



## High Court of Delhi passes practice directions for renewal, verification and/or extension of bank guarantees<sup>1</sup>

### Brief Facts

IRCON International Limited (“**Applicant**”)<sup>2</sup> filed an application under Section 151 of the Code of Civil Procedure, 1908 seeking appropriate directions from the High Court of Delhi (“**Court**”) for renewal of bank guarantees furnished by Hindustan Construction Company Limited (“**Respondent**”), which expired on 20 November 2020. The Respondent submitted the bank guarantees in compliance of an earlier order of the Court allowing release of the amount awarded in the arbitral awards deposited by the Applicant while seeking stay on the operation of the arbitral awards under challenge.

### Issues

**Issue (i):** Whether the rights of the Applicant remained unprotected owing to the non-renewal of the bank guarantees by the Respondent?

**Issue (ii):** Whether the circumstances required the Court to issue general practice directions regarding the extension or renewal of bank guarantees?

### Judgment

**Issue (i):** The Court held that the Respondent had extended the bank guarantees within the stipulated time and the Applicant’s rights were accordingly protected. However, the same was not put to the notice of the Applicant and therefore, the Applicant had to move the said application for extending the bank guarantees.

**Issue (ii):** The Court sought assistance from the parties and considered that in order to streamline the process of extending bank guarantees, it was much needed to plug-in the loopholes and issue appropriate practice directions for the submission, renewal and verification of bank guarantees that are ordered to be furnished before a court as a condition for release of sums deposited by the opposite party during the pendency of proceedings or otherwise. Accordingly, the Court held that:

- A bank guarantee furnished by a party for release of an amount deposited in court must contain a term stating that in case the bank guarantee is not renewed before ten days from expiry, it shall be encashed without any further demand. The said direction is prospective in nature and only applicable for fresh bank guarantees issued in future;

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- The Court directed the Registry to normalise the process of verifying bank guarantees through video conferencing and sought modifications in applicable rules to ensure bank officials are not required to be physically present in court;
- The Court further directed the Registry to automatically list the matter before the Registrar, two-four weeks before the date of expiry of the bank guarantee.

## Analysis

The order passed by the Court takes into consideration the pressing issues faced by litigating parties that were demonstrated before the Court by the counsels representing the parties, in respect of the issuance, verification, renewal or extension of bank guarantees. A bank guarantee acts as a security against an amount released by a court in favour of a decree holder so as to safeguard the interest of the judgment debtor. Although a court directs the Registry to put up an office note while verifying a particular bank guarantee, three-four weeks before the expiry of the bank guarantee, more often than not, parties end up seeking directions from the appropriate court for the renewal or extension of the bank guarantee. This results in unwanted litigation, and an unnecessary cost and time burden on the parties. Thus, in order to curb the difficulties faced by litigating parties, the practice directions issued by the Court in the present case are a step in the right direction. As the practice directions passed are general in nature and not confined to this particular case, they will apply to all prospective cases where a court directs any party to furnish a bank guarantee.

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## Endnotes

- 1 Authored by Gauhar Mirza, Partner, Prakhar Deep, Senior Associate and Nishant Doshi and Jasvinder Singh, Associates; *IRCON International Limited v. Hindustan Construction Company Limited*, FAO (OS) (COMM) Nos. 173-174/2018, High Court of Delhi, judgment dated 2 June 2021.

**Coram:** Vipin Sanghi and Jasmeet Singh, JJ.

- 2 IRCON International Limited was represented by the team of Shardul Amarchand Mangaldas & Co comprising Gauhar Mirza, Partner, Prakhar Deep, Senior Associate and Nishant Doshi and Jasvinder Singh, Associates.

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