. 498/2023, the appellant-writ petitioner seeks to challenge the order dated 28.11.2023 passed by the learned Single Judge in WPC No. 1992 of 2023 wherein the appellant/writ petitioner had prayed for restraining the respondent-Chhattisgarh State Power Generation Company Ltd. (*for short, the CSPGCL*) either from invoking or enacashing the bank guarantees (for short, the BGs). By this appeal, the appellant/writ petitioner seeks for the following relief(s):

> *"A. Allow the instant appeal and set aside the judgment dated 28.11.2023 passed by the Hon'ble the Single Bench of this Hon'ble Court in Writ Petition (C) No. 1992/2023 (Annexure A/1) titled as M/s BGR Energy Systems Limited vs. Chhattisgarh State Power Generation Co. Ltd. and Anr. & grant the reliefs prays in the writ petition.*
>
> *B. Grant stay of invocation of Bank Guarantees in question dated 17.09.2009 (as extended from time to time) amounting to Rs. 163.37 Crores as an interim measure till the final adjudication of the dispute before the State Arbitration Tribunal under the Madhyastam Act; and/or*
>
> *C. Any other relief, which this Hon'ble Court may deem fit be awarded to the Appellant including the cost of the petition in the interest of Justice, Equity and Good-Conscience*."

4. The facts, in brief, as projected by the appellant/ writ petitioner is that it is a Company incorporated under the Companies Act, 1956 and is engaged in the business of execution of various projects, including large scale projects, primarily in the area of power and oil and gas sectors. The respondent-CSPGCL was formed upon reorganization

of the Chhattisgarh State Electricity Board (for short, CSEB) in 2008 by the Government of Chhattisgarh vide notification dated 19.12.2008 in accordance with the provisions contained in the Electricity Act, 2003. Respondent No. 2 is the branch of the Bank through which the appellant had furnished the BGs with the respondent-CSPGCL.

5. The facts, projected by the appellant/writ petitioner before the learned Single Judge was that the appellant on being successful was awarded contract by respondent-CSPGCL and pursuant thereto two separate Letter of Awards (LOA) bearing No.03-05/ Marwa/ BOP/T- 1/09/2087 dated 25.8.2009 and No.03-05/Marwa/BOP/T-01/09/2088 dated 25.8.2009 were issued to appellant. LOAs were for the purpose of design, engineering, manufacturing, shop fabrication, assembly, inspection and testing at supplier's / sub-contractor's works, packing, forwarding to site of all equipment / materials for Balance of Plant (BOP) Package for 2x500 MW Marwa Thermal Power Project. Total cost of both the works was Rs.941.8498 Crores and Rs. 691.86 Crores respectively. Period for completion of work of contract, as per LOAs, was 30 months from the date of LOA. As the appellant could not complete the works awarded within stipulated period and therefore, on the request of appellant, time for completion of work mentioned in LOAs was extended from time to time with conditions. Trial operation certificate was issued by respondent No.1 in favour of appellant in the year 2018. Thereafter, appellant entered into supplementary agreement for BOP to supply, erect and trial operate the balance equipment / systems and to provide services. On 24.1.2023, appellant wrote letter to respondent-CSPGCL and requested for release of amount of Rs.129.37 Crores payable to it as also for release of performance BGs. On 06.03.2023 respondent-CSPGCL wrote letter for invocation of BGs amounting to Rs.163.37

crores. After coming to know the action on the part of respondent-CSPGCL with regard to invocation of BGs, appellant filed writ petition before the High Court of Madras and obtained an interim order on 27.4.2023, but later on that writ petition was dismissed for want of jurisdiction. Thereafter, the appellant-Company filed WPC No. 1992 of 2023 which was dismissed by the learned Single Judge vide order dated 28.11.2023 which is sought to be challenged in this appeal.

6. With respect to WPC No. 3645/2023, Mr. Kartik Seth, learned counsel for the writ petitioner submits that the writ petitioner is basically seeking mandamus to strike down Section 17-A of the Chhattisgarh Madhyastham Adhikaran Adhiniyam, 1983 (*for short, the Adhiniyam of 1983*) being contradictory and destroying the basic structure of the Constitution of India thereby violative of Article 14, 19(1))(g) and 21. He would further submit that Section 9 and 17 of the Central Act i.e. the Arbitration and Conciliation Act, 1996, gives powers to the Courts and the Arbitral Tribunal to grant interim measure / award, respectively. However, Section 17-A of the Adhiniyam of 1983, specifically takes away / prohibits the power of the Arbitral Tribunal to grant interim award. The same is in contravention with each other. He would also submit that Section 17-A of the Adhiniyam of 1983 is *ultra vires* and and violates the Central Act. The Adhiniyam of 1983 is applicable only to the disputes where State Government, a Public Undertaking, wholly, or substantially owned or controlled, by the State Government, is a party, and for matters incidental thereto or connected therewith. Therefore, any party getting into a dispute with respect to a “works contract” as defined in the Adhiniyam of 1983 shall have no interim remedy as Section 17-A of the Adhiniyam of 1983 prohibits the same. The said classification is against Article 14 of the Constitution of India and there is no nexus between the said

classification and the intention of the Central Act. Therefore, Section 17-A of the Adhiniyam of 1983 is not in *pari passu* with the Central Act. He contended that due to Section 17-A and 20 of the Adhiniyam of 1983, any party, of a works contract, being aggrieved by the acts/omissions of the State Government or Public Sector Undertaking cannot approach the Arbitral Tribunal / Courts for any interim measure, which helps in securing the goods and amount in question and also helps in appointment of receivers. Therefore, the petitioner approaches this Court to strike down Section 17-A of the Adhiniyam of 1983 as *ultra vires* and unconstitutional.

7. Mr. Seth would further submit that by virtue of Section 20 of the State Act which bars the jurisdiction of the Civil Courts a party to the dispute, like the writ petitioner, is barred from approaching the Civil Court to obtain an interim order under Section 9 of the Central Act. Therefore, reading Section 17A and Section 20 of the State Act, a party of the dispute like the writ petitioner cannot get any interim measure of protection or any interim order from any Civil court or from the Arbitral Tribunal under the State Act.Thus, a party to a dispute like the Petitioner is deprived of a valuable right of obtaining an interim order from a judicial forum. The judicial power vested in the Civil Court is distinguished from the executive power and the legislative power. A legislation, even if it is passed by competent legislature cannot interfere with the judicial power. Legislation may restrict the judicial power of Civil Courts only if the same legislation creates a special forum which can exercise an equivalent judicial power. The arbitral process is normally accompanied by certain procedural safeguards such as interlocutory or interim measures that safeguard parties during the pendency of proceedings Further, the parties can engage in dilatory tactics to delay proceedings or prejudice the rights of the

opposite parties by *inter alia* dissipating assets or interfering with the final adjudication as the same can be frustrated in case of no interim measure Therefore, the final relief granted by a tribunal may be rendered nugatory or meaningless unless the arbitral tribunal or court is able to safeguard the rights of parties during the pendency of the arbitral proceedings. Therefore, in the intervening period between juncture at which the 'dispute arose and till the execution of the award, certain interim measures are necessary to protect a party's rights. However, Section 17A of the State Act defeats the same. Thereby making it ultra vires. Hence, this writ petition.

8. In WA 498/2023, Mr. Seth would submit that the learned Single Judge has passed the impugned final order without application of judicial mind and without taking into account the financial condition of the appellant at present. The respondent-CSPGCL has invoked the BGs furnished by the appellant without any justification, without informing the appellant and without quantifying the damages allegedly suffered by the respondent-CSPGCL. No reason was given for invoking the BGs after the contract had been fully and satisfactorily performed. The learned Single judge has erroneously vacated the stay vide impugned final order irrespective of the fact that as per Clause 34.2 of the General Conditions of Contract (for short, the GCC) the Contract Performance Security (*for short, the CPS*) is required to be returned to the contractor without any interest 60 days after successful completion of the Defect Liability Period. Furthermore, in Clause 34.3 of the GCC, it has been provided that the CPS is intended to secure the performance of the entire contract. Since the trial operation certificate had been issued, defect liability period was over, the contract was deemed to have been completed under clause 13 of the GCC, and the commercial operations had also commenced. Thus,

there was no reason or justification for invocation of BGs on the part of the respondent-CSPGCL. The BGs in the present case was a contract performance guarantee for faithful performance of the entire contract. Thus, once the contract was completed, there can be no reason or justification for invoking the BGs. Furthermore, no reason or justification has been accounted for in the letter of invocation dated 06.03.2023 issued by the respondent-CSPGCL. The learned Single Judge has failed to consider that even if the supplementary agreement was in place, the respondent-CSPGCL never assigned a single reason for invocation of BGs. Furthermore, the learned Single Judge, vide the impugned order, accounted for the exceptions in case of invocation of BGs. However, still the learned Single Judge has failed to give effect to the exception applicable in the present case.

9. Mr. Seth would submit that the respondent-CSPGCL had never served the appellant with any notice of actual levy of liquidated damages or breach of contract was ever sent and the commercial operation of both the units of the plant was commenced in the year 2016 and the power is being generated since then. The defect liability period (as defined in clause 1.30 of the GCC) ended on 07.08.2019 and the punch points indicated by the respondent-CSPGCL were also duly attended to. Hence, the appellant requested the respondent-CSPGCL on 24.01.2023 seeking closure of the contract and release of the BGs. The outstanding amount which the respondent-CSPGCL was required to pay was to the tune of Rs. 127.29 crores. However, the respondent-CSPGCL issued letter for invocation of BGs to the respondent-Bank without informing the appellant and without quantifying the damages allegedly suffered by respondent-CSPGCL. Neither any reason has been given for invoking the BGs after the contract had been fully and satisfactorily performed.

10. Mr. Seth would next submit that the appellant has already filed a Reference Petition before the State Tribunal Act under the Chhattisgarh Madhyastham Adhikaran Adhiniyam 1983 (*for short, the Act of 1983*). However, under Section 17A of the Act of 1983, there is an express bar on grant of interim injunction by the Tribunal. In case the BGs are invoked by the respondent-CSPGCL in the absence of such injunction, the same will cause irretrievable injury to the appellant-Company. The learned Single Judge, in the impugned judgment, has emphasised upon the fact that the BG was an unconditional one and thus any such demand made by the owner on the Bank shall be conclusive and binding notwithstanding any difference between the owner and the contractor. However, at the same time, the learned Single Judge ought to have appreciated the exceptions provided by the Hon'ble Supreme Court in various judgments relied upon in the writ petition. The exception of irretrievable injury applies in the present case irrespective of the unconditional nature of the BGs. Invocation of BGs in the present case not only involves irretrievable injury, but also existence of special equities which has been laid down as the third exception to the general rule of invocation of BGs by the Hon'ble Supreme Court in ***Standard Chartered Bank v. Heavy Engineering Corporation Ltd. & Another*** {(2020) 13 SCC 574 at para 23 and 26}. The Hon'ble Supreme Court, in ***Gangotri Enterprises Ltd. v. Union of India & Ors.*** {(2016) 11 SCC 720} granted injunction in favour of the petitioner therein as the sum claimed by the respondent in that case in the nature of damages had not yet been adjudicated upon in arbitration proceedings.

11. Even though, the learned Single Judge was apprised of the judgment passed by this Hon'ble Court in ***S.S. Chhatwal and Company***

(Contractor) Private Limited v. National Thermal Power Corporation Limited (NTPC) {2022 SCC OnLine Chh 72} wherein the respondents therein were restrained from encashing the bank guarantee on the ground that in a given case if the party is able to make out an exceptional case at the same time if the court finds that an irretrievable injustice would occur in the event if the writ jurisdiction is not invoked by the court, at a given moment of time, the High Courts do have the power to entertain the writ petition. The present case not only involves irretrievable injury, but also existence of special equities which has been laid down as the third exception to the general rule of invocation of Bank guarantee by the Hon'ble Supreme Court in ***Standard Chartered Bank v. Heavy Engineering Corporation Ltd. & Another*** {(2020) 13 SCC 574 at para 23 and 26}. The said judgment has been followed by the Hon'ble Delhi High Court in ***Hindustan Construction Company Limited v. National Hydro Electric Power Corpn. Ltd.*** {2023 SCC OnLine Del 819}. The act of invocation of the BGs without any reason to do so is clearly an arbitrary act. The respondent-CSPGCL has demanded payment of the BGs in its favour by mentioning "due to non-compliance of contractual conditions".

12. Till date, the respondent-CSPGCL has not assigned in any communication/or letter, instances of non-compliance of the contractual conditions. The learned Single Judge has erroneously relied upon the unilaterally prepared Committee Report dated 23.01.2023, wherein the respondent-CSPGCL has attributed the delay in completion of the BOP package to the appellant and has proposed to levy liquidated damages. It is important to point out here that the said Committee Report was never communicated to the appellant. It was a self-serving report and thus, any reliance upon that

committee report is absolute bias and frivolous. The claims of the appellant for the outstanding amount claimed by the appellant and the counter claim, if any, of the respondent-CSPGCL for 'liquidated damages' is pending adjudication and shall be decided in the arbitration proceedings. In case the final decision of the Arbitral Tribunal is in favour of the appellant and it is found that the appellant does not owe any money to the respondent-CSPGCL and in the meanwhile the BGs are encashed, it would cause grave irretrievable injury to the appellant. The case of the a appellant herein squarely falls within the exception of special equity. In a similar case, the Hon'ble Madras High Court in ***Chennai Metro Rail Limited vs. Transtonnelstroy - Afcons (JV) & Ors***. {2021 SCC OnLine Mad 5637} has observed that a balancing act will have to be done in that case as admittedly the appellant therein had not crystallized its losses and there was no break-up details given by it for its alleged losses and there was also no prima-facie evidence to show that the respondents owe the appellant the BG value. In the present case also, the claim of the respondent-CSPGCL for liquidated damages has not been adjudicated or crystallized. The judgment of the Hon'ble Madras High Court has been affirmed by the Hon'ble Apex court vide its order dated 13.05.2022 passed in SLP (C) No. 8553 of 2022 "***Chennai Metro Rail Limited v. Transtonnelstroy - Afcons (JV) & Another***.

13. Mr. Seth would also submit that the observation of the learned Single Judge that it is not the case of appellant that it will not be in a position to recover the amount of BGs if it succeeds in arbitral proceeding is also misplaced. On the contrary, the appellant has made its case clear that in case the said BGs are encashed, the net worth of the appellant would stand wiped out.

14. The learned Single Judge has further failed to appreciate the ratio laid down by the Hon'ble Calcutta High Court in ***KSE Electricals Pvt. Ltd. v. Project Director, Bangladesh Rural Electrification Board & Anr***. {2021 SCC OnLine Cal 2986}, where the State entity invoked the bank guarantee 3 years after completion of the supply of goods and more than 2 years after expiry of guarantee. The learned Single Judge ought to have taken into consideration the decision of the Supreme Court in ***M/s. Gokul Krishna Construction P. Ltd. & Anr. v. State of Chhattisgarh & Ors.*** {Civil Appeal No. 6057 of 2015} wherein the Hon'ble Apex Court recognized the fact that the State Tribunal under the Act of 1983 does not have the power to grant any interim relief. On this ground and on the ground that the disputes between the parties were under adjudication before the Tribunal, the Hon'ble Supreme Court stayed the encashment of the fixed deposits till the final disposal of the disputes. The fixed deposits were given as security for performance of the contract.

15. Mr. Seth would also argue that the crucial fact regarding financial condition of the appellant has been overlooked by the learned Single Judge and that in case BGs are encashed, it will immediately add to the liabilities of the appellant. The appellant has made losses in the years ending 31.03.2022 and 31.03.2023. The total assets of the appellant were Rs. 4955.44 crores and the total liabilities were Rs. 4863.56 crores. Thus, the net worth was only Rs. 91.88 crore. If the BGs are invoked, the responent-Bank will immediately debit the account of the appellant in a sum of Rs. 163 crore and the net worth of the appellant will become negative. The appellant will face huge challenges including IBC proceedings. Thus, there will be irreversible injury in case invocation of the BGs are not stayed.

16. As far as delay in completion of the project is concerned, the learned Single Judge has failed to consider the fact that the same was getting delayed on account of reasons beyond the control of the appellant which were genuine and partly attributable to respondent-CSPGCL and partly to other contractors working on the main plant and other works. Accordingly, respondent-CSPGCL granted several times extension to the appellant for completion of the BOP. Hence, time was not of the essence in the supply of BOP. At no point of time, in the writ petition, was the respondent-CSPGCL able to place on record any instance of dispute raised or notice issued to the appellant regarding actual levy of liquidated damages or breach of contract. As defined in Clause 1.30 of the GCC, defect liability period had ended after 12 months from successful completion of Trial Operation. It is pertinent to reiterate that the Trial Operation certificate was issued by the Respondent No. 1 on 07.08.2018. Thus, Defect liability period ended on 07.08.2019. Further, as per Clause 13 of the GCC, the contract is deemed to have been completed on the expiration of the Defect Liability Period. Thus, once the contract was completed, there can be no reason or justification for invoking the BGs. Hence, this appeal.

17. Mr. Abhinav Kardekar and Mr. Ayush Singh Solanki, learned counsel appearing for the respondent-CSPGCL {in WPC No. 3645/2023} would submit that the writ petitioner has majorly sought to challenge the provisions of the Act of 1983 stating that the same is inconsistent with the provisions of the Act of 1996.The State Act is *pari materia* to Madhya Pradesh Adhikaran Adhiniyam, 1983 (hereinafter referred to as "MP Act") and the Hon'ble Supreme Court of India has, in catena of judgements, upheld the validity of the MP Act and has held that the same is not inconsistent with the provisions of the Act of 1996. Since, the provisions of the Act of 1983 are *pari materia* to the MP Act, it

would substantially mean that the validity of the Act of 1983 is also settled and covered by the judgements passed by the Hon'ble Supreme Court of India in respect to the provisions of the MP Act. Thus, the instant petition is liable to be dismissed on this ground alone.

18. Section 17A of the Act of 1983 has always been the part of the Madhyastham Act since its enactment in 1983 and the same had received assent of the President of India. Further, the bar under Section 17A to grant interim relief is applicable in both irrespective of the fact that the reference before the Arbitral Tribunal is filed by the State or a private entity. Thus, the Section 17A of the Act of 1983 Act is not discriminatory in nature as it applies to all parties making reference before it. The validity of Section 17A of the MP Act (same as CG Act) was raised before the Division Bench of the Hon'ble Madhya Pradesh High Court in case of ***M/s. R.N. Tandon & Sons v. Madhya Pradesh Electricity Board & Ors***. {1996 SCC OnLine MP 327}, wherein, the Division Bench of the Hon'ble Court, after considering the provisions of the Section 17-A of the Adhiniyam has held that the same is valid and not *ultra vires* to the Constitution of India. It may be noted that this order validating the Section 17-A of the Adhiniyam, 1983 was passed by the Hon'ble Division Bench on 30.09.1996 i.e. after the enforcement of the Arbitration & Conciliation Act, 1996 and therefore, Section 17-A of the Act of 1983, being a special provision is not *ultra vires* and thus, the instant petition is liable to be dismissed on this ground alone. The findings similar to the said order passed by the Hon'ble High Court of Madhya Pradesh is also reflected in the subsequent judgements of the Hon'ble Supreme Court wherein, the Hon'ble Apex Court has upheld the validity and applicability of the provisions of the Adhiniyam, 1983 over and above

the provisions of the Arbitration & Conciliation Act, 1996. In the case of ***Madhya Pradesh Rural Road Development Authority & Anr. v. L.G. Chowdhary Engineers and Contractors***, {(2018) 10 SCC 826}, the Apex Court has upheld the validity of the Adhiniyam, 1983 and has held that in the disputes arising out of the works contract, the provisions of the Adhiniyam, 1983 would be applicable and such disputes will be resolved under the Adhiniyam, 1983 instead of the Arbitration and Conciliation Act, 1996. The issue regarding applicability of the Arbitration Act, 1996 vis-vis the applicability of the Adhiniyam, 1983 had travelled to the Hon'ble Apex Court from the Hon'ble High Court of Madhya Pradesh and the Hon'ble Courts at each stage have held that the provisions of the Adhiniyam, 1983 being special enactment, the same would apply in cases even where the agreement between the parties provide for the resolution of dispute under the Arbitration and Conciliation Act, 1996.

19. Mr. Kardekar would further submit that a of the Hon'ble High Court of Madhya Pradesh in case of ***Shri Gouri Ganesh Shri Balaji Constructions "C" Class Contractor v. Executive Engineer, PWD,*** {2018 (3) M.P.L.J} has essentially held that even the cases involving black listing of a contractor are supposed to be referred to the Madhyastham Adhikaran constituted under the provisions of the Adhiniyam, 1983 as the petitioner would have liberty to claim appropriate amount of money as consequential relief. The Hon'ble Full Bench in ***Gouri Ganesh*** (supra) was deciding the applicability of the provisions of the Adhiniyam, 1983 in cases where challenge was made to termination of contract without claiming any consequential relief. The Hon'ble Full Bench while deciding the issue had further stated that all disputes arising out of the works contract covered under the scope of the provisions of the Adhiniya, 1983, including the

challenge to black listing would be within the scope of the provisions of the Adhiniyam, 1983 and the provisions of the Arbitration and Conciliation Act, 1996 will not apply to it. This finding was given by the Hon'ble Full Bench after being aware of the fact that the Madhyastham Adhikaran constituted under the special provision of Section 17-A does not have power to grant any interim relief in form of injunction. However, even after being aware of such fact, the Hon'ble Full Bench did not find any infirmity in the provisions of the Section 17-A of the Adhiniyam, 1983 and held that the appropriate claims can be made in terms of money even in cases of blacklisting, which will be decided by the Madhyatham Adhikaran under the provisions of the Adhiniyam, 1983. Thus, the issue raised in the instant petition being covered by the catena of judgements passed by the Hon'ble Apex Court and the Hon'ble High Court of Chhattisgarh and High Court of Madhya Pradesh is now settled and therefore, the instant Petition challenging the validity of the provisions of the Adhiniyam, 1983 is liable to be dismissed on this ground alone.

20. The above judgement of the Hon'ble Full Bench clearly shows that the extent of applicability of the Adhiniyam, 1983 has been held to be valid even in cases of black listing of firm and the Hon'ble High Court has held that even in such cases, consequential claims can be made in terms of money. Similarly, the invocation of BG can be challengerd before the Arbitration Tribunal constituted under the provisions of the Adhiniyam 1983, wherein, the amount of money encashed via invoking BG can be made as a part of claim by the writ petitioner along with interest and the same will be adjudicated by the Adhiniyam. However, the writ petitioner instead of approaching the appropriate Tribunal for resolving its dispute, has filed the instant writ petition to circumvent the procedures laid in the Adhiniyam, 1983 raising issues

which have already been settled by the Courts in various judgements some of which are reproduced above in the instant reply. Thus, the instant petition is liable to be dismissed on this ground alone without granting any relief to the writ petitioner.

21. Mr. Kardekar would further submit that the only ground of challenge raised by the writ petitioner in the instant petition is with respect to difference of power of the Tribunal (Madhyastham Adhikaran) constituted under the Adhiniyam of 1983 and the Arbitral Tribunal constituted under the provisions of the Arbitration Act, 1996. However, the writ petitioner has failed to address the fact that the applicability of the State Act (Adhiniyam, 1983) has been held to be above the provisions of the Central Act by the Hon'ble Apex Court. Since, the State Act is applicable over and above the provisions of the Act of 1996, there is no requirement of the provisions of the State Act to be pari materia with the provisions of the Central Act. Even the specific Section 17- A restricting the State Tribunal to grant interim relief by way of granting injunction has held to be valid by the Full Bench of the Hon'ble High Court of Madhya Pradesh in ***R.N.Tandon & Sons*** (*supra*) and therefore, the issue being settled by the courts cannot be now challenged by the petitioner to further its ulterior motive of delaying encashment of BGs by the respondent/CSPGCL.

22. The Adhiniyam, 1983 has received assent of the President and was still in existence at the time of enactment of the Arbitration Act, 1996. Further, even while enactment of Arbitration Act, 1996, no stipulation was made to make the provisions of the 1983 Act ineffective. On the contrary, Section 2(4) of the 1996 Act clearly saves and makes provision for the applicability of the special enactments, like the Act of 1983 provides that the provisions of the Arbitration Act, 1996 will deem to apply to such special enactments unless the provisions of

1996 Act are contrary to the provisions of such special enactments. A Division Bench of the Madhya Pradesh High Court, in ***M/s. Bhanu Kumar Jain v. State of Madhya Pradesh*** {WP No. 3138 of 1997}, while deciding the vires of the Adhiniyam, 1983 vis-à-vis Arbitration Act of 1996 has essentially held that the provisions of Section 2(4) of the Act of 1996 saves the provisions of the Adhiniyam, 1986. Further, this case was also upheld by a Full Bench of the Hon'ble High Court of Madhya Pradesh and the principles regarding validity of Adhiniyam, 1986 were followed in case of ***Mohan Agrawal Construction Co. v. Union of India*** {2012 SCC Online MP 5561}. From the catena of judgements referred above, it is crystal clear that the validity of the provisions of the Adhiniyam, 1983 have been upheld by the Hon'ble Courts even after enactment of the Act of 1996. The Act under challenge in the present petition is not a standalone Act and similar Act is applicable in the State of Madhya Pradesh and the State of Gujarat. Further, in all the States, the special Acts have been held to be applicable even after the enactment of the Arbitration Act, 1996 and therefore, the provisions of the Adhiniyam of 1983 are not *ultra vires* to the Constitution or to the provisions of the Arbitration and Conciliation Act, 1996.

23. Mr. Kardekar would also submit that the petitioner in its interim application has sought for stay on the effect of the operation of the Section 17-A of the Act of 1983 which is the prayer made by it in its original petition. Thus, the interim prayer sought by the petitioner being similar to that of the main prayer cannot be granted at an interim stage as granting of such prayer would essentially mean the granting of prayer sought in the main petition. The petitioner has failed to show any *prima facie* case, irreparable injury that will be caused to it if interim relief is not granted and has merely sought for such relief

without raising any substantial grounds and therefore, the interim relief sought by the petitioner is liable to be rejected on this ground too.

24. Mr. Y.S.Thakur, learned Additional Advocate General appearing for the State/respondent No. 1 {in WPC No. 3645/2023}, while concurring with the submissions made by Mr. Kardekar, would submit that the issue raised by the writ petitioner stands decided by the Madhya Pradesh High Court in ***R.N.Tandon & Sons*** (supra) and as such, this petition deserves to be dismissed. He further submits that the Hon'ble Supreme Court has settled the law with respect to challenge to a statutory provision being ultra vires on the following grounds, viz. (i) if the statutory rule or act violates any fundamental rights enshrined in the Constitution (ii) if the legislature enacts a rule or Act on a subject that falls outside its jurisdiction (iii) if a Rule or Act is found to be unreasonable, arbitrary or capricious, and, (iv) there is always presumption over constitutionality of a statute duly passed by the appropriate legislature. In case, due to implementation of any legislation, certain constitutional rights are violated, then only a writ may lie. None of the said condition exists in the present case.

25. Mr. Thakur further submits that the petitioner has challenged Section 17A of the Adhiniyam of 1983 by which the inherent powers have been given/provided to the tribunal which contains a non-obstante clause as it begins with the words "nothing in this Act" which means that this provision is an overriding provision. The aforesaid provision leaves no manner of doubt that none of the provisions of the Adhiniyam of 1983 limits or restricts the exercise of inherent power by the Tribunal which is necessary for and sub justice or to prevent abuses of process of the tribunal. The aforesaid enactment has been made in order to resolve the dispute between the parties. The present

is a commercial dispute where the Adhiniyam of 1983 vide Section 16(2) stipulates that the Tribunal shall as far as possible may pass award within four months from the date of service of reference on opposite party. The specific time limit has been provided so that the commercial disputes may be resolved at the earliest. The proviso to Section 16(1) clearly provides that the tribunal may pass an interim award. Thus, there is already a safeguard provided to the parties to the disputes where the Tribunal can consider and decide the claim of the parties appeared before it.

26. According to Mr. Thakur, so far as the bar under proviso to Section 17A for not passing an interim order by way of injunction, stay, or attachment before the award is fully justified with respect to the present facts and circumstances of the case where the Arbitral Tribunal has been constituted in order to resolute the commercial dispute within a short span of time. Thus, it is clear that the intention of the legislature is to finalize the commercial dispute as early as possible so that the benefits of final award may be provided to the parties concerned. At the same time, the legislature has also provided safeguards by way of granting interim award if it is necessary in favour of the respective parties. Thus, there is no violation of any fundamental or statutory right of the petitioner therefore, the present writ petition has no merit and the same is liable to be dismissed.

27. Mr. Jayant Bhushan, learned counsel appearing for the respondent-CSPGCL {in WA No. 498/2023} submits that the learned Single Judge has already adjudicated and passed the order in favour of the respondent-CSPGCL after considering all the relevant facts and circumstances of the case and all the issues raised in the instant appeal were already thoroughly examined. The appellant had entered into a contract dated 30.09.2009 with the respondent-CSPGCL

pursuant to issuance of two separate LOAs bearing No. 03-05/Marwa-BOP/T-01/09/2087 dated 25.08.2009 for design, engineering, manufacturing, shop fabrication, assembly, inspection and testing at supplier's/sub contractors work, packing to site of all equipment for Balance of Plant package for 2X500MW Marwa Thermal Power Project and bearing No. 03-05/Marwa-BOP/T-01/09/2088 dated 25.08.2009 for services for civil works, structural steel fabrication and erection, architectural and other building service works, roads and drains etc. as specified including supply of steel, cement and other construction materials, transportation, insurance and complete taxes and duties, installation, Testing & commissioning, guarantee test for complete BOP package for 2X500MW Marwa Thermal Power Project, which shows that the nature of work is pertaining to the Works Contract'. Thereafter, the appellant entered into a supplementary agreement dated 07.08.2018 with the respondent-CSPGCL for Balance of Plant Packages to supply, erect and trial operate the balance equipment/systems and to provide the services remaining pending as on 07.08.2018. As per the said agreement, the parties were bound by Clauses 17.2 to 17.9 of the GCC, and any other relevant provision of the contract, and such terms/conditions/provisions shall apply *mutatis mutandis* to the balance equipment. The contractor was required to furnish a CPS in the form of irrevocable BGs in favour of respondent-CSPGCL. The aforesaid agreements succinctly provides for an unfettered right in favour of the respondent-CSPGCL to recover any damages that it may suffer as a consequence of the contractor's failure to perform the contract, liquidated or otherwise, from such BGs.

28. Disputes arose as the appellant failed in completing the contract in due time causing material breach of contract, resulting in respondent-

CSPGCL exercising its right to levy liquidated damages by invoking the said BGs. Both the LOAs, GCC and the supplementary agreement unequivocally sets out that the appellant shall furnish a performance security in the form of BG which will be equal to ten percent of the value of respective contracts/ LOAs to secure the faithful performance of the entire contract. Further, Clause 34 of the GCC clearly lays down that such contract performance security shall be payable to the owner without any condition whatsoever and these securities shall be irrevocable. Based on the above, two BGs bearing Nos. 7091109BG0000211 and 7091109BG0000212 were furnished by the appellant in favour of the respondent-CSPGCL. Later, as per the supplementary agreement the validity of the aforementioned BGs were extended and further supplemental BG was furnished by the appellant. The said BGs are unconditional and irrevocable and provide an unfettered right to the respondent-CSPGCL to encash such BGs at its option.

29. Mr. Bhushan would submit that BG 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 BG was given and the beneficiary. Subject to limited exceptions, the beneficiary cannot be restrained from encashing the BG as long as it is an unconditional and irrevocable one even if the dispute between the beneficiary and the person at whose instance the BG was given by the bank had arisen in the performance of the contract. Mr. Bhushan would also submit that it is amply clear from the terms of the BGs issued in the instant case in favour of the respondent-CSPGCL, Beneficiary under the BGs that they were absolute, unconditional and irrevocable. The respondent-CSPGCL hence, on assessment of liquidated damages suffered by it

on account of delay in completion of project/ entire works by the appellant invoked the aforesaid BGs furnished by the appellant on 06.03.2023, by issuing a letter to the respondent-Bank. The said invocation of BGs was done based on a report submitted by a Committee of four members, determining as to whom delay was attributable and the quantum of liquidated damages incurred. The BGs are bilateral contracts between the Bank and the beneficiary, i.e. respondent-CSPGCL, even if they were issued at the instance of the appellant. The appellant is not a party to the BGs. It is, therefore, legally a stranger to the contract, insofar as the BGs are concerned.

30. In the instant case, the terms of the BGs states that the bank guarantee was being provided, "having agreed to provide a contract Performance Guarantee for the faithful performance of the entire contract equivalent to Rs. 69,18,60,000, 10% of the said value of the contract to the owner". This recital does not make the fact of compliance or non-compliance by the contractor, i.e. by the Appellant, of its obligations under the agreement with respondent-CSPGCL, a relevant consideration, where the aspect of invocability of the BGs is concerned. The opening recital identifies the purpose for providing of the BGs as ensuring compliance by the contractor i.e. by the appellant, of its obligations under the agreement with respondent-CSPGCL, the only condition requiring fulfilment, by respondent-CSPGCL, to be entitled to the benefit of the BGs is to make a demand of monies payable by the contractor.

31. It is important to note the specific stipulation, in the BG that the only requirement to be met by respondent-CSPGCL was raising of a demand on the Bank, stating that the amount claimed was required to be payable by the contractor on demand. Hence once such a statement was made, the Bank was required to honour the BG and

legally cannot go behind the statement seeking to verify whether the statement was right or wrong. No equities could sway in favour of the appellant in such a situation, predicated on the terms of the contract, breach of the contract, default or absence of default, etc. The appellant cannot, in such circumstances, seek to come between the two independent contractual parties, namely the Bank and respondent-CSPGCL, in the matter of performance of the contract between those parties, to which the appellant is a stranger.

32. Mr. Bhushan would further submit that in the original contract as it is, have not been made conditions governing honoring of the BGs by the Bank. The BGs dated 17.09.2009 merely require respondent-CSPGCL to demand the Bank, the amount governed by the BG and the Bank would become immediately liable to transfer such amount to it. Once such a demand, with such a statement, is made by respondent-CSPGCL, the demand is conclusive regarding the amount covered thereby and operates proprio vigore, rendering the bank liable to honor the BG and to pay, to Respondent No. 1, the amount covered by the BG, as demanded by it. Both the BGs are equally categorical in stipulating that the demand by Respondent No.1 would be conclusive regarding the liability of the bank, notwithstanding any dispute raised by the contractor, i.e. the appellant. The grievance between the appellant and respondent-CSPGCL being relatable not to the covenants of the BG, but to the covenants of the parent agreement between the appellant and respondent-CSPGCL would have to be decided on the basis of the appropriate legal remedy in that regard by arbitration under Clause 52 of the General Conditions of the Contract. It is humbly reiterated that the BG is in itself a separate contract and as the terms of the BG has not been contravened with by the respondent-CSPGCL, the appellant

cannot pursue for restraining the invocation of the BGs against the respondent-CSPGCL as it was not technically privy to the BGs which was essentially between the Respondent No. 1 and the Bank. Further, there is no dispute that the letter dated 06.03.2023, from respondent-CSPGCL to the Bank specifically stated that the amount claimed was payable due to non-compliance of contractual conditions on the part of appellant and henceforth demanded the same. The contractual pre-condition in the BGs, thereby, stood completely satisfied. The Bank became, thereby, bound, by law, to credit the amount covered by the BGs into the account of respondent-CSPGCL. Since the invocation of the BG by the beneficiary thereof is in terms of the BG, there is no requirement under law to restrain the Bank from honoring the BG, by referring to the covenants in the contract between the contract awardee and the beneficiary of the BG. Moreover, there is no case for restraining the invocation of the subject BGs, consequent on the letter of invocation dated 06.03.2023 issued by respondent-CSPGCL to the Bank. The stipulation in the letter of invocation to the effect that the amount claimed was payable due to non-compliance of contractual conditions on the part of appellant satisfied the pre-invocation requirement as contained in the BG. Once respondent-CSPGCL made the requisite statement in terms of the BGs, the Bank is bound by law to credit the amount covered by the BGs into the account of respondent-CSPGCL. Subsequently, whether there is, in fact, compliance or non-compliance of the contractual conditions; is not within the scope of inquiry of either the Bank or the Hon'ble Court.

33. Any reference to the original dispute between the parties, relating to the performance of the contract, is completely irrelevant, insofar as the issue of stay of invocation of the BGs is concerned. That dispute has necessarily to form substratum of an entirely different proceeding,

which is to be resolved by arbitration under the terms of the original contract. Mr. Bhushan would thus submit that it would be within the scope of inquiry in the arbitral proceedings. The appellant herein has admittedly already approached the State Arbitral Tribunal for the adjudication of its claims. After getting knowledge of action on the part of respondent-CSPGCL of invocation of BGs, the appellant herein filed a writ petition before the High Court of Madras which was dismissed for want of jurisdiction. Thereafter, appellant filed a W.P(C) No. 1992 of 2023, before this Hon'ble High Court, which was dismissed vide a detailed order dated 28.11.2023; stating that the appellant's case lacked merit and had no good ground to grant a relief of restraining respondent-CSPGCL from either invoking or encashing the BGs which is under challenge in this appeal.

34. Mr. Bhushan would further argue that the Hon'ble Single Bench has in detail discussed the law on invocation of BGs stating that the interference by the Courts restraining the employer to invoke BG is only in exceptional circumstances, which are (i) fraud; (ii) irretrievable injury/harm. Further, in light of the facts in hand and the established law, the Hon'ble Single Bench found that both the conditions were not met with, in the instant case, and hence concluded that there was no good ground to grant relief to the Appellant. The learned Single Judge has relied on the decisions of the Supreme Court in ***U.P. State Sugar Corporation v. Sumac International*** {(1997) 1 SCC 568}, ***Dwarikesh Sugar Industries Ltd. v. Prem Heavy Engineering works (P) Ltd.*** {(1997) 6 SCC 450}, ***Vintech Electronics v. HCL Infosystems Ltd.*** {(2008) 1 SCC 544}, and dismissed the writ petition. Even it is not a case where the appellant has pleaded any ground of fraud against the respondent/CSPGCL. It has further failed to establish the case of 'irretrievable injury'. The appellant has merely

pleaded that it's case falls within the scope of 'special equities' and hence there is no valid reason to invoke the BGs.

35. The appellant has not been able to establish its case of falling under the exception of special equity backed by irretrievable injustice. The Hon'ble Supreme Court in the case of ***BSES Ltd. v. Fenner India Ltd***., {(2006) 2 SCC 728} held that: "The second exception to the general rule of non-intervention is when there are "special equities" in favour of injunction, such as when "irretrievable injury" or "irretrievable injustice" would occur if such an injunction were not granted." Hence, the special equities, if pleaded, have to be in the nature of irretrievable injustice. The appellant's case does not come under the purview of second exception as in any event, even if the BGs were to be invoked, it would always be open to the appellant to seek restitution in the arbitral proceedings thus there the appellant does not become remediless in any case and even on the test of irreparable injustice, no case for grant of any stay or injunction can be said to exist.

36. Another limb of argument of the appellant is that if the final decision of the Arbitral Tribunal is in favour of the appellant and if it is found that the appellant does not owe any money to the respondent/CSPGCL, then encashment of BGs will cause irretrievable injury. It is noteworthy to mention that it is not the case of appellant that appellant will not be in a position at all to recover the amount of BGs if it succeeds in arbitral proceeding by way of restitution. The appellant is having remedy under the Adhiniyam, 1983 which Appellant has already invoked by filing a reference petition and therefore, no relief, as claimed in this writ appeal, can be granted to appellant. The Hon'ble Supreme Court in the case of ***UP State Sugar Corporation*** (supra) had not even considered reference of a company under the Sick Industrial Companies Acts (SICA) as amounting to irretrievable

injustice. In case of ***Dwarikesh Sugar Industries Ltd***. (supra), the Hon'ble Supreme Court observed that the Court should restrain from granting injunction in routine practice. In the present case, the appellant has miserably failed to abide by the terms of the contract it entered with the respondent/CSPGCL due to which the project of respondent/CSPGCL was delayed beyond any reasonable period and is till incomplete even after a decade of the prescribed completion date. Clause 19 of the 'Instruction to Bidders' signed between the appellant and the respondent/CSPGCL provided that the overall completion of the awarded works shall be done by the appellant within 30 months from the date of issue of letter of award. Further, clause 5 and clause 4 of the LoA dated 25.08.2009 issued to appellant by the respondent/CSPGCL provided that the appellant shall complete the balance of plant within 30 months from the date of LoA. Clause 3.3 of the agreement dated 30.09.2009 signed between the appellant and the respondent/CSPGCL provided that the time is the essence of the contract and the agreed schedule as provided in various clauses of the contract shall be strictly adhered with. Further, the clause specifically mandated the appellant to complete the work in the schedule provided to it.

37. Even after there being a specific clause in the contract for completion of the awarded works within 30 months from the LoA and the provision that time is the essence of the Contract, the appellant herein admittedly miserably failed to complete awarded works in due time and even after ten years of awarding of contract, the works are still pending and remains to be completed. The appellant failed to complete the awarded works to it within 30 months from the letter of award and thus have violated the terms of the contract signed with the respondent/CSPGCL. The appellant has solely relied on the trial

operation certificate issued to it to contend the complete scope of work allotted to it was complete. This contention is blatantly false and self contradictory as the appellant has further admitted that it had sought extensions for completing the allotted works as recently as in 2021 which shows that the allotted works were not completed in 2018 after the issuance of trial operation certificate to appellant. As per the contract, work started on 25.08.2009 and the time stipulation under the contract for the completion of all works under both the contracts was for 30 months, which came to an end on 25.02.2012, thereafter, on multiple occasions, the appellant sought time extensions from respondent/CSPGCL herein and these time extensions were granted on each occasion with the rider of the imposition of liquidated damages on the appellant. The respondent/CSPGCL by its various orders for time extension, informed the appellant each time that time extension is being granted on the condition that respondent/CSPGCL reserves its right to impose liquidated damages at an appropriate time. Also, the request for a cost escalation will not be entertained, was also informed by the respondent/CSPGCL to the appellant in such communications. The fact that the appellant accepted the denial of its requests of cost escalation is sufficient to show that it was aware of the delays being caused by it in completing the allotted work. Further, due to delays committed by the appellant in completing the allotted works, more than 10 years have passed and the work is still pending. As such, the respondent/CSPGCL was left with no option but to get it completed from third parties at the appellant's risk and cost according to the tender conditions. In this context, since the contract is nearing completion, the respondent/CSPGCL constituted a Committee involving senior officials of its company to calculate the liquidated damages to be imposed on the appellant and this

Committee has come to a conclusion that liquidated damages strictly as per the contract conditions of 10% amounting to Rs. 180.705 Crores shall be recoverable from the appellant. This committee report was prepared on 23.01.2023 and the Respondent No.1 is within its rights to impose liquidated damages at the rate of 10% as per the contract between the parties. Mr. Bhushan relies on clauses 16.1, 16.2, 16.4 and 18 of the GCC.

38. Mr. Bhushan would also argue that the appellant is attempting to raise issues over the details of delays and other factual aspects of the contract in the writ court with sole intention to prevent respondent/CSPGCL from exercising its contractual right of invocation of BG even when the appellant was fully aware of the fact that the adjudication of such disputed can only take place in Chhattisgarh Madhyastham Adhikaran wherein a reference petition is already filed. The appellant has made a blatantly false statement that the allotted work was completed in 2018 even when the appellant itself through its series of letters, latest being issued on 26.06.2021, has requested for the extension of the contract so that it can be completed. The appellant and respondent/CSPGCL in furtherance of the allotted works had entered into a supplementary agreement dated 07.08.2018 for the balance works and the remaining punch points of the contract which had to be completed by the appellant as mentioned above. The recital Clause "C" of the supplementary agreement provides that the remaining equipment and services of main contract shall be carried out in terms of supplementary agreement. Clause D (Miscellaneous) (2) of the supplementary agreement provides that the supplementary agreement is binding upon parties and that it will be read along with the main contract and in case of conflicting terms, the terms of supplementary agreement shall supersede the terms of the

contract. Further Clause D (1) of the supplementary agreement provides for the deemed completion of the contract which is provided as the period of expiration of the Additional Defects Liability Period. Clause A (Supply of Equipment) provides that the additional defects liability period shall continue till 12 months after the acceptance of the each of balance equipment by the respondent/ CSPGCL as provided in ANNEXURE-I of the supplementary agreement. The Supplementary Agreement specifically provided that the BGs shall remain valid without any liability of the owner to pay interest till the expiry of sixty 60 days after the end of the additional defect liability period for the last of the balance equipment that is supplied, erected and trial operated by the contractor, or until the contractor completes the punch points and rectifies the defects set out in Annexure II A and Annexure II B respectively to the satisfaction of the owner, whichever is later and further it was agreed under the supplementary agreement that the owner shall be entitled to recover any damages that it may suffer as a consequence of the contractor's failure to perform the contract, liquidated or otherwise, from such BGs and hence there is no supersession of the contract as wrongly alleged by the appellant.

39. Mr. Bhushan would next submit that even when the respondent/CSPGCL had communicated to the appellant that it is saving its right to impose liquidated damages on appellant due to its failure in completing the contract in due time, the appellant never objected to such communications of the respondent/CSPGCL wherein, the rights of respondent/CSPGCL to levy liquidated damages were saved and continued to accept the payments from the respondent/CSPGCL against the works done by it. The fact that the appellant never objected to respondent/CSPGCL reserving its right to levy liquidated damages shows that the appellant was well aware of

the material breach of contract being committed by it by not completing the awarded works in due time. Since the appellant failed to complete the allotted works in due time and the fact that the respondent/CSPGCL herein had suffered and was continuously suffering huge losses, the respondent/CSPGCL, in order to secure its interest proceeded with invocation of the unconditional BGs submitted by the appellant to secure its interest and to recover the losses suffered by it. Further, such invocation of BG was also in consonance with the terms of the contract which provided that the BGs are unconditional and are to secure the entire performance of the contract. The respondent/CSPGCL, in its letter dated 04.09.2012 had clearly informed the appellant regarding imposition of liquidated damages due to the delay in completion of the work by the appellant and had requested the appellant to submit BGs to the extent of 10% of the contract value in lieu of the amount to be recovered by imposing liquidated damages. The appellant in its reply to the above letter submitted that the securities already kept with the respondent/CSPGCL may be considered for the sought BGs. This shows that the appellant was well aware of the fact that the liquidated damages will be imposed on it due to delay in completion of the work. Further, the appellant in its most recent letter dated 24.01.2023 specifically requested the respondent/CSPGCL to not levy liquidated damages which shows that the appellant had complete knowledge regarding levy of liquidated damages on it due to delay caused by it in completing the allotted works. Thus, the action of invoking the BGs is not in violation of the agreements entered between the parties or any other applicable laws.

40. Mr. Bhushan would lastly submit that the appellant clearly has alternate remedies available for enforcement of its right and an

injunction in the proceedings of the writ appeal may not be granted. The appellant also will not suffer from any irreparable injury as the appellant has clear remedy to seek monetary compensation along with interest if allowed, by competent forum/court of law. The reliefs sought by appellant therefore are directly barred by provisions of the specific relief act as stated above and the appellant is trying to circumvent appropriate legal channel by coming to this court and seeking a writ remedy in a pure commercial dispute. The contract work was for an amount upwards of Rs. 1633.7098 crore (approx.) and the BGs that are encashed are to the tune of approximately Rs. 163 Crores and therefore even after encashment of such guarantees, interests of the respondent/CSPGCL are not fully secured. Further, the respondent/CSPGCL is a Chhattisgarh Government Undertaking and a Generation Licensee under the Electricity Act, 2003 and therefore, there is no question of causing any irreparable loss to the appellant as the appellant can very well file claim pertaining to return of BG amount along with its statement of claims before competent Hon'ble Courts and if at all such entitlement of appellant is accepted, it can be easily recovered from the respondent/CSPGCL as it is a undertaking Company of the State. Thus, there is no point of causing any irreparable loss to the Appellant. On the other hand, invocation of BGs due to the reasons stated in preceding paragraphs is a contractual right of the respondent/CSPGCL and such invocation becomes all the more necessary as the respondent/CSPGCL is continuously suffering huge losses due to the breach of contract terms committed by the appellant.

41. On the other hand, Mr. P.R.Patankar, learned counsel appearing for the respondent-Bank {in WA No. 498/2023} would submit that in the present appeal, the main contesting party are the appellant and the

respondent/CSPGCL and as such, there is nothing much to say on behalf of the respondent/Bank.

42. We have heard learned counsel for the parties, perused the pleadings and documents appended thereto.

43. With respect to WPC No. 3645/2023, the main grievance of the writ petitioner is that since the Tribunal cannot grant any interim protection to the parties approaching it, the same is ultra vires the Constitution as in given cases, if no interim protective order is passed, the petition may render infructuous or it may cause irretrievable injuries to the party. Section 17-A of the Adhiniyam, 1983 reads as under:

> "*17-A. Inherent powers. - Nothing in this Act shall be deemed to limit or otherwise affect the inherent powers of the Tribunal to make such order as may be necessary for the ends of justice or to prevent abuse of the process of the Tribunal:*
>
> *Provided that no interim order by way of injunction, stay or attachment before award shall be granted:*
>
> *Provided further that the Tribunal shall have no power to review the award including the interim award.*"

44. It is a settled principle of law that the Statute enacted by the Parliament or State Legislature cannot be declared unconstitutional lightly. The Court must be able to hold beyond any iota of doubt that the violation of the constitutional provisions was so glaring that the legislative provisions under challenge cannot stand.

45. The Constitution Bench of the Supreme Court in the matter of ***Shayara Bano v. Union of India and others (Ministry of Women and Child Development Secretary and others)*** {(2017) 9 SCC 1} held that legislation can be struck down if it is manifestly arbitrary and manifest arbitrariness is the ground to negate legislation as well under Article 14 of the Constitution of India. It has been observed by Their Lordships as under: -

> *"101. It will be noticed that a Constitution Bench of this Court in Indian Express Newspapers (Bombay) (P) Ltd. v. Union of India8 stated that it was settled law that subordinate legislation can be challenged on any of the grounds available for challenge against plenary legislation. This being the case, there is no rational distinction between the two types of legislation when it comes to this ground of challenge under Article 14. The test of manifest arbitrariness, therefore, as laid down in the aforesaid judgments would apply to invalidate legislation as well as subordinate legislation under Article 14. Manifest arbitrariness, therefore, must be something done by the legislature capriciously, irrationally and/or without adequate determining principle. Also, when something is done which is excessive and disproportionate, such legislation would be manifestly arbitrary. We are, therefore, of the view that arbitrariness in the sense of manifest arbitrariness as pointed out by us above would apply to negate legislation as well under Article 14."*

46. Very recently, in the matter of ***Dr. Jaya Thakur v. Union of India and others*** {2023 SCC OnLine SC 813}, it has been held by three-Judge Bench of the Supreme Court that judicial review is a powerful weapon to restrain unconstitutional exercise of power by the legislature and executive by observing as under: -

> *"68. It could thus be seen that the role of the judiciary is to ensure that the aforesaid two organs of the State i.e. the Legislature and Executive function within the constitutional limits. Judicial review is a powerful weapon to restrain unconstitutional exercise of power by the legislature and executive. The role of this Court is limited to examine as to whether the Legislature or the Executive has acted within the powers and functions assigned under the Constitution. However, while doing so, the court must remain within its self-imposed limits."*

47. In this regard, as has rightly been pointed out by the learned State counsel as well as the learned counsel for the respondent/CSPGCL, the issue with regard to the validity of the Adhiniyam of 1983 has already been settled by a Division Bench of Madhya Pradesh High Court in ***R.N.Tandon & Sons*** (supra). Even otherwise, Section 16 of the Adhiniyam of 1983 provides that the Tribunal may make an

'interim' award. A detailed discussion has been made by the Division Bench of the Madhya Pradesh High Court in ***R.N.Tandon & Sons*** (supra), the relevant portion of which is quoted herein below:

> "*9. We have already examined that Section 17-A of the Adhiniyam is not ultra vires the Constitution and the Adhiniyam. The Adhiniyam is a special enactment and it is for the Legislature to lay down as to what powers should be conferred on the Tribunal and the Legislature in its wisdom has laid down that the provisions of the Code of Civil Procedure are applicable to the limited extent only Section 17-A, first proviso does not empower the Tribunal to exercise power of granting stay before award. That cannot be said to be ultra vires Section 12 of the Adhiniyam. Except granting interim injunction or stay as contemplated under the proviso, the Tribunal can exercise power of examining witnesses on commission, for appointment of Receiver, and other reliefs under inherent powers. In view of the aforesaid discussion, we do not find any merit in this petition ….."*

48. We are in respectful agreement with the observations made therein and as such, this Court is of the considered opinion that the challenge raised in this writ petition deserves to be rejected at the threshold. The writ petitioner has utterly failed to point out any illegality or as to how Section 17-A of the Act of 1983 is unconstitutional in light of the observations made by Supreme Court in the cases (supra). Consequently, **WP(C) No. 3645/2023 stands dismissed**.

49. From the above discussion, the admitted position that would emerge in this case is that contract was awarded to the appellant for the works as aforesaid by the respondent/CSPGCL for which the appellant was requried to furnish BGs. The work could not be completed within the time specified and the same was extended by mutual consent of the parties, though with the condition that appellant would be liable for payment of liquidated damages. According to the appellant, it had completed the entire work awarded to it whereas, according to the respondent/CSPGCL, there are still some works

which are left to be done which has and is still causing losses to the respondent/CSPGCL.

50. While admitting this appeal on 01.12.2023, this Court had directed that purely as an interim measure, the effect and operation of the judgment dated 289.11.2023 passed by the learned Single Judge which is impugned herein, shall remain stayed and further the respondent/CSPGCL was restrained from invoking the BGs till the next date of hearing. Thereafter, on 09.12.2023, learned counsel for the respondent/CSPGCL had prayed for withdrawal of IA No. 2 of 2023, which was an application to issue appropriate direction to the appellant to extend the BGs submitted to it, on the ground that the said BGs had already been extended. The matter was again taken up for hearing on 29.04.2024 when the matter was directed to be listed on 10.07.2024 and thereafter, the matter was listed on 10.07.2024, 22.07.2024, 23.07.2024 and the arguments concluded on 24.07.2024.

51. Most of the facts are admitted by both the parties and the issue which arises for consideration is as to whether the BGs can be unilaterally invoked / encashed by the respondent/CSPGCL when the same is going to cause irretrivable injury to the other party i.e. the appellant. The contract was awarded to the appellant/writ petitioner on 25.08.2009 and extension was granted by the respondent/CSPGCL time and again and on 07.08.2018, trial run operation certificate was also issued to the appellant/writ petitioner.

52. The appellant is also a Company engaged in engaged in the business of execution of various projects, including large scale projects, primarily in the area of power and oil and gas sectors. It had undertaken the work of the respondent/CSPGCL which is an undertaking Company of the State of Chhattisgarh. The dispute

between the parties appear to have arisen when the appellant sent a notice on 24.01.2023 seeking closure of the contract and release of the BGS and for payment of the outstanding amount to the tune of Rs. 127.29 crores as after the said notice, the respondent/CSPGCL issued letter of invocation of BGs on 06.03.2023 to the respondent/Bank without informing the appellant and without quantifying the damages which is alleged to have been suffered by the respondent/ CSPGCL.

53. It is also admitted position that the respondent/CSPGCL had been granting extension to the appellant-Company on number of occasions and till sending of the notice by the appellant on 24.01.2023 seeking closure of the contract and release of the outstanding dues, the respondent/CSPGCL had no objection in extending the contract period. The total cost of the project was Rs. 1633.7098 {Rs. 941.8498 crores + Rs. 691.86 crores) and the respondent/CSPGCL has also made payment of about Rs. 1300 Crores to the appellant-Company. Had it been a case that the respondent/CSPGCL was dissatisfied with the work of the appellant-Company, it could have invoked/encashed the BGs at an earlier point of time. The respondent-CSPGCL has not even bothered to inform the appellant-Company as to what was the actual loss caused to them neither any communication has ever been made in this regard. Further, the trial operation certificate had been issued by the respondent/CSPGCL to the appellant-Company, defect liability period is also over, the contract was deemed to have been completed under clause 13 of the GCC, and the commercial operations had also commenced. Thus, there was no reason or justification for invocation of BGs on the part of the respondent-CSPGCL without calculating the actual loss / damage caused to the respondent/CSPGCL.

54. The aforesaid conduct of the respondent/CSPGCL is such that after getting the works done/completed by a firm/Company, when the said appellant-Company has approached the respondent/CSPGCL claiming its legitimate dues, in order to avoid discharge of its liability, the respondent/CSPGCL has indulged into dilatory tactics and on the other hand, has tried to invoked the BGs. If the work of the appellant/Company was not to the satisfaction of the respondent/ CSPGCL, there was no occasion for the respondent/CSPGCL to extend the contract period and enter into supplementary agreements with the appellant-Company. If such would be the conduct of the respondent/CSPGCL, which is an undertaking Company of the State, then no private firm/Company would show any interest in working with it which would ultimately cause loss to the State itself.

55. There is no quarrel with the ratio laid down by the Supreme Court in ***UP State Sugar Corporation*** (supra) and ***Dwarikesh Sugar Industries Ltd***. (supra) wherein it has been observed that the Bank is bound to honour the BGs irrespective of any dispute raised by the customer (at whose instance the guarantee was issued) against the beneficiary, subject to two exceptions viz. a fraud committed in the notice of the bank which would vitiate the very foundation of the guaranteee or encashment of the BG would result in irretrievable harm or injustice of the kind which make it impossible for the guarantor to reimburse himself. There is no doubt that the BGs are irrevocable in nature and that they are payable by the guarantor to the appellant on demand without demur. It has been reiterated by the Supreme Court that the Courts should be slow in granting an injunction to restrain the realisation of such BGs. While reiterating the aforesaid ratio, the Supreme Court, in ***Himadri Chemicals***

Industries Ltd. v. Coal Tar Refining Co. {(2007) 8 SCC 110}, at paragraph 14 has 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 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."*

56. While this Court is in respectful agreement with the ratio laid down by the Supreme Court in the aforesaid cases, another important issue that needs to be considered is this case is the fact with regard to irretrievable injury that may be caused to a party by invocation/encashment of the BGs. In ***Gangotri Enterprises*** (supra), the Supreme Court had observed as under:

> *"40. On perusal of the record of the case, we find that firstly, arbitration proceedings in relation to the contract dated 22.08.2005 are still pending. Secondly, the sum claimed by*

the respondents from the appellant does not relate to the contract for which the Bank Guarantee had been furnished but it relates to another contract dated 22.08.2005 for which no bank guarantee had been furnished. Thirdly, the sum claimed by the respondents from the appellant is in the nature of damages, which is not yet adjudicated upon in arbitration proceedings. Fourthly, the sum claimed is neither a sum due in praesenti nor a sum payable. In other words, the sum claimed by the respondents is neither an admitted sum and nor a sum which stood adjudicated by any Court of law in any judicial proceedings but it is a disputed sum and lastly, the Bank Guarantee in question being in the nature of a performance guarantee furnished for execution work of contract dated 14.07.2006 (Anand Vihar works) and the work having been completed to the satisfaction of the respondents, they had no right to encash the Bank Guarantee."

57. A Single Bench of the Delhi High Court, while dealing with a similar case, in ***Hindustan Construction Company Ltd.*** (supra) has observed as under:

"59. This Court shall now adjudicate the question regarding stay on invocation of Bank Guarantee in the instant case. The settled position in law that emerges from the precedents 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. There are, however, exceptions to this rule when there is a clear case of fraud, irretrievable injustice or special equities.

60. In the case at hand, the facts and circumstances of the case cumulatively demonstrate special equities in favour of the Petitioner. Firstly, it is an admitted fact that the Petitioner has arbitral awards with respect to the Project in its favour wherein the counter-claims of the Respondent have been dismissed. Secondly, the Bank Guarantees given during the contract cannot be said to have been given in perpetuity even for the period after the completion of project and adjudication of claims/counter-claims between the parties. Thirdly, even if the Respondent succeeds in its challenge to the Award under Section 34, it has to resort to fresh arbitration proceedings with regard to the counter- claims. Fourthly, there is no prima facie case made out in light of the awards passed in favour of the Petitioner, especially in light of the uncontested facts that on 29.02.2016, the project was taken over for substantial completion of works, and on 28.02.2017, the Defect Liability Period was completed, and finally on 14.08.2021, the Defect Liability Certificate was issued. Therefore, no valid basis for invocation/encashment of the bank guarantee by the respondent exist. Fifthly, as on date, as per the statements made by the learned counsels, there is no stay whatsoever on either of the awards passed qua the said Project in any of the Section 34 petitions.

Sixthly, as per the provisions of the contract, specifically Clauses 10.1 and 10.2, Performance Bank Guarantee ought to be returned to the contractor within 14 days of issuance of Defects Liability Certificate."

58. Similarly, a Single Judge of the Madras High Court, in ***Chennai Metro Rail Ltd.*** (supra), has observed as under:

"*27. Proportionality also constitutes a special equity exception against invocation or encashment of unconditional Bank Guarantee. In the case on hand, the total contract value is INR 1566,81,00,000 and the subject Bank Guarantee was given for 7.5% of the contract value for Rs.117,51,07,500. The case of the respondents is that they have not committed breach of contract and it is only the Appellant who have committed breach of contract, for which they have initiated arbitration against the Appellant. Even without crystallizing its claim against the respondents, the Appellant has invoked the Bank Guarantee. In case, in the final decision of the Arbitral Tribunal, it is found that the respondents do not owe any money to the Appellant or if it is found that the respondents are liable to pay only a much lesser sum than the Bank Guarantee value, which is Rs.117.5 crores, it would amount to irretrievable injustice. Since the Bank Guarantee amount is huge, proportionality of the claim will certainly play a role in deciding as to whether injunction can be granted against the invocation of Bank Guarantee. This Court is of the considered view that proportionality is also one of the special equities falling within the principle of "irretrievable injustice" for the purpose of granting an order of injunction from invocation of Bank Guarantee. In case, the Appellant is allowed to encash the Bank Guarantee for Rs.117.5 Crores and later on it is found by the Arbitral Tribunal that no money is due by the respondents to the Appellant or a much lesser money is due by the respondents when compared to the Bank Guarantee value, the respondents will find it difficult to recover the unjust enrichment made by the Appellant as the amount involved is a huge sum. A balancing act will have to be done in this case as admittedly the Appellant has not crystallized its losses and there is no break-up details given by it for its alleged losses and there is also no prima-facie evidence to show that the respondents owe the Appellant the Bank Guarantee value. In the case on hand, the Arbitral Tribunal has rightly applied the test of balance of convenience and has granted the order of injunction restraining the Appellant from invoking the Bank Guarantee and at the same time protected the interest of the Appellant too by directing the respondents to keep the Bank Guarantee alive till the disposal of the Arbitration.*

xxx xxx xxx

41. The case of the respondents will certainly fall under the category of "irretrievable injustice" in case the Bank Guarantee is allowed to be encashed by the Appellant. The Bank Guarantee amount is for a substantial sum of Rs.117.5 crores, which is a very huge sum and in case on the final adjudication by the Arbitral Tribunal it is found that the

respondents do not owe any money to the Appellant or owes only a much lesser sum when compared to the Bank Guarantee value, the respondents will be put to irretrievable injustice if the Bank Guarantee has been encashed as it would seriously deplete their capital reserves and will result in liquidity crisis seriously affecting their regular business. There is also a possibility of the Appellant gaining unjust enrichment in case the bank guarantee is encashed. Therefore, only after the final adjudication of the arbitral claim, it can be found that as to who owes money and by how much."

59. Though the above proposition of law laid down by the Delhi High Court as well as the Madras High Court cannot be a binding precedent but the same has some pursuasive value. The order passed by the learned Single Judge of the Madras High Court has been affirmed by the Supreme Court in ***Chennai Metro Rail Limited v. M/s. Transtonnelstroy Afcons (JV) & Another*** {SLP(C) No. 8553/2022} vide order dated 13.05.2022. It has been observed as under:

"The jurisdiction exercised by the Tribunal under Section 17 of the 1996 Act is akin to jurisdiction exercised under Order 39 Rule 1 and 2 of the CPC so also the jurisdiction exercised by the High Court is akin to jurisdiction under Order 43 Rule 1(r) of CPC. The High Court could not have interfered with the jurisdiction exercised by the Arbitral Tribunal unless it came to a finding that the exercise of jurisdiction was either perverse or impossible.

While affirming the order passed by the Arbitral Tribunal the High Court has given sound reasons.

Therefore, in the facts of the present case, we do not find that the view taken by the Tribunal, so also by the High Court can be said to be perverse or impossible.

We further find that the Ld.Tribunal has attempted to balance the interest of both the parties in as much as it has directed the respondents to keep the bank guarantee alive during the pendency of the arbitral proceedings.

We are, therefore, not inclined to interfere in the present petition, however, we request the Ld. Arbitral Tribunal to decide the arbitral proceedings pending before it as expeditiously as possible and in any case within a period of four months from the date of this order. We expect that both the parties will co-operate for expeditious disposal of the said proceedings.

The Special Leave Petition stands disposed of in the aforesaid terms.

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

60. Though the aforesaid judgment of the Chennai High Court, which has attained finality by the order passed by the Supreme Court in the special leave petition as aforesaid, was cited before the learned Single Judge but the same has not been considered by the learned Single Judge while deciding the writ petition.

61. Further, a three Judge Bench of the Supreme Court, in ***M/s. Gokul Krishna Construction P. Ltd. & Anr.*** (supra), while dealing with similar issue, had passed the following orders:

> *"The High Court has while dismissing the writ petition taken the view that the appellant-Company could seek redressal in terms of Clause 25 of the Agreement which provides for adjudication of disputes between the parties by way of arbitration. In the opinion of the High Court the contract provides a complete machinery for redressal of all disputes, which is the only remedy available to the appellant-Company. This appeal assails the correctness of that order as noticed earlier.*
>
> *Mr. Atul Sharma, learned counsel for the appellant-company, argued that the appellant-company has already invoked the arbitral clause and approached the Arbitral Tribunal constituted under the Madhya Pradesh State enactment as extended to the State of Chhattisgarh. The matter is, according to Mr. Sharma, currently pending adjudication before the Arbitral Tribunal. In the meantime, the State is, according to learned counsel, encashing the fixed deposits to the prejudice to the appellant-company. It is urged that since the Tribunal does not have the power to grant any interim relief against encashment of the fixed deposit receipts, the appellant has no option but to approach the High Court for redress.*
>
> *Mr. A.P. Mayee, learned counsel for the respondent-State, on the other hand, contended that the respondents have already recovered a sum Rs.18,81,117/- out of the final payment due to the contractor. A further amount of Rs.49,55,283/- all the same remains recoverable from the appellant. The available fixed deposit receipts of a sum of Rs.49,72,000/- have not yet been encashed.*
>
> *In the circumstances, therefore, and keeping in view of the fact that the disputes between the parties are under adjudication before the Tribunal, interests of justice would be sufficiently served if we direct that encashment of the fixed deposit receipts for a total sum of Rs.49,72,000/- shall remain stayed pending final disposal of the disputes by the arbitral Tribunal. With that direction, this appeal is disposed of leaving the parties to bear their own costs. We make it clear that the respondent- State shall be free to have the fixed deposit receipts renewed from time to time to enure for the benefit of the successful party. No costs."*

62. As the facts of the present appeal are identical to that of the cases cited above, we are of the considered opinion that the learned Single Judge has erred in law by not considering the aspect with regard to irretrievable injury that would be caused to the appellant/writ petitioner if the BGs are allowed to be encashed. The net worth of the appellant would completely stand wiped out. The appellant herein has admittedly approached the State Arbitral Tribunal for the adjudication of its claims and till his claims are adjudicated, equity demands that the respondent/CSPGCL be restrained from encashing/invoking the BGs which, as per the learned counsel for the parties, have already been extended for a period of one year.

63. Accordingly, the appeal is **allowed** and the order passed by the learned Single Judge dated 28.11.2023 in WPC No. 1992/2023 is set aside. Consequently, WPC No. 1992/2023 also stands **allowed**. The State Arbitration Tribunal, before which the reference petition of the appellant/writ petitioner is pending, is directed to consider and decide the same as expeditiously as possible, preferably within a period of four months from the date of receipt of a copy of this judgment and till then, the respondent/CSPGCL shall not invoke/encash the BGs in question.

Sd/-
(Ravindra Kumar Agrawal)
JUDGE

Sd/-
(Ramesh Sinha)
CHIEF JUSTICE

Amit

Head Note

Though Bank Guarantee is a bilateral contract between the Bank and the beneficiary, the aspect of irretrievable injury that may be caused to a party should also be considered while its invocation/encashment, especially when the obligation to complete the work for which the Bank Guarantee was given, has been fulfilled.