

## Information Memorandum

## Amidst the lockdown, Delhi High Court stays the invocation of Bank Guarantee

**M/s. Halliburton Offshore Services Inc vs. Vedanta Limited and Anr**

O.M. P (I) (COMM) & I.A.3697/2020, Order dated: 20/04/2020, DELHI HIGH COURT

### RATIO

Delhi High Court has recently restrained Vedanta Ltd from invoking bank guarantees of Halliburton Offshore Services Pvt. Ltd after the latter expressed its inability to complete the development of oil blocks for Vedanta within the deadline due to the lockdown

#### Bank Guarantee Transaction in Paper Format



#### Facts of the case:

Vedanta had floated an international tender for development of three oil blocks, Halliburton accepted the offer, and accordingly both the companies executed a contract dated 25.04.2018 for integrated development of the aforesaid oil blocks. Vedanta had initially granted extension of time to complete the project till 31.03.2020. Substantial part of the project was completed prior to the said date. Halliburton was unable to complete the development of oil blocks citing that the lockdown had rendered the performance of its contract with Vedanta temporarily impossible. Halliburton approached the High Court under section 9 of the Arbitration and Conciliation Act, seeking interim relief by way of a restraint against Vedanta from encashing 8 bank guarantees. The bank guarantees were issued in favour of Vedanta to secure the performance of obligations under the contract. After the filing of present petition by Halliburton, Vedanta terminated the contract, and communicated to the bank for invocation of the 8 bank guarantees forming subject matter of the proceedings.

#### Proceedings before Delhi High Court:

- Halliburton contended that due to the complete nationwide lockdown on industrial activities as well as movement of persons in country consequent to pandemic, Halliburton was unavoidably handicapped in performing the contract. It relied upon *Mahatma Gandhi Sahakara Sakkare Karkhane v. National Heavy Engineering Coop Ltd 2007 6 SCC 470* and *U.P State Sugar Corporation vs. Sumac International Ltd 1997 1 SCC 568* to submit that the court has carved out exceptions to encashment of bank guarantee and where special equities exist then bank guarantee should not be encashed.
- Halliburton submitted that project completion required the travel of people from outside India and workmen from various parts of the country, both of which were barred amid the lockdown.
- Vedanta relied upon *U.P Cooperative Federation Ltd vs. Singh Consultants and Engineers (P) Ltd, 1988 1 SCC 174*; and *Svenska Handelsbanken v. Indian Charge Chrome, 1994 1 SCC 502* and submitted that the ground on which invocation of bank guarantee can be stayed is if there is fraud on the part of the beneficiary creditor or where the documents tendered for invoking the guarantee are not according to the terms of the guarantee.
- It submitted that Halliburton raised the issue of force majeure for the first time in its communication dated 25.03.2020, merely taking advantage of the pandemic crisis and to reap benefits therefrom.

## Issue before Delhi High Court:

Whether the present lockdown can come to the aid of Halliburton in the nature of special equity and restrain Vedanta from invoking the bank guarantees?

## Observation:

1. The Court observed that in order to restrain the operation of irrevocable letter of credit, performance bond or guarantee, there should be serious dispute to be tried and there should be a good prima facie acts of fraud and special equities in the form of preventing irretrievable injustice between the parties.

2. Under what circumstances can the bank guarantee be invoked and what is the law relating to passing of injunction against encashment of the same?

(i) The Court must be slow in putting a restrain in realizing such a bank guarantee.

(ii) There are two exceptions to the above, Firstly, if there is a fraud in connection with such a bank guarantee as it would vitiate its very foundation.

(iii) Secondly, such circumstances where allowing the encashment of an unconditional bank guarantee would result in irretrievable harm or injustice to one of the parties concerned.

3. When in the course of commercial dealings an unconditional bank guarantee is given or accepted, the beneficiary is entitled to realize such bank guarantee in terms thereof irrespective of any pending disputes. The bank giving such a guarantee is bound to honour it as per its terms irrespective of any dispute raised by its customer otherwise the very purpose of giving such a bank guarantee would be defeated.

## KEY PRINCIPLES:

1. Encashment of bank Guarantee on special equities
2. Probable Force Majeure can be considered as a special equity.
3. Unless the issue of Force Majeure is decided the Court can grant a temporary stay on encashment of bank guarantee.

## Held:

The Court observed that the lockdown resulted in an inability for Halliburton to complete the performance within the agreed date. Hence the special equities demanded that the bank guarantee should not be encashed thereby granting limited protection to Halliburton till next date of hearing and held as under:

(i) Courts are empowered to stay encashment of bank guarantees on grounds of "special equities" to prevent "irretrievable harm".

(ii) Even though petroleum was an exempted activity during lockdown, Halliburton was not involved in production of petroleum but engaged in drilling of petroleum wells.

(iii) If no interim protection is granted and the bank guarantees are allowed to be encashed, even while the lockdown is in place, injury and prejudice would result to Halliburton merits being categorised as irretrievable.

(iv) Since the injunction granted is purely ad interim in nature, the aspect of continuance of this interim order will be taken up on next date of hearing.

## Acelegal Analysis:

- Court without plunging into the merits of the case and observing the contractual clause of the contract have granted temporary ad-interim relief to Halliburton in the nature of limited protection till the lockdown is uplifted.
- The observation has been made by court on the law of invocation of bank guarantee and not really on the law of invocation of force majeure under the lockdown crisis.
- The issue before the court was on invocation of bank guarantee under the pandemic situation and not on the frustration of obligation under the contract due to the force majeure.
- The said decision appears to be in variance with the decision of Bombay High Court in *Standard Retail Pvt Ltd vs. M/s Global Corp & Ors, Commercial Arbitration Petition (L) 404/2020*. However, a

careful reading would show that the issue before the Mumbai High Court was the honouring of letter of credit where the other party had performed its obligation. The court applied strict interpretation of contractual clause with respect to force majeure, observing that lockdown is for temporary period, it needs to be contemplated that whether the particular timeline has really affected the party to perform its obligations. Therefore, this Delhi HC decision is very different in respect to the issue before the court, the remedy sought and the relief granted.

**Contact**

*Acelegal*

Email id: [bharat@acelegal.net](mailto:bharat@acelegal.net)

Telephone: 022-27812781/ 82

**Address:****MUMBAI:**

D-201, 2<sup>nd</sup> Floor, Vashi Station Complex, Navi Mumbai – 400 703

**DELHI:**

B-27, Front Block, Sagar Apartments, 6- Tilak Marg, New Delhi-110001

**Disclaimer:**

*This information Memorandum is meant solely for the purpose of information. Acelegal do not take any responsibility of decision taken by any person based on the information provided through this memorandum. Please obtain professional advice before relying on this information memorandum for any actual transaction. Without prior permission of Acelegal, this memorandum may not be quoted in whole or in part or otherwise referred to in any documents.*