

On 20 April 2020, the High Court of Delhi enjoined an owner from calling on eight guarantees given by a mining contractor because of “special equities”. Enchasing unconditional guarantees will only be enjoined where there is fraud, irretrievable harm or special equities.

In *Halliburton Offshore Services Inc v Verdanta Limited* OMP (I) (COMM) 88/2020, Halliburton had given performance, liquidated damages and advance bank guarantees to Verdanta. Completion of the work was due on 31 March 2020 but Halliburton claimed to be prevented from completing by that date because of a complete lockdown on industrial activities and movement of people, particularly in Rajasthan, where the mine was located.

Verdanta reserved its right to take appropriate recourse under the contract “including, but not limited to, termination of subject contract and getting the balance activities completed through alternative resources at the risk and cost of” Halliburton.

Application was then brought by Halliburton under s 9 of the Arbitration and Conciliation Act 1966, which empowers the court to make interim measures before or during arbitration. Halliburton said it intended to commence arbitration under the contract and asked the court to restrain Verdanta from calling on the guarantees. After Halliburton filed the application, Verdanta terminated the contract and wrote to the bank calling on the guarantees.

Mr Justice C. Hari Shankar held that injunctions to restrain calls on unconditional bank guarantees may be granted where:

- There is fraud in connection with the guarantee
- The call would result in irretrievable harm or injustice
- There are special equities

His Honour emphasised that, accepting these propositions, every case has to be decided on its own facts.

Injunctions to restrain such calls were traditionally limited to the first two situations – fraud, and irretrievable harm or injustice – however, his Honour found that the contours of the second ground is “somewhat more elastic”.

“Special equities” had, in earlier cases, been limited to where irretrievable injustice resulted. A 2019 Supreme Court decision in *Standard Chartered Bank Ltd v Heavy Engineering Corporation Limited* 2019 SCC Online SC 1638 seemed to visualise irretrievable injustice and special equities as distinct circumstances, either of which may justify an injunction.

This enabled Shankar J to say:

“Viewed any which way, there appears to be no gainsaying the proposition that, where “special equities” exist, the court is empowered, in a given set of facts and circumstances, to injunct invocation, or encashment, of a bank guarantee. Where such special circumstances do exist, no occasion arises, to revert to the general principle regarding the contractually binding nature of a bank guarantee, or the legal obligation of the bank to honour the bank guarantee, these special circumstances having, in all cases, being treated as exceptions to this general principle.”

Here, the unprecedented and unpredictable nature of the countrywide lockdown preventing Halliburton from completing by the due date was, or created, special equities to warrant an interim injunction for one week after 3 May 2020, the date the lockdown was anticipated to be relaxed. Whether the injunction would be extended depended on the continuation of the lockdown and the normalisation of Halliburton’s activities. A further hearing was set of 11 May 2020, which we will follow with interest.

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