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**(2003) 04 DEL CK 0056**

**In the Delhi High Court**

**Case No :** IAs. No's. 4763 and 6994 of 2002 in Suit No. 956 of 2002

Vikas Laminator Ltd.

APPELLANT

Vs

Indian Overseas Bank and Another

RESPONDENT

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**Date of Decision :** 09-04-2003

**Acts Referred:**

Civil Procedure Code, 1908 (CPC) — Order 39 Rule 1, Order 39 Rule 2, 151

**Citation :** (2003) 5 AD 251 : AIR 2003 Delhi 434 : (2003) 3 BC 355 : (2004) 1 CTLJ 170 : (2003) 105 DLT 331

**Hon'ble Judges :** Ramesh Chand Jain, J

**Bench :** Single Bench

**Advocate :** A.S. Chandhiok, Leena Tuteja, Dinesh Agnani, Manmeet Arora and A.S. Agnani, for the Appellant; Ajay Jha, for defendant No. 1, Sanat Kumar and Sanjay Sharma for defendant No. 2, for the Respondent

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## **Judgement**

R.C. Jain, J.—The above named plaintiff has moved is No. 4763/2002 under Order XXXIX Rules 1 & 2 read with Section 151 CPC seeking an ad interim injunction restraining defendant No. 1 bank from making payment of the bank guarantees in question to defendant No. 2 till the disposal of the suit.

2. The plaintiff has filed a suit for permanent injunction with the averments and allegations that it is a company incorporated under the Companies Act, 1956; defendant No.1 is a banking company while defendant No. 2 is also a company incorporated under the Companies Act, 1956 having been formed for assisting small scale industrial units in the country in several ways, one of which being to extend raw-material assistance to the units in procuring raw-material from the canalized/government to date agencies for and on behalf of the said units. The plaintiff is engaged in the manufacturing of flexible packaging and for that purpose it has been purchasing raw material from various companies and for which defendant No. 2-corporation agreed to provide financial assistance to the plaintiff-company and accordingly an agreement dated 30th July, 1997 was entered into between the plaintiff and defendant No. 2. In terms of the said

agreement, the plaintiff had given the following five bank guarantees issued by defendant No. 1 in favor of defendant No. 2:-

"Bank Guarantee No. and date Amount 115/LG/85/97 DTD.05.08.97 Rs. 15,00,000/- 115/LG/19/98 DTD.22.01.98 Rs. 10,00,000/- 115/LG/21/98 DTD.12.02.98 Rs. 20,00,000/- 115/LG/40/99 DTD.20.03.99 Rs. 10,00,000/- 115/LG/41/99 DTD.24.03.99 Rs. 15,00,000/- The said bank guarantees are stated to be subsisting.

3. The plaintiff claims that it had paid up to date interest for all the outstanding loans and fulfilled all its obligations under the agreement uptil a few months prior to the filing of the suit but due to the recession in the business, the goods manufactured by the plaintiff could not be sold in the market and as a result whereof the stock of finished and semi-finished goods has piled up. Due to this reason, the plaintiff suffered heavy losses and could not fulfill its obligations and has become sick industry as per the provisions of Sick Industrial Company (Special Provisions) Act, 1985 (SICA) and had approached the Board of Industrial & Financial Reconstruction (BIFR), for being declared sick and for framing of scheme in terms of the said Act and for rehabilitation of the plaintiff-company. While the matter was pending consideration before the BIFR, the defendant No. 2 without any rhyme or reason and knowing fully well, with mala fide intention and ulterior motives and contrary to the terms and conditions of the agreement and bank guarantees, invoked the said bank guarantees and asked the bank/defendant No. 1 to encash the bank guarantees without showing if the plaintiff has committed any breach of any terms and conditions of the agreement and the extent of loss/damage/charges and expenses suffered due to any default/delay on the part of the plaintiff. The said demands of defendant No. 2 are stated to be contrary to the terms of the agreement as well as the guarantee executed by defendant No.1 in favor of defendant No.2. It is further alleged that defendant No. 2 has not settled the accounts in terms of the agreement nor has it raised any demand whatsoever on the plaintiff informing that the plaintiff had neglected in making the payments of any amount. On this score, it is also pleaded that the action of defendant No. 2 in invoking the bank guarantees without even settling the accounts is contrary to the terms of the bank guarantees and is mala fide and has been made with ulterior motives in order to pressurise the plaintiff to agree to illegal and unlawful demands of defendant No. 2.

4. The suit is contested by defendant No. 2 by filing a written statement raising preliminary objections about the maintainability of the present suit on the premises that the bank's liability under the bank guarantee is absolute and unconditional under the law of the contract and the plaintiff has no locus standi to intervene in the matter as it is the defendant No. 1-bank who had undertaken to pay the amount of the bank guarantees in accordance with clauses 3 & 4 thereof, notwithstanding any dispute raised by the Unit; the suit has been filed by the plaintiff in collusion with defendant No. 1 which is apparent from the fact that the bank failed to indemnify defendant No. 2 in terms of the bank

guarantees which were invoked on 3rd May, 2002 and in the meantime, the plaintiff obtained a restraint order against the encashment of the bank guarantee on false representation. It is also pleaded that the plaintiff has not approached the Court with clean hands and has concealed material facts in regard to its promises and undertaking to pay the due amounts in Installments. It is denied that defendant No. 2 has failed to settle the accounts and on the contrary it is pleaded that as on 3rd May, 2002, the plaintiff was liable to pay Rs. 69,71,765/- to defendant No. 2 which was increasing by Rs. 4,000/- per day approximately as the plaintiff has failed to make the payment. It is denied that defendant No. 2 has invoked the bank guarantee in contravention of the terms and conditions of the agreement and the bank guarantee or with mala fide intention or with a view to exercise any pressure on the plaintiff. It is further pleaded that the plaintiff was extended financial assistance on furnishing alternative security of bank guarantee provided in the agreement and it is denied that defendant No. 2 was required to take possession of the hypothecated goods before invoking the bank guarantee.

5. Defendant No. 1 also filed its written statement not disputing the factum of defendant No. 1-bank having executed the five bank guarantees in question in favor of defendant No. 2 and for and on behalf of the plaintiff and that defendant No. 2 being entitled to invoke the bank guarantee. It is denied that the plaintiff is entitled to any declaration or injunction against defendant No. 1 from making the payment of the amounts of the bank guarantees. plaintiff has filed replications to the written statements controverting the pleas raised in the written statements and reiterating the averments made in the plaint.

6. At the time of filing of suit, the plaintiff prayed for grant of an ex parte ad interim injunction and the Court while issuing the notice to the defendants has directed defendant No.1 to withhold the payments of the bank guarantees No. 115/LG/85/97 dated 5.8.1997 for Rs. 15,00,000/-, 115/LG/19/98 dated 22.1.1998 for Rs. 10,00,000/-, 115/LG/21/98 dated 12.2.1998 for Rs. 20,00,000/-, 115/LG/40/99 dated 20.3.1999 for Rs. 10,00,000/- and 115/LG/41/99 dated 24.3.1999 for Rs. 15,00,000/- in pursuance of the letters of invocation dated 2nd May, 2002 issued by defendant No. 2 vide order dated 20th May, 2002. Defendant No. 2 filed a reply to the said application of the plaintiff and also moved an application being is No. 6994/2002 under Order XXXIX Rule 4 CPC for vacation of the ex parte ad interim injunction. In the application, it is denied that the plaintiff had any prima facie case much less a strong case entitling it for the relief of declaration and permanent injunction or ad interim injunction on the same ground as pleaded in the written statement.

7. I have heard Mr. A.S. Chandhiok, Sr. Advocate, on behalf of plaintiff, Mr. Sanat Kumar, Advocate representing defendant No. 2 and Mr.Ajay Jha, Advocate for defendant No. 1-bank and have given my thoughtful consideration to their respective submissions. The first and foremost question which needs to be considered for answering the present applications is whether the bank

guarantees executed by defendant No. 1-bank in favor of defendant No. 2, are absolute or conditional bank guarantees. In this regard, we may refer to the terms and conditions of the agreement dated 30th July, 1997 and the bank guarantees. The relevant clauses No. 6 & 7 of the said agreement which have a bearing on the question of bank guarantees are in the following terms:-

"6. That the raw material assistance under this Agreement shall be granted by the Party of the First Part to the Party of the Second Part subject to furnishing of the following securities by the party of the second part :

a) A Bank Guarantee executed by a Nationalised/Approved Bank to the satisfaction of the Party of the First Part. The Party of the First Part shall be entitled to invoke and encash the said Bank Guarantee in the terms and conditions as stipulated in the said Bank Guarantee.

b) A letter of Credit executed by a Nationalised/Approved Bank to the satisfaction of the Party of the First Part. The Party of the First Part shall be entitled to negotiate the letters of credit as per the terms stipulated therein;

c) Pledge of shares/debentures Units of UTI/National Savings Certificates or any other securities approved by the Party of the First part;

"7. That the Party of the Second Part hereby further hypothecates in favor of Party of the First Part the goods described in general terms in the Schedule `A" and/or plant and machinery described in Schedule `B" (hereinafter referred to as the hypothecated goods) belonging to the Party of the Second part, which now or hereinafter from time to time during this security shall be brought in, stored or be in or about the premises or godown of the Party of the Second Part at or wherever else the same may remain as security for the payment by the party of the Second Part to the Party of the First Part at any time or ultimately on the closing of the said lending facility and for the payment of all debts and liabilities mentioned in the clauses hereof;"

8. On the strength of above terms and averments/admissions made by defendant No. 2 in para No.15 of the written statement, Mr.Chandhiok submitted that the bank guarantees furnished by the plaintiff was an alternative security, the main/primary security being the hypothecated goods and stocks of the plaintiff in favor of defendant No.2 as contemplated by clause 7 of the agreement. This submission has been controverted by the learned counsel for defendant No. 2 being based on misreading of the terms of the agreement and the alleged averments made in the written statement. In this connection, he has also invited the attention of this Court to Schedule `A" and "B" appearing at the bottom of the said agreement relating to the particulars of goods/materials and shops/godowns etc. which could have been hypothecated by the plaintiff to defendant No. 2. Both these Schedules `A" & `B" of the agreement are left blank which would in turn show that no stock, goods or shops/godowns etc. were hypothecated/mortgaged by the plaintiff to defendant No. 2 as stipulated in clause 7 (supra) of the agreement. Consequently, it is manifest that the bank

guarantees furnished by defendant No. 1 for and on behalf of the plaintiff in favor of defendant No. 2 were the primary and only security furnished by the plaintiff for the due performance of the terms and conditions of the said agreement.

9. Now coming to the terms of the bank guarantee clauses 2, 3 & 4 which are important and will throw light as to the nature and extent of the bank guarantees viz. whether the bank guarantees were absolute or conditional. The said terms of the bank guarantees read as under:-

"2. We Indian Overseas Bank further agree that National Small Industries Corpn Ltd., shall be the sole judge whether the said unit has committed any breach or breaches of any of the terms and conditions of the said agreement and the extent of loss, damage, cost, charges and expenses suffered due to any default/delay on the part of unit in payment of NSIC dues, other charges, expenses or payment demanded by the National Small Industries Corporation Ltd. in terms of the said agreement. We hereby also waive in favor of the National Small Industries Corporation Ltd., all rights and defense plea to which as guarantor we may be entitled to. To give effect to this guarantee, the National Small Industries Corporation Ltd. may act as though as we were the principal debtors.

3. We Indian Overseas Bank do hereby undertake to pay the amounts due and payable under this guarantee without any demur, merely on a demand from the NSIC stating that the amount claimed is due by way of loss or damage caused to or would be caused to or suffered by the NSIC by reason or breach by the said unit of any of the terms and conditions contained in the said agreement or by reason of the unit's failure to perform the said agreement, charges, expenses or payment demanded by NSIC in terms of the said agreement, any loss caused to NSIC by way of loss of raw material by NSIC at the behest of the unit for utilisation of unit's business. Any such demand made on the bank shall be conclusive as regards the amount due and payable by the bank under this guarantee. However, our liability under this guarantee shall be restricted to an amount not exceeding Rs. 10.00 lacs.

4. We undertake to pay to the NSIC any money so demanded notwithstanding any dispute or disputes raised by the unit in any suit or proceeding pending before any court or Tribunal relating thereto, our liability under these presents being absolute and unequivocal."

10. On the strength of said terms and conditions, learned counsel for defendant No. 2-corporation has strongly urged that the bank guarantees in this case are absolute and no conditions are attached to its invocation. On a careful reading of the above clauses of the bank guarantees furnished by defendant No. 1-bank in favor of defendant No. 2, it appears to this Court that the bank guarantees were irrevocable and not conditional in the strict sense that no discretion was left with defendant No. 1-bank not to pay the amounts due once a demand was made by defendant No. 2 for making payment of the amounts secured by the bank guarantees. However, sight cannot be lost of the important stipulation that the

demand of defendant No. 2-corporation must state that the amount claimed was due by way of loss or damage caused or would be caused to or suffered by the NSIC by reason or breach of any of the terms and conditions contained in the said agreement or by reason of units" failure to perform the said agreement including any default/delay in timely payment of NSIC dues.

11. Learned counsel for the plaintiff has strongly urged that in the invocation letters, the defendant No. 2 has nowhere stated that it has suffered any loss or damage and if so, what was the extent of such loss or damage and, Therefore, the invocation letters cannot be said to have fulfilled the requirements for their invocation and the invocation of the bank guarantees was illegal and invalid. In this connection, we may refer to one of the five letters of invocation dated 2nd May, 2002 which are identical and is in the following terms:-

"The Manager

Indian Overseas Bank

defense Colony

New Delhi-24.

Reference : Bank Guarantee No. 115/LG/21/98 for Rs. 20,00,000/- given by you on behalf of M/s. Vikas Laminator Ltd., Noida

Dear Sir,

We refer to your Bank Guarantee No. 115/LG/21/98 dated 12.02.98 for Rs. 20,00,000/- issued on behalf of M/s. Vikas Laminator Ltd., Noida. The said bank guarantee is expiring on 30.01.2003. As the party has failed to meet its commitment under the contract, we hereby invoke the said bank guarantee and demand you to make the payment of the said bank guarantee immediately.

The receipt of this letter may please be acknowledged.

Thanking you,

Yours faithfully,

R.K. Sharma

(Manager a/cs)"

12. In support of his contention that the invocation of the bank guarantee was not valid, learned counsel for the plaintiff has placed reliance upon a Supreme Court decision in the case of Hindustan Construction Co. Ltd. Vs. State of Bihar and Others, where the Court reiterated the legal position that the terms of the bank guarantee are extremely material and since the bank guarantee represents an independent contract between the bank and the beneficiary, both the parties would be bound by the terms thereof and the invocation, Therefore, will have to be in accordance with the terms of the bank guarantee or else the invocation

itself would be bad. It was also held in this case that the bank guarantee could be invoked only in the circumstances referred to in aforesaid clause whereunder the amount would become payable only if the obligations are not fulfilled or there is misappropriation. That being so, the Bank guarantee could not be said to be unconditional or unequivocal in terms so that the employer/State could be said to have had an unfettered right to invoke that guarantee and demand immediate payment thereof from the Bank. Invocation itself being bad High Court was not justified in interfering with the order of injunction, granted by the single Judge, by which the defendants were restrained from invoking the Bank guarantee. Reliance is also placed on a Single Bench judgment of this Court in the case of Puri International (P) Ltd. Vs. National Building Construction Co. Ltd., . This Court on the facts of that case held that the bank guarantee was not invoked in accordance with the terms or requirements of the bank guarantee and, Therefore, its encashment was not permissible. Equally reliance is placed on yet another decision passed by Single Judge in the case of Ansal Properties and Industries (P) Ltd. Vs. Engineering Projects (India) Ltd., . In the said case, the stipulations in the bank guarantee and the letter invoking the bank guarantees read as under:-

"We, the New Bank of India Limited..... do hereby guarantee the recovery by the E.P.I. of the said advance with interest thereon..... If the said contractor fails to utilise the said advance for the purpose of the contract and/or the said advance together with interest thereon as aforesaid is not fully recovered by EPI, we..... hereby unconditionally and irrevocably undertake to pay to the EPI as demanded and without demur to the extent of the said sum of Rs. 25 lacs any claim made by the EPI on us for loss or damage caused to or suffered by the EPI by reason of the EPI not being able to recover in full the said sum of Rs. 25 lacs with inter, as aforesaid.

2. We..... further agree that the EPI shall be the Sole Judge of ..... the extent of loss or damage caused to or suffered by the EPI on account of the said advance together with interest not being recovered in full and the decision of the EPI ..... shall be final and binding on us.

Petitioner is the Contractor and the respondent is EPI in this document).

"You (New Bank of India) had executed in our favor a Bank Guarantee No. MRB/36/78 dated 21.8.1978 for a sum of Rs. 22,59,000/- on behalf of M/s. Ansal Properties & Industries Pvt. Ltd. for due performance of their obligations under the contract between them and ourselves. M/s. Ansal Properties & Industries Pvt Ltd., the contractor above named have failed to perform their obligations under the contract and as such we call upon you to pay to us the guaranteed amount of Rs. 22,59,000/-."

13. On the face of these stipulations and relying upon the Supreme Court decision in the case of United Commercial Bank Vs. Bank of India and Others, and Harparshad and Co. Ltd. Vs. Sudarshan Steel Mills, Punjab National Bank, , it

was held that the invocation letter did not fulfill the requirements agreed in the bank guarantee for invoking the same and as such this performance bank guarantee had not been validly invoked.

14. Mr. Sanat Kumar, learned counsel for defendant No. 2 has countered the above argument and has urged that the invocation of bank guarantees in the present case is perfectly valid firstly because it contained the requisite statement that the plaintiff had failed to meet its commitment under the contract and the amount claimed by defendant No. 2 had actually become due and payable by the plaintiff due to its default. In this connection besides relying on the terms of bank guarantee, he has invited the attention of this Court to the correspondence exchanged between the parties during the period June 2000 to April 2002. In the letter dated 7th June, 2000, the defendant No. 2 informed the plaintiff that an amount of over Rs. 20 lacs was overdue for more than 100 days as against the maximum credit period limit of 90 days and, Therefore, called upon the plaintiff to take immediate action for payment of Rs. 20 lacs by 15th June, 2000. It appears that the amount was not paid within the stipulated period and vide a letter dated 9th December, 2000, the plaintiff had undertaken to pay Rs. 5 to 7 lacs per week and by December, 2000, it will be able to clear the overdue amount of Rs. 20 lacs. However, no payment was made and vide a letter dated 11th December, 2000, the defendant No. 2 once again called upon the plaintiff to remit a sum of Rs. 20 lacs within the month of December. Letter dated 10th July, 2001 also refers to the commitment of the plaintiff to make the payment in the Installment of Rs. 6 to 7 lacs every week which was not fulfilled. The said letter was responded by the plaintiff which reads as under:-

"We are in receipt of your letter No. NSIC:RON:MKG:2001 dated 10.7.2001 regarding liquidation of outstanding dues under RMA.

We regret to inform you that we could not fulfill our commitment because we are not getting the payments from our clients of South region due to disturbance in Tamilnadu.

We ensure you that maximum possible payment will be made to you in this month. Kindly bear with us till such time."

plaintiff's subsequent letter addressed to defendant No. 2 dated 15th March, 2002 is rather important and a part of it reads as under:-

"The company has come out of all the problems now and we have tied up some financial arrangements with one of our well wisher, who are familiar with the flexible packaging industry and have good rapport with suppliers who have now agreed to supply the material at a competitive price. We are expecting release of some additional working capital finance from our banker shortly. In view of the above and as discussed we confirm as under:

1. The entire over dues will be cleared by the end of June this year.
2. Till March end we will settle over dues of Rs. 10.00 lacs and the same amount

will be disbursed to us. The interest and service charges shall be paid separately on the amount disbursed under this Scheme.

We are enclosing herewith the Extension of Letter of Guarantee No. LG/115/41/99 for Rs. 15.00 Lacs and Bank Guarantee No. LG/115/40/99 for Rs. 10.00 Lacs. Kindly acknowledge the receipt.

Hope you will understand our problem and allow us time to clear over dues as requested."

15. It appears, nothing was done in the direction of making the payment of due amount and defendant No. 1-bank was constrained to issue two letters dated 19th April, 2002 and 24th April, 2002 in quick succession holding out its intentions to invoke the bank guarantees for plaintiff's failure to remit the outstanding amount of Rs. 69,22,674/-. It is, Therefore, apparent that the plaintiff has itself acknowledged that the amount to the extent of almost Rs. 70 lacs approximately, i.e. equivalent to the amount of bank guarantees was overdue and payable by the plaintiff to defendant No. 2-corporation and defendant No. 2 had shown it indulgence repeatedly by permitting them to make the payment in a staggered/deferred manner. The plaintiff despite its assurances failed to honour its commitment and, Therefore, the contention of the learned counsel for the plaintiff that there was no settlement of account and defendant No. 1 had not informed about the due amount, is without any force.

16. On the face of the contents of the above material and the legal position, it is to be seen as to whether the expression "As the party has failed to meet its commitment under the contract, we hereby invoke the said bank guarantee and demand you to make the payment of the said bank guarantee immediately" is in consonance and sufficient compliance of the terms of the bank guarantees. On a plain reading of the contents of the said letters, this Court has no hesitation in holding that the invocation was in consonance with clause 3 of the bank guarantee because that clause authorised defendant No. 2 to invoke the bank guarantees and demand payment by stating any of the following things:-

- a) The amount claimed is due by way of loss or damage caused or would be caused or suffered by the NSIC; or
- b) Breach by the said unit of any of the terms and conditions contained in the said agreement; or
- c) By reason of the unit's failure to perform this agreement including any default/delay in timely payment of NSIC dues.

No doubt, the invocation letters do not refer to any loss or damage caused or suffered by the NSIC but it clearly states the reason for invoking the bank guarantee as "As the party has failed to meet its commitment under the contract" which in the opinion of this Court clearly tantamounts to the same thing as contained in third situation (supra).

17. The law with regard to grant of injunction to restrain realisation of the bank guarantee has been settled through a catena of decisions of the Supreme Court and various High Courts and in the case of Dwarikesh Sugar Industries Ltd. Vs. Prem Heavy Engineering Works (P) Ltd., and another, , it was held that the Court should be slow in granting injunction restraining realisation of the bank guarantee. There are only two following exceptions to this general:-

(1) If there is a fraud in connection with the bank guarantee which would vitiate the very foundation of such guarantee and the beneficiary seeks to take advantage of it, then he can be restrained from doing so. But for that, the fraud has to be an established fraud.

(2) Where allowing the encashment of an unconditional bank guarantee would result in irretrievable harm or injustice to one of the parties concerned. The resulting of the irretrievable injury, has to be such a circumstance which would make it impossible for the guarantor to reimburse himself, if he ultimately succeeds. Even this has to be decisively established and it must be proved to the satisfaction of the Court that there would be no possibility whatsoever of the recovery of amount from the beneficiary, by way of restitution.

18. In the case in hand, there is no allegation regarding any fraud having been perpetrated on the plaintiff or the beneficiary seeking to take any undue advantage of it nor it could be shown that any irretrievable harm or injustice is likely to be caused if the bank guarantees furnished by the plaintiff are allowed to be encashed. In the case in hand, the bank guarantees were furnished by defendant No. 1-bank at the behest of plaintiff in favor of defendant No. 2 as a security for the due performance of the terms and conditions of the contract/agreement dated 30th July, 1997 between the plaintiff and defendant No. 2 and has unmistakably shown that a sum of around Rs. 70 lacs has become overdue to defendant No. 2 from the plaintiff which it has failed to pay/remit despite several opportunities granted in accordance with deferred schedule of payment as per its own offer. plaintiff was forewarned about the invocation of the bank guarantees before actually invoking the same. It was purely a commercial transaction and the plaintiff cannot seek to restrain the encashment of the unconditional and irrevocable bank guarantees on certain non-existent and untenable grounds. In commercial transactions, the bank guarantees are the very life blood and are meant to be honoured and not disregarded on certain untenable premises when it comes to their enforcement. Any contrary view is likely to effect the commerce and industry.

19. Learned counsel for the plaintiff has lastly submitted that the plaintiff-company has suffered financial loss and has gone sick and approached the BIFR and has been declared as a sick company and, Therefore, as per the provision of Section 22 of SICA, defendant No. 2 is not within its rights to encash the bank guarantees. This Court on a consideration of the matter, more particularly that the present suit has not been filed by defendant No. 2 corporation, is of the view that Section 22 of SICA will not be attracted in the present case as none of the

situations mentioned in the said Section which require suspension of legal proceedings, exist in the case in hand.

20. Having considered the matter in its entirety and from various angles, this Court is of the considered opinion that the plaintiff has failed to make out a prima facie case what to talk of a good and strong prima facie case, entitling it to an ad interim injunction. Balance of convenience also cannot be said to be in favor of the plaintiff rather it exists in favor of defendant No. 2. The plaintiff cannot avoid its legal obligations under the terms of the agreement and bank guarantees. The plaintiff has defaulted in making payment of overdue sums for a long period and thereby committed breach of the terms and conditions of the agreement entitling the defendant No. 2-corporation to invoke the bank guarantees.

21. In the result, is No. 4763/2002 filed by the plaintiff under Order XXXIX Rules 1 & 2 CPC fails and is hereby dismissed. is No. 6994/2002 filed by defendant No. 2-corporation under Order XXXIX Rule 4 is allowed and the ad interim injunction order dated 20th May, 2002 granted by this Court is hereby vacated.

List the matter before the Joint Registrar for completion of pleadings and admission/denial of documents on 21st August, 2003.