

IN THE COMMERCIAL COURT AT ALIPORE

Present: Suparna Ray (JO Code: WB00711)

Misc Arb (Com) 04 of 2026
CNR No. WBSP18-000006-2026

M/s. Maruti Enterprises

....Petitioner

vs.

Union of India and Anr.

....Respondents

Order: 02

Date: 15.01.2026

Appearance:

Mr. Samrat Sil

Mr. Mrityunjoy Saha

.....Ld. Advocates.

Instant record is put up today by instigation of the petitioner whereby the petitioner intends to move the instant case ex parte.

Office notes there is no caveat.

At this stage, Mr. Sil, learned Advocate appearing for the petitioner moves the case before this Court.

In brief, a tender was floated by the respondents authority being Tender No. ELD-300-WC-6-2020-21 for the work being 25 KV OHE and allied electrical works for "Replacement of Tramway OHE by Conventional OHE at Sealdah North and Main Section" in 2020 (hereinafter referred to as "tender work"). Petitioner, herein participated in the said tender and accordingly, a Letter of Acceptance (LOA) dated 15.10.2020 was issued by the respondent authority in favour of the petitioner.

As per the aforesaid LOA, the value of tender work was of a sum of Rs. 4,93,41,001.89/- and for completion of same 24 months' time was given which supposed to be ended on 14.10.2022.

In view of the said LOA, the petitioner was required to furnish Performance Guarantee equivalent in form of Bank Guarantee as given in Clause 16(4) of Chapter IV of Tender Document which is equivalent to 5% of the contract value amounting to Rs. 24,67,050.09/- within 21 days from the date of issue of LOA.

It appear from the instant application that the petitioner furnished Performance Guarantee in form of Bank Guarantee being No. 08800004020 dated 22.10.2020 which has been extended from time to time and lastly, extended upto 30.03.2026.

More so, apart from the Performance Guarantee, the petitioner was further required to deposit Security Money as well, which was 5% of total costs of Work i.e. Rs. 24,67,050.09/-. However, as per LOA, Rs. 3,83,200.00/- deposited by petitioner as Earnest Money was retained as Security Deposit and further amount of Security Deposit was to be recovered from the progressive bill @ 6% of the bill amount till it reaches 5 % of the contract value.

As per the petitioner and further from the instant application, it appears that till date the petitioner has submitted nine (09) progressive bills and against such bill the aforesaid amount which was to be deducted, was duly deducted by the respondent and as such, as on date Rs. 24,67,050.09/- has been retained by the respondents authority as Security Deposit.

It further appears from the instant application as well as the submission of the learned Advocate appearing for the petitioner that though the time was fixed completion of the tender work yet the said work is not completed within the said stipulated time, however, upon application of the petitioner, the respondents authority in several times extended the time for tender work and lastly, extended the same up to 30.11.2025.

The petitioner contends before this Court that the due to obligations on the part of the respondents authority since the

inception of the tender work, the petitioner was constrained to seek extension of time. Learned Advocate appearing for the petitioner, as regards, refers to the copies of the letters dated 05.08.2022 , 22.09.2022, 22.11.2024, 07.02.2025, 19.02.2025, 31.03.2025 and 03.11.2025 send by the petitioner to the respondent no. 2.

Learned Advocate appearing for the petitioner submits that time was extended by the respondents authority upon invocation of Clause 17A of General Clauses of Contract (in short GCC) only but did not invoke the L.D. Clause being the Clause 17B of GCC. Therefore, according to the learned Advocate, granting the extension by respondents authority without L.D. Clause itself depicts that there was no default on part of the petitioner regarding completion of the said project.

A seven days notice being ELD-300-WC-6-2020-21 dated 26.11.2025 was issued by the respondents authority to the petitioner upon invocation of Clause 62 GCC, however, the petitioner herein contends that the said notice was received by the petitioner on 13.12.2025 i.e. 10 days after expiry of the stipulated seven days notice and on the same day the petitioner replied to the same.

The petitioner contends that the respondents authority totally ignored the said reply and further served a 48 hours notice being ELD-300-WC-6-2020-21 dated 02.01.2026 whereby threatened to forfeit the Security Deposit and encash the Performance Guarantee aforesaid. The petitioner then replied to the same by a letter dated ME/SDAH/T-Way/48H/2026 dated 02.01.2026 and further sent a representation and notice dated 07.01.2026 for referring to the matter to arbitration to the General Manager, Eastern Railways in compliance of Clause nos. 63 and 64 of GCC.

That being so, by filing the instant application before this Court, the petitioner prayed for an interim order from restraining the respondents authority from enchasing the Performance Guarantee in the form of Bank Guarantee stated above and further forfeiting the Security Deposit of Rs. 24,67,050.09/- before adjudicating the dispute in question before the arbitration.

On revelation of the instant case, it appears that the GCC pertaining to the LOA contains an arbitration clause being Clause no. 64 by which the dispute between the parties may be referred to arbitration for adjudication of the same in accordance with due procedure as contained in the said Clause.

The case and/or dispute as made out by the petitioner is arbitrable and as such, the same may be adjudicated by the arbitral tribunal in accordance with Clause no. 64 contained in GCC.

More so, it appears that in the instant application the petitioner has only prayed to secure the Performance Guarantee and the Security Deposit before adjudicating the matter in arbitration. And, if the same be allowed, there will not at all be prejudice to the respondents authority. As, if in the arbitration the petitioner's case does not hold, the respondents will get the benefit of the said Performance Guarantee and the Security Deposit with interest. Besides that, while adjudicating a Section 9 application, this Court should protect the arbitral property so that the fruit of arbitration should not be futile.

However, in this score, this Court relies on the case of **Arcelor Mittal Nippon Steel India Limited vs. Essar Bulk Terminal Limited**, wherein the Hon'ble Apex Court held as follow:

“Applications for interim reliefs are inherently applications which are required to be disposed of urgently. Interim relief is granted in aid of final relief. The object is to ensure protection of the property being the subject matter of arbitration and/or otherwise ensure that the arbitration proceedings do not become infructuous and the arbitral award does not become an award on paper, of no real value”.

This Court also relies on a recent decision of the Hon'ble Supreme Court of India in the case of **M/s. Jindal Steel and Power Ltd. & Anr. vs. M/s. Bansal Infra Projects Pvt. Ltd.** in respect of invocation of the Bank Guarantee in a Section 9 petition, the Hon'ble Court held as follows:

“12. However, it cannot be disputed that after hearing both sides and with the consent of the parties, the High Court disposed of the writ petition by the order impugned herein, inter alia stating that if the appellants were permitted to invoke the bank guarantee, the prayer made in the Section 9 arbitration petition would likely become infructuous. Furthermore, the High Court clearly observed that the Commercial Court shall proceed in accordance with law and adjudicate upon the prayers made in the arbitration petition on its own merits, considering the pleadings and documents placed on record, without being influenced by any of the observations made therein. Ultimately, it was directed that the interim order restraining the appellants from encashing the bank guarantee shall remain in force until the disposal of the arbitration petition pending before the Commercial Court, subject to Respondent No. 1 extending the validity of the bank guarantee. Thus, we are of the view that the order passed by the High Court is merely an interim measure intended to protect the interests of both parties.

13. Admittedly, Respondent No. 1 initiated arbitration proceedings to resolve the disputes with the appellants. In the Section 9 arbitration petition filed by them, the arguments on behalf of Respondent No. 1 and Respondent No. 2 have already been concluded, and the matter stands partly heard, pending further arguments on behalf of the appellants. Furthermore, pursuant to the order dated 06.11.2024 passed by the High Court, an Arbitral Tribunal was constituted to adjudicate the disputes between the parties and a hearing was held on 03.01.2025, during which, the parties involved herein appeared and the Arbitral Tribunal directed them to file statement of claim, statement of defence and counter claim, if any, and reply to the same. Thus, in view of the ongoing arbitration proceedings concerning the bank guarantee, it is imperative to maintain the existing position regarding the bank guarantee until the final outcome of the Section 9 arbitration petition”.

Therefore, it appears before this Court that the petitioner has been able to make out a good *prima facie* case, tilting the balance of

convenience in favour of granting *ex parte ad interim* relief else the petitioner will suffer irreparable loss, for which the petitioner may be remediless, if the petitioner will get an award in favour of them in the arbitral proceeding.

Therefore, the respondents and/or their men and/or agents and/or representatives is hereby directed to be restrained from encashing the Performance Guarantee, more-fully stated in prayer (a) of the instant application, and also from forfeiting the Security Deposit, more-fully stated in the prayer (a) as well, till the next date as fixed hereunder.

Issued notice accordingly.

The petitioner is directed to comply with the due provisions of Order XXXIX Rule 3(a) and (b) of CPC and file the affidavit of service to that effect within 24 hours.

Petitioner is directed to file requisites at once. Thereafter, the summons for the instant case will be issued.

To date i.e. on **07.03.2026 at 11:40 a.m.** for S/R and appearance of the respondents.

Parties to act on the basis of the downloaded copy of this Order.

Dictated and corrected by me.

Sd/-

Judge, Commercial Court at Alipore,
For South 24 Parganas, Purba Medinipur,
Paschim Medinipur&Jhargram

Sd/-

Judge, Commercial Court at Alipore,
For South 24 Parganas, Purba Medinipur,
Paschim Medinipur&Jhargram