

IN THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH COURT-II

MA-417/2018

In

CP(IB)1832/MB/MAH/2017

(Misc. Application under section 60(5)(a) & (c) of I&B Code)

EPC CONSTRUCTIONS INDIA LIMITED,
1ST Floor, Tower II, Equinox Business Park,
(Peninsula Techno Park), Off BKC, LBS Marg,
Kurla (West), Mumbai – 400 070.

....Applicant/Corporate
Debtor.

Versus

1. **NLC INDIA LIMITED,**
Block – 1, Neyveli,
Cuddalore District,
Tamil Nadu – 607 801.

... Respondent No.1.

And

2. **AXIS BANK LIMITED,**
Axis House, Ground Floor,
C-2, Wadia International Centre,
P.B. Road, Worli, Mumbai-400 025.

... Respondent No.2.

Advocate Mr. Pratik Mishra appears for Applicant, Advocate Mr. Sanjay Kelkar appears for Respondent No.1 and Advocate Bhanu Chopra appears for Respondent No.2 through Virtual hearing (VC).

CORAM : SHRI H.P. CHATURVEDI, HON'BLE MEMBER (J)



SHRI RAVIKUMAR DURAISAMY, HON'BLE MEMBER (T)

Perse : Harihar Prakash Chaturvedi, Member (J)

ORDER

1. The present case is fixed for pronouncement of the Order today i.e. 24.09.2020 in the MA-417/2018 preferred by the Applicant/ Corporate Debtor EPC Construction India Limited who is a Corporate Debtor.

The Order is being pronounced pursuant to the directions given and observation made by the Hon'ble Bombay High Court in the Writ Petition (OS-WP-LD-VC-251-2020) dated 24.08.2020 whereby this Bench was directed to pronounce Order within Four Weeks. Thereafter the present MA-417/2018 was heard denovo by us after reconstitution of this Bench and Order therein was reserved. Now the case is fixed today for pronouncement. Hence, the case is taken up today for pronouncement of order in detail.

2. The present MA-417/2018 in CP(IB)1832/IBC/NCLT/MB/MAH/2017 is preferred by the then Corporate Debtor EPC Constructions India Limited under section 60(5) of the Insolvency and Bankruptcy Code (I&B Code) seeking for an injunction against invoking of two Bank Guarantees issued by Axis Bank Limited dated 16.10.2014 for a sum of Rs. 115,90,76,933/- (Rupees One hundred and fifteen Crores,



Ninety Lakhs, Seventy-six Thousand, Nine Hundred and Thirty-three only) and on 19.04.2018 Rs. 23,85,92,361/- (Rupees Twenty-three Crores Eighty-five Lakhs, Ninety-two Thousand, Three Hundred and Sixty-one only) by the Respondent No.1 NLC India Limited. It was the allegation by the Applicant against Respondent No. 1 that such Bank Guarantee is being invoked in a fraudulent manner and in complete violation of the present I&B Code. It is also submitted that since this Bench of NCLT, Mumbai Bench, vide its Order dated 20.04.2018 has pleased to "Admit" the Petition under section 7 of the I&B Code at the instance of Financial Creditor, the IDBI Limited and further appointed a RP Mr. Abhijit Guahathakurta. Hence, thus the CIRP in respect of Corporate Debtor has began and a Moratorium was declared under section 14 of the I&B Code by prohibiting institution of any Suit before a Court of Law, transferring/encumbering any of the assets of the Debtor etc. Hence in view of this moratorium, the Applicant is not entitled to invoke any such Guarantee during the continuity of the period of CIRP. Further the Resolution Plan has also been approved by this Bench vide its order dated 19/11/2018, hence debts of creditors has now been determined and is binding upon its creditors including the present Respondents. Hence the present MA-417/2018.

3. It is matter of record that during the course of hearing this Bench vide its Interim Order dated 08.05.2018 was pleased to



direct all the parties to maintain the status quo. As such this Interim Order was continued till the disposal of the main I&B Petition No. CP(IB)1832/MB/MAH/2017 when order for approval of Resolution Plan was pronounced on 19/11/2018. It is a settled legal position that after commencement of the Moratorium the assets or guarantees of the Corporate Debtor cannot be disposed of without the approval/ permission of this Court/Adjudicating Authority.

4. Therefore, it is the contention of the Resolution Professional who had taken over the charge of the Corporate Debtor Company, that the performance bank guarantee should not be and cannot be invoked by the present Applicant NLC India Limited in view of the CIRP has begun.
5. The Learned Counsel appearing for the RP drew our attention to certain other developments that took place after the filing of the present Application stating inter alia that out of the Two Bank Guarantees (BG-II) for an amount of Rs. 23,85,92,361/- (Rupees Twenty-three Crores Eighty-five Lakhs, Ninety-two Thousand, Three Hundred and Sixty-one only) has already been encashed by NLC India Limited/Respondent No. 1 towards Performance Bank Guarantee so as to make payment of dues of Corporate Debtor for completion of the Project. The RP also stated that the project assigned by the NLC to the Corporate Debtor is of a national importance and the Corporate Debtor is



still working through the RP as a going concern. The necessary steps are being taken for completion of the project and the payments were being made towards the claims of the Creditors before insolvency commenced. Hence the Learned RP has contended that Moratorium declared in respect of Corporate Debtor is still in operation under section 14 of the Code pursuant to the order of this Tribunal dated 20.04.2018. Further, the Corporate Debtor is a going concern, hence, it would not be in the paramount interest of the Corporate Debtor to allow such encashment of the Bank Guarantees (which is already partly encashed). The RP further contended that in case the Bank Guarantee is allowed to be encashed then claim arising for such encashment would result in the claim against Corporate Debtor.

6. It is also submitted that Moratorium was declared upon the Corporate Debtor and in operation under Section 14 of the Code, pursuant to the Admission order of this Hon'ble Tribunal dated 20.04.2018. Thus as mandated under section 14 of the Code, the purpose and intent of the Code is to keep the Corporate Debtors' assets together during the CIRP and ensure the continuity of the Corporate Debtor under CIRP as a going concern. The Respondent No.1 has already encashed BG-II and now is in the process of encashment of BG-I which may not be just and proper.



7. In the event that BG-I is allowed to be encashed, the claims arising from such encashment would result in the claims against the Corporate Debtor arising prior to the Insolvency Commencement Date (i.e. April 20, 2018) pursuant to the dues owed to sub-contractors/contractors and vendors pertaining to this project that the Respondent No.1 proposes to pay from the proceeds of the encashment of the BG-I being replaced with the claims of Respondent No. 2 as a funded loan provided to the Corporate Debtor and consequent recharacterization of such claims from being operational debt to financial debts during the moratorium period.
8. The Corporate Debtor has provided support towards completion of the project with Respondent No.1 and made payments for claims that have arisen after Insolvency Commencement Date in a timely manner. It is a matter of fact that the Corporate Debtor has made payment of INR 4.62 Lakhs for the project since the insolvency commencement date and proposes to make a payment of INR 1.0 Crore within the next week. As per the provisions of the Code, the claims that have arisen prior to the Insolvency Commencement Date are to be submitted to the RP for verification in accordance with the Code. In the event that Respondent No. 1 seeks claim of dues prior to the initiation of the CIRP, the same may be submitted to the RP in accordance with the provisions of the Code for verification and the same



may be paid as a part of the insolvency resolution process, subject to the provisions of the Code.

9. The main concern raised by the Respondent No.1 in its affidavit –in-reply is surrounding the outstanding dues of the sub-contractors / suppliers / vendors of the Corporate Debtor. In the light of the negotiations that have been undertaken and a part of record, it is an admitted fact that the Respondent No.1 had unequivocally agreed to allow the Project to be extended and offered to directly pay the dues of the sub-contractors / vendors of the Corporate Debtor. In the light of the same, in the event that the Hon'ble Tribunal deems fit that the moratorium under Section 14 of the Code is not applicable on the encashment of BG-I, then keeping in view the on-going CIRP, the Respondent No.1 be directed to apply the proceeds from BG-I and BG-II only to the extent to ensure the re-payment of the dues of the bonafide sub-contractors / suppliers / vendors of the Corporate Debtor in relation to this Project (a list to be supplied by the Corporate Debtor), to ensure the going concern of the Corporate Debtor and the claims of such sub-contractors / suppliers / vendors may be reduced by the RP to the extent of such payment at the time of its verification by the RP in accordance with the Code.
10. **In the event that this Hon'ble Tribunal allows complete encashment of the amount stipulated in BG-I, then the**



Respondent No.1 be directed to appropriate the proceeds from the same towards the repayment of outstanding dues of the sub-contractors / suppliers / vendors as approved by the Corporate Debtor, for the claim prior to the CIRP. Further, in the event that there lies a surplus, the same be directed to be repaid to the Corporate Debtor in order to ensure its going concern and enable it to complete the execution of the thermal power project and other projects.

11. Notwithstanding the above, the RP in his reply has also impliedly conceded with the legal position of the present case and taken an alternative plea that in the event this Tribunal allows complete encashment of amount of Bank Guarantees, then the Respondent No.1 i.e. NLC India Limited be directed to appropriate the proceeds from the same towards repayment of outstanding dues of sub-contractors / suppliers / vendors as approved by the Corporate Debtor for the claim prior to the CIRP. Further in the event that there lies a surplus the same be directed to be repaid to the Corporate Debtor, in order to ensure its going concern and enable it to complete the execution of the thermal power projects and other projects. Thus it may be seen that the RP has pointed out a debatable position of encashment and invocation of the Bank Guarantees during the CIRP period of the Corporate Debtor/ Applicant. But it also made an alternative plea.



12. We have duly considered the above stated facts and circumstances of the present Application and the legal issue arises therein for our consideration is :

Whether a third party who happened to be supplier / contracting party of the Corporate Debtor can be restrained from invocation of its Performance Bank Guarantee as per the terms of the Guarantee/ Contract executed for completion of work contract/ project?

In fact the status of the present Applicant is as good as Operational Creditor to its employer/ contracting party, the Respondent No.1 NLC India Limited (who is a Public Sector Undertaking, Government of India) is concerned. If the work of the project under the Agreement is not performed within stipulated time or as per the specific terms, such contract can be revoked/cancelled by the employer/ contracting party, at the risk and costs of the defaulter Contracting Party i.e. sub-contractors / suppliers / vendors. In order to ensure the completion of work contract, the performance bank guarantee were obtained by the Respondent No.1 NLC India Limited. The respondent No. 2 Axis Bank stood as Bank Guarantor on behalf of present Applicant Corporate Debtor (EPC Construction India Limited). Therefore, if a party to the contract fails in performing its part of contract, then the other contracting party can go ahead to recover such money for breach of contract and claim damage and compensation. The same are well known principles of the Indian Contract Act and the Contract can also be cancelled at



the risk and costs of the defaulting Contractor, hence there seems no illegality in execution of such Performance Bank Guarantee and its invocation as it is duly consented to and agreed upon by both the Parties.

13. Moreover, if there is any dispute regarding allegation / counter allegation between contracting party for invocation of bank guarantee or cancellation of contract, this Tribunal in our humble view is not expected to adjudicate the same. It is for the parties concerned to approach a competent Civil Court/ Forum of law and to seek appropriate relief therefrom.

This Adjudicating Authority under Insolvency and Bankruptcy Code in normal course is not expected to pass an interim order restraining a particular party or party concerned not to invoke its performance guarantee or to pass any prohibitory order because the remedy to be granted against the corporate debtor under the Code is remedy *in rem* and not *in personem*. Thus, this Adjudicating Authority would decline to interfere with the invocation of the bank guarantee and to decide merits of the same because it needs to be dealt with by a competent Civil Court and after appreciation of evidence adduced before it and by perusing the documentary material placed on record before it in a civil trial. Hence in summary jurisdiction of I&B Code this Adjudicating Authority is not expected to adjudicate such disputed allegation of the Applicant that Respondent No.1 in a



fraudulent manner is in process of invoking the bank guarantee. Because it is out of the purview of the I&B Code and it is upto the competent Civil Court of law to decide such disputed allegation/issue.

14. Notwithstanding the above, such issue whether invocation of the performance bank guarantee tantamounts to violation of Moratorium or breach of provisions of I&B Code, can be considered and adjudicated by this Adjudicating Authority.
15. Therefore, we have duly considered the legal and factual aspect of the case and the main issue that arise for consideration before this Bench (this Adjudicating Authority) whether during continuance of CIRP a performance bank guarantee given by the Corporate Debtor cannot be invoked by the Third Party, who does not necessarily fall in the category as a Creditor of the Corporate Debtor and we find that such issue has already been examined by the Hon'ble NCLAT in the matter of **GAIL (INDIA) LIMITED** and it has been held by their Lordships that the security interest shall not include the Performance Bank Guarantee and the Performance Bank Guarantee given by the Corporate Debtor in favour of the party (Gail India Limited) is not covered by Section 14 and such party (Gail India Limited) is entitled to invoke its 'Performance Bank Guarantee' in full or in part. The relevant portion is :



“ 3. The stand of the ‘Resolution Professional’ is that the ‘Performance Bank Guarantee’ cannot be invoked during the ‘Moratorium’.

4. Section 14 of the Insolvency and Bankruptcy Code, 2016 (for short I&B Code) relates to ‘Moratorium’. Clause (c) of sub-section (1) of Section 14 empowers the Adjudicating Authority to declare ‘Moratorium’ for prohibiting any action to foreclose, recover or enforce any security interest created by the ‘Corporate Debtor’ in respect of its property etc., which reads as follows :-

“14. **Moratorium** - (1) Subject to provisions of sub-sections (2) and (3), on the insolvency commencement date, the Adjudicating Authority shall by order declare moratorium prohibiting all the following :-

xxx xxx xxx
(c) any action to foreclose, recover or enforce any security interest created by the corporate debtor in respect of its property including any action under the Securitization and Reconstruction of Financial Assets and Enforcement of Security Act, 2002”

5. The expression “security interest” has been defined in sub-section (31) of Section (3) of the ‘I&B Code’, which reads as follows :-

“3. **Definitions** :- xxx xxx xxx

(31) ‘security interest’ means right, title or interest or a claim to property, created in favour of , or provided for a secured creditor by a transaction which secures payment or performance of an obligation and includes mortgage, charge, hypothecation, assignment and encumbrance or any

other agreement or arrangement securing payment or performance of any obligation of any person :

Provided that security interest shall not include a performance guarantee.”

6. From sub-section (31) of Section 3, it is clear that the ‘security interest’ do not include the ‘Performance Bank Guarantee’, therefore, we hold that the ‘security interest’ mentioned in clause (c) of Section 14(1) do not include the “Performance Bank Guarantee”. Thereby the “Performance Bank Guarantee” given to the ‘Corporate Debtor’ in favour of Appellant – ‘GAIL (India) Ltd.’ is not covered by Section 14. The Appellant – ‘GAIL (India) Ltd.’ is entitled to invoke its ‘Performance Bank Guarantee’ in full or in part.”

16. Since the debatable issue involved has now been legally settled by the Hon’ble NCLAT, in ‘GAIL (India) Ltd.’, this Bench is not expected to go into the controversy of the other issues, hence the objection raised by the Applicant or Corporate debtor is not sustainable in the eye of law and invocation of the ‘Performance Bank Guarantee’ does not fall within the purview of Section 14 of the I&B Code and the relief being sought for cannot be granted. MA-417/2018 vide Order recorded separately. The operative portion of our Order and our conclusions therein reads as under :-

(i) The relief being sought for in the present MA-417/2018 does not fall within the purview of Section 14 of the Insolvency and Bankruptcy Code, hence it cannot be

granted by this Adjudicating Authority in view of the Order passed by the Hon'ble NCLAT in the matter of *GAIL (India) Limited V/s Rajeev Manaadiar & Others in Company Appeal (AT) (Insolvency) No. 319 of 2018 dated 24.07.2018* whereby the Hon'ble NCLAT pleased to observe and hold that the security interest does not include the 'Performance Bank Guarantee' and therefore the 'Performance Bank Guarantee' given by the Corporate Debtor in favour of the Appellant (GAIL (India) Limited) is not covered under section 14 of the Insolvency and Bankruptcy Code. Thus Appellant was entitled to invoke its 'Performance Bank Guarantee' in full or in part by this decision. The Hon'ble NCLAT was pleased to set aside the Order dated 12.06.2018 (passed in MA-521/2018 in CP/1374/I&BC/MNCLT/MB/MAH/2017). This Ruling is squarely applicable to the facts and circumstances of present case and it is binding on us. In view of this present MA-417/2018 must fail.

Moreover, in the present matter this Bench has already 'Admitted' the I&B Petition moved by the Financial Creditor, the CIRP is commenced, the Resolution Professional has taken over the charge of the Corporate Debtor and the Resolution Plan is also approved.



- (ii) We carefully examined and considered the facts and the issues involved and as narrated in the pleadings of MA/Affidavit in Reply filed by the RP and we are of the view that Order of the status quo as passed by this Bench stands merged with the Final Order dated 19/11/2018 approving the Resolution Plan. Hence, it no longer can survive until specific order or direction is given to NLC India Limited, in MA-417/2018 by restraining it and not to invoke its 'Performance Bank Guarantee' as the same would fall out of the purview of Moratorium u/s 14 of the I&B Code by following the above stated decision of Hon'ble NCLAT and for want of proper jurisdiction of this Court under the I&B Code.
- (iii) In addition to the above, the Hon'ble Bombay High Court in its decision in the matter of *Murablack India Limited V/s UBS AC, an establishment organized and existing under the laws of Switzerland & Others (in Notice of Motion No. 2356 of 2000 in Suit No. 187 of 1997 decided on September 4, 2000)* took similar view by placing reliance on a decision of the Hon'ble Supreme Court in the case of *Hindustan Construction Company V/s State of Bihar (2000 Bank J. (S.C.) 314 : (1999) 8 SCC 436)*, where their Lordship of the Bombay High Court have pleased to observe and hold as such :-



“7. Secondly, can mere invocation of guarantee be said to be proceedings to hold section 22 of SIC Act would be applicable. The judgment in so far as Maharashtra Tubes Limited (Supra) is concerned, relates to the first part and not to the amendment brought by the Amendment Act of 1993. By the Amendment Act, all that is stated that a suit for recovery of money or for the enforcement of any security against the industrial company or of any guarantee in respect of any loans or advance granted cannot be or be proceeded with. It does not speak of any other proceedings. Therefore, only suits will not be or can be proceeded with. It does not include other proceedings. That contention must, therefore, also fail. Even otherwise, on a consideration of language of Section 22, invocation of a Bank Guarantee is invocation of a term of the Guarantee. Invocation by itself cannot be read into Section 22 of the SIC Act. Further invocation of a Bank Guarantee is admittedly a transaction by itself.

8. It is independent of the main contract between the plaintiff and the Defendant no.1. If reference need be made, it can be made to the case of (Hindustan Construction Company vs. State of Bihar) 2000 Bank.J (SC) 314; (1999) 8 SCC 436. The Apex Court held that a guarantee constitutes a separate, distinct and independent contract. The contract is between the party as the guarantor and the person in whose favour the guarantee is given. It is independent of the contract between principal and the person on whose behalf the guarantee is given. However, suit by a plaintiff to restrain the Bank from making payment in terms of the guarantee is maintainable. Relief



cannot be granted if in such a case plaintiff is able to make out a case of fraud and/or irretrievable injustice. In the instant case, defendant No. 5 who has given the Bank Guarantee has expressed no difficulty in making payment to the defendant No. 1. It is the contention of defendant No. 5 that considering international trade and commerce they have to honour the commitment to defendant No. 1 otherwise it is they who will have to suffer irreparable injury and loss in international financial circles. In these circumstances as defendant No. 5 is not invoking the provisions of section 22 assuming it could invoke, the question of the Court granting any relief at the instance of the plaintiff would not arise."

- (iv) Therefore, the Hon'ble Bombay High Court observed that a Guarantee constitute a separate distinct and independent contract between the parties. The contract is between the party as the guarantor and the person in whose favour the guarantee is given. It is independent of the contract between principal and the person on whose behalf the guarantee is given. However, suit by a plaintiff to restrain the Bank from making payment in terms of the guarantee is maintainable. Relief cannot be granted if in such a case plaintiff is able to make out a case of fraud and/or irretrievable injustice. In the instant case, defendant No. 5 who has given the Bank Guarantee has expressed no difficulty in making payment to the defendant No. 1. It is the contention of defendant No. 5 that considering




international trade and commerce they have to honour the commitment to defendant No. 1 otherwise it is they who will have to suffer irreparable injury and loss in international financial circles. In these circumstances as defendant No. 5 is not invoking the provisions of section 22 assuming it could invoke, the question of the Court granting any relief at the instance of the plaintiff would not arise.”

- (v) We have also perused the decision of the Hon'ble Supreme Court in the matter of *Hindustan Construction Company (Supra)* and proposition laid down therein by the Apex Court. The relevant portion of the above referred Supreme Court decision for the purpose of placing reliance by us is being reproduced herein as below:-

“Now, a Bank Guarantee is the common mode, of securing payment of money in commercial dealings as the beneficiary, under the Guarantee, is entitled to realise the whole of the amount under that Guarantee in terms thereof irrespective of any pending dispute between the person on whose behalf the Guarantee was given and the beneficiary. In contracts awarded to private individuals by the Government, which involve huge expenditure, as, for example, construction contracts, Bank Guarantees are usually required to be furnished in favour of the Government to secure payments made to the contractor as "Advance" from time to time during the course of the contract as also to secure performance of

the work entrusted under the contract. Such Guarantees are encashable in terms thereof on the lapse of the contractor either in the performance of the work or in paying back to the "Government Advance", the Guarantee is invoked and the amount is recovered from the Bank. It is for this reason that the Courts are reluctant in granting an injunction against the invocation of Bank Guarantee, except in the case of fraud, which should be an established fraud, or where irretrievable injury was likely to be caused to the Guarantor. This was the principle laid down by this Court in various decisions. In U.P. Cooperative Federation Ltd. v. Singh Consultants & Engineers Pvt. Ltd., [1988] 1 SCC 174, the law laid down in Bolivinter Oil SA v. Chase Manhattan Bank, [1984] 1 All E.R. 351 was approved and it was held that an unconditional Bank Guarantee could be invoked in terms thereof by the person in whose favour the Bank Guarantee was given and the Courts would not grant any injunction restraining the invocation except in the case of fraud or irretrievable injury. In Svenska Handelsbanken v. Indian Charge Chrome, [1994] 1 SCC 502; Larsen & Toubro Ltd. v. Maharashtra State Electricity Board, [1995] 6 SCC 68; Hindustan Steel Works Construction Ltd. v. G.S. Atwal & Co. (Engineers) (P) Ltd., [1995] 6 SCC 76; National Thermal Power Corporation Ltd. v. Flowmeore (P) Ltd., [1995] 4 SCC 515; State of Maharashtra v. National Construction Co., [1996] 1 SCC 735; Hindustan Steel Works Construction Ltd. v. Tarapore & Co., [1996] 5 SCC 34 as also in U.P. State Sugar Corporation v. Sumac International Ltd., [1997] 1 SCC 568, the same principle has been laid down and reiterated.




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

For the reasons stated above, the appeal arising out of SLP(C) No. 6985/98 is allowed. The judgment and order passed by the Division Bench of the Bombay High Court insofar as it purports to vacate the injunction order, granted by the Single Judge in respect of "Performance Guarantee", is set aside and the injunction order granted by the Single Judge in respect of both the Guarantees, namely, "Mobilisation Advance" and "Performance Guarantee" is maintained. The appeal arising out of SLP(C) No. 12143/98 is dismissed. There shall be no order as to costs."

- (vi) That part the Hon'ble Gujrat High Court in the matter of *ABG Shipyard Limited V/s Government of India (Special Civil Application No. 17666 of 2017)* was also pleased to observe as such:



“In view of the rival submissions, it is required to be stated that normally the Court would decline to interfere with the invocation of the bank guarantee or the performance guarantee as it has been settled law that the Court should decline interference with the invocation of the bank guarantee except on limited grounds. However, the Law declared and observation made has reference to ordinary commercial transaction and performance guarantee. In the facts of the case, subsequent application of the Insolvency and Bankruptcy Code, 2016 will have to be considered, which provides for a separate procedure in case of such Company, which is under resolution process.”

- (vii) Therefore, by following the above stated Judicial precedents we are of the confident view that status quo order granted against the Respondent no.1 stands ceased to have its effect automatically soon after the approval of Resolution Plan. Further, there cannot be status quo against Respondent no.2 Axis Bank for discharging contractual obligation and performing its part of contract. Therefore, the Respondent no.1 being a contracting party is eligible and entitled to invoke its Performance Bank Guarantee. It cannot be restrained by this Adjudicating Authority at the instance of Corporate Debtor and it is upto a competent civil court/ forum and not necessarily by this Adjudicating Authority under the provisions of the I&B Code to deal with and decide the same. Hence, no
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injunction order can be passed, being out of the purview of the Section 14 of the I&BC Moratorium.

For the aforesaid reason, the present MA-417/2018 is liable to be rejected with following observation to the Respondent no.1 NLC India Limited:-

- (a) In case of any surplus amount remains after invoking Bank Guarantee 1, the same should be kept in a separate Escrow Account opened in a Nationalized Bank and the same has to be dealt with as per Orders of a Competent Court of Law/ Forum.
- (b) Since the release of Bank Guarantee invocation amount was pending for some time and was lying with Axis Bank, we are of the view that upon payment of Bank Guarantee Amount, the Bank has to pay applicable interest accrued, if any, on the margin money received by the bank to the NLC India Limited - Respondent No.1.

With the aforesaid observation, the MA No.417/2018 in CP(IB) 1832/MB/MAH/2017 is disposed of accordingly.

RAVIKUMAR DURAISAMY
Member (Technical)


H.P. CHATURVEDI
Member (Judicial)

Dated this the 24th day of Sept. 2020
aah/vc