



2025:KER:24902

WA NO. 2183 OF 2023

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IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE DR. JUSTICE A.K.JAYASANKARAN NAMBIAR

&

THE HONOURABLE MR. JUSTICE EASWARAN S.

THURSDAY, THE 20TH DAY OF MARCH 2025 / 29TH PHALGUNA,

1946

WA NO. 2183 OF 2023

AGAINST THE ORDER/JUDGMENT DATED 10.11.2023 IN WP(C)

NO.3124 OF 2023 OF HIGH COURT OF KERALA

APPELLANT/PETITIONER:

M/S. ITMA HOTELS INDIA PRIVATE LIMITED,
ITMA HOTELS, PONNURUNNI NORTH, VYTILLA P.O,
KOCHI, KERALA, REPRESENTED BY THE RESOLUTION
PROFESSIONAL SHRI. KIZHAKKEKARAKURIAKOSE JOSE
682019, NEW ADDRESS ITMA HOTELS, PONNURUNNI
NORTH, VYTILLA P.O., KOCHI, KERALA REPRESENTED
BY ITS MANAGING DIRECTOR MR. TIJU VARGHEES
CHAKO, PIN - 682019

BY ADVS.
SRI.K.SREEKUMAR (SR.)
M.BALAGOPAL
R.SREEJITH
AMMU CHARLES
THRESSY THOMAS
R.DEVIKA (ALAPPUZHA)
ANJALI MENON



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RESPONDENTS/RESPONDENTS:

- 1 THE ADDITIONAL COMMISSIONER OF CUSTOMS,
CENTRAL BOARD OF INDIRECT TAXES AND CUSTOMS,
OFFICE OF THE COMMISSIONER OF CUSTOMS, CUSTOM
HOUSE, WILLINGTON ISLAND, COCHIN, PIN - 682009
- 2 THE DEPUTY/ASSISTANT COMMISSIONER OF CUSTOMS,
CENTRAL BOARD OF INDIRECT TAXES AND CUSTOMS,
OFFICE OF THE COMMISSIONER OF CUSTOMS, CUSTOM
HOUSE, WILLINGTON ISLAND, COCHIN, PIN - 682009
- 3 STATE BANK OF INDIA,
STRESSED ASSETS MANAGEMENT BRANCH (SAMB), 1112,
RAJA PLAZA, AVINASHI ROAD, COIMBATORE,
REPRESENTED BY ITS ASSISTANT GENERAL MANAGER,
PIN - 641037
- 4 STATE BANK OF INDIA,
M.G. ROAD BRANCH, M.G. ROAD, ERNAKULAM,
REPRESENTED BY ITS BRANCH MANAGER, PIN - 682016

BY ADV SUVIN R MENON, CGC

OTHER PRESENT:

SRI. K. SREEKUMAR- SR. COUNSEL
SRI. P.V VINOD- SC FOR SBI

THIS WRIT APPEAL HAVING BEEN FINALLY HEARD ON
20.03.2025, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:



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J U D G M E N T

Easwaran S., J.

This intra-court appeal is preferred by the writ petitioner aggrieved by the dismissal of WP(C) No.3124/2023 by the learned Single Judge by judgment dated 10.11.2023.

2. The short facts necessary for the disposal of the appeal are as follows:

The appellant/writ petitioner was under Corporate Insolvency Resolution Process under the Insolvency and Bankruptcy Code, 2016 initiated by the National Company Law Tribunal, Kochi. The petitioner had for the purpose of running a hotel, imported various capital goods from abroad under the Export Promotion Capital Goods Scheme announced by the Central Government, during the period between April, 2011 to March, 2014. At the time of the imports, the petitioner had furnished 45 Bank Guarantees for various amounts covering the amount of duty against the EPCG authorisations totalling to an amount of Rs.4,14,72,500/-. Since the petitioner was having financial constraints and in view of initiation of the insolvency proceedings, the project never took off and the imported goods were still available at the petitioner's premises in the packaged condition itself. While so, on 27.8.2022, 30.8.2022 and



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31.8.2022, show cause notices under Sections 28(1) read with 124 of the Customs Act, 1962, were issued to the petitioner. According to the petitioner, since the amounts were due to the financial creditor, the 3rd respondent - State bank of India, an application under Section 7 of the Insolvency and Bankruptcy Code, 2016 was moved before the Kochi Bench of the National Company Law Tribunal. While admitting the said application by order dated 31.12.2021, the NCLT, Kochi appointed an Interim Resolution Professional to carry out the resolution process of the petitioner as per the Code. In pursuance to the said order, a resolution plan was submitted, which was approved by the committee of creditors, and accordingly, the NCLT approved the same. The Customs Department, in the meantime, filed their claim before the resolution professional, who rejected the same. The dues of the Customs Department did not find a place in the resolution plan and finally the resolution plan was approved, and thereby the resolution applicant took charge of the affairs of the petitioner. After the rejection of the claim of the Customs Department by the resolution professional, the Customs Department issued a letter dated 11.1.2023 (Ext.P10) to the Bank to encash the Bank Guarantees which were given by State Bank of India on



account of the writ petitioner. Challenging Ext.P10, the petitioner approached this Court in the writ petition.

3. The learned Single Judge, who considered the writ petition, found that the challenge to the invocation of the Bank Guarantees cannot be made, except on fraud or irretrievable injury or loss caused to the person who has furnished the Bank Guarantee. Since none of the grounds were available in the writ petition, the challenge against Ext.P10 was repelled.

4. Heard Sri.K.Sreekumar, the learned Senior Counsel appearing for the appellant, and Sri.Suvin R.Menon, the learned Central Government Counsel appearing for respondents 1 and 2, and Sri.P.V.Vinod (Bengalam), the learned Standing Counsel appearing for respondents 3 and 4, State Bank of India.

5. The Senior Counsel raised twofold contentions; (a) the Bank Guarantees executed by the erstwhile State Bank of Travancore are no longer in force and have since expired and, therefore, the Customs Department cannot invoke expired Bank Guarantees; (b) The claim of the Customs Department was agitated before the resolution professional, who had rejected the claim. Against the dismissal of the claim by the resolution professional, the Customs Department, though had a remedy before the National



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Company Law Tribunal, did not avail the same and, thereafter, the Department is not entitled to invoke the Bank Guarantee.

6. Per contra, Sri.Suvin R.Menon, the learned counsel appearing for the Customs Department with reference to the affidavit filed in the present appeal, contends that in the nature of the Bank Guarantees, it is not possible for the appellant to contend that they have expired. With reference to the clauses in the Bank Guarantees, a specimen of which is produced, the learned counsel contends that the Bank had agreed to make the Bank Guarantees alive until otherwise requested by the Customs Department.

7. Sri.P.V.Vinod (Bengalam), the learned counsel appearing for the Bank referring to the affidavit filed on their behalf sworn to by the Assistant General Manager, State Bank of India, Stressed Assets Management Branch (SAMB) asserts before this Court that the Bank Guarantees were alive only from 9.7.2011 to 8.7.2020. In fact, according to the learned Standing Counsel, the last date of lodgement of the claim was 8.7.2020. Under clause 7(2) of the Bank Guarantee, it is specifically agreed that the Bank Guarantee will be valid between 9.7.2011 and 8.7.2020, and any claim beyond the said period, the Bank is not obliged to honour. Thus, the Bank has



unequivocally stated before us that the Bank Guarantees in question are no longer valid and have since expired.

8. We have considered the rival submissions raised across the bar and are of the view that in the light of the unequivocal stand taken by the Bank in their affidavit dated 17.3.2025, Ext.P10 letter by which respondents 1 and 2 sought to invoke the Bank Guarantees cannot be sustained. Thus, we hold that invocation of the expired Bank Guarantees is not permissible under law and, therefore, Ext.P10 has no efficacy of law and is liable to be set aside.

9. At this point of time, the learned Central Government Counsel appearing for respondents 1 and 2 pointed out that the Bank cannot take a stand that the Bank Guarantees have expired, whereas going by the terms of the contract, they are obliged to keep the Bank Guarantees alive. We are afraid that in this proceedings we cannot adjudicate the disputed questions of fact touching upon the interpretation of the contract of the Bank Guarantees. Respondents 1 and 2 will have to take recourse to the appropriate proceedings under law.

Accordingly, we are of the view that the appellant is entitled to succeed. Hence, the writ appeal and the writ petition are allowed. Ext.P10 is set aside leaving open the rights of respondents 1 and 2



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to take recourse to appropriate proceedings under law qua the Bank Guarantees issued by respondents 3 and 4, in accordance with law.

Ordered accordingly.

Sd/-
DR.A.K.JAYASANKARAN NAMBIAR,
JUDGE

Sd/-
EASWARAN S.,
JUDGE

jg



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APPENDIX OF WA 2183/2023

PETITIONER ANNEXURES

Annexure A TRUE COPY OF THE ORDER DATED 29.03.2023 OF THE NCLT, KOCHI BENCH ALONG WITH THE APPROVED RESOLUTION PLAN

Annexure B TRUE COPY OF THE EMAIL SENT BY THE APPELLANT TO THE 3RD RESPONDENT DATED 06.12.2023

Annexure C TRUE COPY OF THE LETTER SENT BY THE APPELLANT TO THE 1ST AND 2ND RESPONDENTS DATED 15.12.2023

RESPONDENT ANNEXURES

A true copy of acknowledgment of Google Pay receipt dated 07.03.2025

Annexure R1(a) A true copy of one of the Guarantee dated 14.01.2012 issued by the State Bank of Travancore in favour of the Hon'ble President of India, on the application of the Appellant

Annexure R1(b) A true copy of the email dated 19.01.2023, issued by the Assistant General Manager of the State Bank of India, SME Branch to the 2nd Respondent

Annexure R1(c) A true copy of the email dated 04.03.2023 issued by the Assistant General Manager of the State Bank of India, SME Branch

Annexure R1(d) A true copy of the email dated 22.12.2023 issued by the Assistant General Manager of the State Bank of India, SME Branch to the License Section of Cochin Customs House



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Annexure R1(e) A true copy of the letter dated 06.10.2022
issued by the Assistant Commissioner of
Customs, Customs House Cochin, to the
Resolution Professional along with its
Annexure

Exhibit R/3-1 A copy of the sanction letter dated
26.09.2013

Exhibit R/3-2 A copy of the one bank guarantee issued
9th July 2011