# HIGH COURT OF TRIPURA
# AGARTALA

**WP(C) No.374 of 2026**

R & C Infraengineers Pvt. Ltd., a company, incorporated under the Companies Act, 2013, having its Head Office at B-2/151, Type-B, opposite Summit Building, Vishesh Khand, Gomati Nagar, Lucknow, Uttar Pradesh, Pin-226010. Represented by its Project Manager, namely, Sri Rohit Kumar Singh, son of Ram Badan Singh, having his Office at Jail Ashram Road, near Purbasha, P.O.-Agartala, P.S.-East Agartala, District-West Tripura, Pin-799001.

……… Petitioner(s).

V E R S U S

1. The State of Tripura, represented by the Commissioner & Secretary to the Department of Industries & Commerce, Government of Tripura, New Secretariat Complex, Gurkhabasti, Agartala, P.O.-Kunjaban, P.S.-New Capital Complex, Sub-Division-Sadar, District-West Tripura.

2. The Commissioner & Secretary to the Public Works Depart (R & B), Government of Tripura, New Secretariat Complex, Gurkhabasti, Agartala, P.O.-Kunjaban, P.S.-New Capital Complex, Sub-Division-Sadar, District-West Tripura.

3. Tripura Industrial Development Corporation Ltd. (TIDCL), to be represented by its Project Director, Government of Tripura, Shilpa Nigam Bhawan, Khejur Bagan, P.O.-Kunjaban, Agartala, District-West Tripura, Pin-799006.

4. AXIS Bank Limited, Agartala Branch, to be represented by its Branch Manager, Banik Tower, HGB Road, Agartala, District-West Tripura, Pin-799001.

………Respondent(s).

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| For Petitioner(s) | : | Mr. Somik Deb, Sr. Advocate,<br>Mr. Koomar Chakraborty, Advocate. |
| For Respondent(s) | : | Mr. B.N. Majumder, Sr. Advocate,<br>Mr. Karnajit De, Addl. G.A.,<br>Mr. Kousik Roy, Advocate,<br>Mr. Rajib Saha, Advocate,<br>Mr. Ritwick Bhuyan, Advocate,<br>Mr. Yash Ahuja, Advocate. |

**HON'BLE THE CHIEF JUSTICE MR. M.S. RAMACHANDRA RAO**
**HON'BLE MR. JUSTICE BISWAJIT PALIT**

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| CAV reserved on | : | **06.07.2026**. |
| Judgment delivered on | : | **20.07.2026**. |
| Whether fit for reporting | : | **YES** |

**JUDGMENT & ORDER**

***(M.S. Ramachandra Rao, C.J.)***

1) The issue in this Writ petition relates to validity of invocation by the Tripura Industrial Corporation Ltd ( for short 'TIDCL') (respondent no.3) on 25.5.2026 of 2 Bank Guarantees given as Bid security totalling Rs.94,24,000/- by petitioner in connection with 2 packages (Packages 11 and 12) under a tender dt.12.9.2025 issued by TIDCL.

2) These Bank guarantees were issued by the Axis Bank Ltd, Agartala branch.

3) There is no dispute that petitioner submitted it's bids under the above tender for these two packages on 3.11.2025, and the petitioner was found to be the lowest tenderer, but no Letter of Acceptance was issued to it.

4) Clause 18.1 of the Instructions to Bidders (ITB) /Tender states that the Bids shall remain valid for the bid validity period specified in the Bid Data Sheet. The said Bid data Sheet mentions the bid validity period to be 180 days. So these bids of the petitioner were valid under clause 18.1 of the Tender for 180 days i.e., upto 2.5.2026 only.

5) However the tender contemplates a situation where the bid validity can also be extended. Clause 18.2 of the ITB provides that:

> *"in exceptional circumstances, prior to the expiration of the bid validity period, the Employer may request Bidders to extend the period of validity of their Bids. The request and the responses shall be made in writing…. A bidder may refuse the request without forfeiting it's bid security. A bidder granting the request shall not be required or permitted to modify it's bid.*"

6) In the instant case, admittedly there was no request by TIDCL to petitioner to extend the bid validity period for the two packages. Therefore the bids of the petitioner lapsed on 2.5.2026.

7) Both the Bank Guarantees state that the Public Works Department (R &B) of Govt. of Tripura (respondent no.2) and the TIDCL (respondent no.3) were the 'beneficiary' of the Bank Guarantees and they further state as under:

> *"At the request of the bidder, we Axis Bank …………hereby irrevocably undertake to pay you sum not exceeding Rs……… upon receipt by us of <u>your first demand</u> in writing accompanied by a written statement stating that the bidder is in breach of it's obligations under the bid conditions , because the Bidder :*
>
> *(a) Has withdrawn its Bid <u>during the period of bid validity</u> specified by the Bidder in the Letter of Technical bid and Letter of price Bid; or*
>
> *(b) Does not accept the correction of errors in accordance with the Instructions to Bidders ( for short 'ITB') ;*
>
> *(c) Having been notified of the acceptance of it's bid by the employer <u>during the period of bid validity</u>, (i) fails or refuses to execute the contract Agreement, or (ii) fails or refuses to furnish the performance security, <u>in accordance with the ITB</u> , or (iii) fails or refuses to furnish the domestic preference security , if required.*
>
> *This guarantee will expire (a) if the bidder is the successful Bidder, upon receipt of copies of the contract Agreement signed by the bidder and the Performance security issued to you upon the instruction of the Bidder; and (b) if the bidder is not successful Bidder, upon earlier of (i) our receipt of a copy of your notification to the Bidder of the name of the successful Bidder, or (ii) 28 days after the expiration of the Bidder's bid (c) or till 26.11.2026 ( claim expiry date) , whichever is earlier."*

8) Admittedly vide letter dt.29.4.2026 (Annexure-G), the TIDCL wrote to petitioner that petitioner had quoted low prices and also no rate/cost for many items in the two packages, that it had examined the reasons cited by petitioner in it's Letter dt.23.4.2026, and it '*may* accept' the bid prices quoted by petitioner with the condition that the amount of Performance Security be increased at the expense of the petitioner to 10% of the contract price for Package 11 and 7% for Package 12, all other terms and conditions remaining unchanged. Petitioner was asked to communicate it's acceptance of the condition *within* 2.5.2026 for further necessary action at it's end.

9) The petitioner wrote a letter dt.2.5.2026 (Annexure- H) to the TIDCL .In that letter it made a counter offer stating that instead of 10% performance security, it is willing to offer only 5% performance security. It's letter states as under:

> " … *we reiterate that the bid prices were determined based on prevailing market conditions and a competitive pricing approach. Further , our ongoing project in Agartala has enabled us to optimise resources and logistics, allowing us to operate with reduced margins while ensuring efficient execution.*
>
> *In view of the above, <u>we kindly request your consideration to permit submission of Performance Security @ 5%</u> without any additional increment, which will help us maintain adequate cash flow and facilitate timely project execution.*
>
> *However, we hereby confirm that <u>in the event the Authority does not acceded to our above request</u>, we shall comply and submit the performance Security along with Additional performance security, strictly in accordance with the directions of the Authority."*

10) To this response of petitioner, TIDCL replied vide letter dt. 5.5.2026 (Annexure – I) disagreeing with petitioner's proposal to offer only 5% performance security without additional increment. It directed petitioner to submit the requisite Additional Performance Security Bank Guarantee over and above the standard Performance Security/Bank guarantee as per it's terms and conditions communicated earlier.

11) However, in the meantime, the bid validity of petitioner's bid expired on 2.5.2026, as stated *supra*.

12) Petitioner then wrote letter dt.12.5.2026 (Annexure -3) to TIDCL stating that it had submitted it's bid on 3.11.2025 as per the then prevailing conditions, that Financial evaluation of tenders was declared on 30.3.2026 showing it as L-1 for both packages, but Letter of Acceptance had not been issued to it, that due to ongoing war situation and it's consequential impact on the market, the present market conditions have deteriorated significantly, which is entirely beyond it's control. It contended that as per clause ITB 18.1 of Section 2 BDS, since the bid validity period has been stipulated as 180 days and the validity of it's bids had expired on 2.5.2026, it is not willing to grant any further extension of it's bid validity period. It therefore sought return of it's 2 Bank Guarantees for the two packages for which it had submitted bids.

13) The TIDCL then invoked the two Bid Security Bank Guarantees by writing Annexure letter dt.25.5.2026 (Annexure-4) to the Axis Bank. The said Letter states :

> *"3. M/s R & C Infraengineers Pvt.Ltd participated in the above tenders and submitted bids accordingly. Subsequently, vide Letter dt.12.5.2026, despite being L-1 , the bidder has expressed its*

*unwillingness to continue in the bid process and requested release of the aforesaid bank guarantees.*

*4. In this regard, it is stated that the bid submitted by the bidder remained valid during the stipulated bid validity period and the bidder, being the L-1 bidder, was under obligation to honour the bid conditions during the currency of the bid process. The communication received from the bidder conveying unwillingness to continue with the bid process has been treated as withdrawl / non-complicance with the tender conditions and has adversely affected the procurement process.*

*5. Accordingly, as per the terms and conditions governing the bid security/ bank Guarantee submitted by the bidder, TIDCL has decided to invoke the aforesaid Bank guarantees furnished toward the Bid Security."*

*6. You are, therefore, requested to invoke the above bank Guarantees and remit the proceeds to the following bank Account of TIDCL…" (emphasis supplied)*

14) The instant Writ Petition has been filed on 26.5.2026 by the petitioner to restrain the respondents from acting on the letter dt.25.5.2026 issued by TIDCL, to quash it and to direct the TIDCL to return both Bank guarantees. Interim relief was also sought to restrain the respondents from acting in furtherance of the letter dt.25.5.2026.

15) It is stated by both sides that the Axis Bank processed the said letter dt.25.5.2026 on the same day and paid the amounts covered by both Bank Guarantees to TIDCL.

16) Petitioner contends that under Clause 24.3 of the ITB of the Tender documents, no bid may be withdrawn between the deadline for submission of Bids and the expiration of the period of bid validity i.e., between 3.11.2025 and 2.5.2026 only; that there is therefore no restriction to

withdraw bids after 2.5.2026; that there was no request for extension of bid validity by TIDCL or it's acceptance in writing by petitioner; that the TIDCL , having deliberately abstained from invoking Clause 18.2 , cannot now invoke the Bank Guarantees as if a bid validity extension had been refused or a withdrawal has occurred.

17) It is further contended that clause 43.1 of the ITB states that *prior to the expiration of the period of bid validity,* the employer shall transmit the notification of award through issuance of Letter of Acceptance*;* that admittedly, no Letter of Acceptance had been issued to petitioner by TIDCL before 2.5.2026; and so petitioner was entitled to write the letter dt.12.5.2026 , after the bid validity expired, to TIDCL to return the Bank Guarantees. Consequently, TIDCL's action in invoking both Bank Guarantees, is arbitrary, illegal and violates Art.14 and 300-A of the Constitution of India.

18) Petitioner contends that the respondents' cannot penalise the petitioner for their own failure to discharge their mandatory obligation to issue Letter of Acceptance within the bid validity period.

19) It is also contended that though the financial evaluation results were declared on 30.3.2026, the TIDCL waited till 29.4.2026 to ask the petitioner to enhance the Performance Security Guarantee, and then gave time to petitioner till 2.5.2026 to respond to it. It is contended that the respondent TIDCL cannot take advantage of it's own wrong and penalise the petitioner. It is further contended that after petitioner's bid lapsed on 2.5.2026, the TIDCL had no authority on 5.5.2026 to demand the enhanced Performance security. It is also pointed out that as per clause 45.1 of ITB, the obligation to furnish Performance Security is triggered only "*within 28 days of receipt of*

*notification of award through issuance of Letter of Acceptance from the Employer*", and since LOA was never issued, no obligation to furnish the Performance Security ever arises.

20) It is further contended that the Bank Guarantees were conditional Bank Guarantees and none of the conditions precedent for invoking the bank Guarantee exist in the instant case. There is no withdrawal of bid during the bid validity period, no issue of correction of errors arose, there was no notification of acceptance of bid during the period of validity because the TIDCL demanded extra 10% Performance Security on 29.4.2026, to which the petitioner made a counter offer on 2.5.2026 offering 5% Performance Security, and till 5.5.2026, TIDCL had not responded, and in the meantime, on 2.5.2026, the bid validity ended.

21) We find force in the contentions of petitioner.

22) As the TIDCL admits, upon completion of the financial evaluation process, mere declaration of petitioner as the Lowest Evaluated Substantially Responsive Bidder does not automatically culminate in the issuance of the Letter of Acceptance or the formation of a concluded contract ( Para 5.6 an 5.7 of the Counter filed by TIDCL).

23) There was admittedly no issuance of Letter of Acceptance to petitioner before 2.5.2026 or even thereafter.

24) As per clause 43.1 of the Tender, *prior to expiry of the period of bid validity,* the TIDCL shall transmit the Notification of the Award through issuance of Letter of Acceptance. Under clause 43.3, until a formal contract is prepared and executed, the notification of award through issuance of Letter of

Acceptance shall constitute a binding contract. So after 2.5.2026, it cannot issue the Letter of Acceptance or create a binding contract.

25) The crucial question in this case relates to the validity of the petitioner's bid.

26) TIDCL's plea in para 5.10 of it's counter is that petitioner's continued correspondence prior to and also on 2.5.2026 indicated that petitioner was actively participating in the post qualification and evaluation process and unequivocally demonstrated it's intention to continue with the procurement process.

27) We may point out that in it's letter dt.29.4.2026 sent to petitioner, TIDCL stated that in terms of Clause 38.4, it '*may accept* ' the bid prices for Packages 11 and 12 with the condition that amount of performance security be increased to 10% and 7% of the contract price. The words '*may accept'* used in the said Letter show that it still retained the choice '*not to accept*' even if petitioner were to agree for it's new conditions. There is no '*unequivocal*' statement in this letter that TIDCL '*will accept*' the petitioner's price bids if the petitioner gives the enhanced Performance Security it wants.

28) The contents of the Letter dt.2.5.2026 written by petitioner to the TIDCL, in reply to the Letter dt.29.4.2026 of TIDCL, have to be therefore understood keeping in mind that TIDCL itself had not given a clear, definite and final decision that if petitioner agrees to the new conditions proposed by it, it will accept petitioners bids.

29) In the Letter dt.2.5.2026 written by petitioner to the TIDCL, petitioner had objected to the demand of the TIDCL to give 10% and 7 %

Performance Security for each of the packages and made a counter offer of only 5% Performance Security.

30) So the TIDCL cannot contend that petitioner's Letter shows an 'unequivocal' intention to continue the procurement process. No doubt petitioner did say in the last para of the said letter as under:

> "*However, we hereby confirm that <u>in the event the Authority does not acceded to our above request</u>, we shall comply and submit the performance Security along with Additional performance security, strictly in accordance with the directions of the Authority."* (*emphasis supplied*)

31) We are of the view that parties were still negotiating at that stage (i.e., on 2.5.2026) whether they can agree on a middle ground or not and the petitioner was awaiting the response of the TIDCL to it's counter offer (of only 5 % increase in Performance security).

32) Even according to the TIDCL, the last day of the bid validity period was 2.5.2026. It is undisputed that it never sought extension of bid validity from petitioner under clause 18.2. The TIDCL responded only on 5.5.2026, after the bid validity expired.

33) The TIDCL cannot contend that the bid validity stood extended by the conduct of petitioner because the ITB specifically states in Clause 18.2 that if the TIDCL wants a bid extension, it has to make a request to petitioner in writing, and the petitioner has to agree to it also in writing. As there was no such extension of bid validity sought by TIDCL before 2.5.2026, petitioner's bid lapsed on 2.5.2026 notwithstanding the petitioner writing the Letter dt.2.5.2026 and TIDCL cannot interpret the said Letter as extending the bid validity contrary to the ITB clause 18.2.

34) The plea of TIDCL that the assurance of petitioner quoted above is unequivocal, unconditional and binding on it and that it created a legitimate and *bonafide* expectation in it's favor that petitioner intended to honor it's bid and proceed with the execution of the works, cannot therefore be countenanced.

35) The Court can also take judicial notice also of the fact that the market conditions on the basis of which the petitioner submitted it's bid in November, 2025 changed after the Iran-USA Middle East war which started in February, 2026 and is still continuing in July, 2026.

36) So the petitioner was entitled to mention this in it's letter dt.23.4.2026 (Annexure-F) where it stated that the '*present market situation has deteriorated significantly*', which it again reiterated in it's letter dt.2.5.2026 to oppose the demand of TIDCL for the increase to 10% / 7% Performance of contract value while making it's counter offer of only 5%.

37) The action of the TIDCL in insisting that the petitioner should stick to it's quoted prices for the two packages even in such a situation is arbitrary, unreasonable and cannot be countenanced.

38) We can view the issue from another angle i.e, *whether the invocation of the Bank guarantees by TIDCL is valid in law*?

39) It is settled law that invocation of the Bank guarantee will have to be in accordance with the terms of the Bank Guarantee or else, the invocation itself will be bad. (see ***Hindustan Construction Co. Ltd v. State of Bihar*[1].)**

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[1] (1999) 8 SCC 436

40) So we shall examine the terms of the Bank Guarantees and see whether TIDCL has invoked them as per their terms or not.

41) The following are the terms of the Bank Guarantees terms:

> "*At the request of the bidder, we Axis Bank …………hereby irrevocably undertake to pay you sum not exceeding Rs.……… upon receipt by us of your first demand in writing accompanied by a written statement stating that the bidder is in breach of it's obligations under the bid conditions , because the Bidder :*
>
> *(a) Has withdrawn its Bid during the period of bid validity specified by the Bidder in the Letter of Technical bid and Letter of price Bid; or*
>
> *(b) Does not accept the correction of errors in accordance with the Instructions to Bidders ( for short 'ITB') ;*
>
> *(c) Having been notified of the acceptance of it's bid by the employer during the period of bid validity, (i) fails or refuses to execute the contract Agreement, or (ii) fails or refuses to furnish the performance security, in accordance with the ITB , or (iii) fails or refuses to furnish the domestic preference security , if required."*

42) No doubt if the TIDCL makes demand, the Axis Bank has to pay the amount covered by the Bank Guarantee if the TIDCL gives written statement that one or other events mentioned therein have occurred. The Bank cannot question it.

43) But even according to TIDCL, *during the period of bid validity,* the petitioner had not withdrawn it's bid. The withdrawal of the bid was admittedly on 13.5.2026, long after the bid validity expired on 2.5.2026. So clause (a) of the Bank Guarantees, is inapplicable.

44) There is also no issue of correction of errors. So clause (b) of the Bank Guarantees, has no relevance.

45) Coming to clause (c) (i) of the Bank Guarantees, admittedly the acceptance by TIDCL of bids of petitioner in it's letter dt.29.4.2026 was not definite (It had used the words '*may accept'*) *and* it was further subject to condition of the petitioner agreeing to it's demand to increase the Performance Security to 10% of the contract price for one package and 7% for another package.

As a matter of law, when there is variance between the offer and the acceptance in respect of any material term, acceptance cannot be said to be absolute and unqualified and the same will not result in the formation of a legal contract.

Moreover TIDCL itself on 29.4.2026 gave time to petitioner up to 2.5.2026 to communicate it's acceptance of increase in Performance Security knowing fully well that the said date is the last date of bid validity of petitioner's bid. It did not bother to seek extension of bid validity in writing under clause 18.2.

On 2.5.2026, petitioner objected to it's demand and made a *counter offer* of 5% increase of Performance Security only. It stated that only if the TIDCL does not agree to it, petitioner will act as per demand of TIDCL.

Instead of sending it's response on 2.5.2026, TIDCL delayed it's response till 5.5.2026. By that date, the bid validity had expired.

We hold that there was no *consensus ad idem* between the parties *during the period of bid validity i.e before or on 2.5.2026* , and that was why Letter of Acceptance was also not issued to petitioner by TIDCL. Thus, it cannot be said that *during the period of bid validity*, petitioner failed or refused to execute the contract Agreement. So clause (c) (i) condition was not fulfilled.

46) Further as per cause (c)(ii), *during the period of bid validity*, the petitioner should have failed or refused to furnish the performance security, *in accordance with the ITB.*

Admittedly, the Petitioner was willing to furnish the Performance Security indicated in the ITB , but the TIDCL wanted the Performance Security *to be more i.e., increased to 10% and 7% respectively*. So clause (c)(ii) is also not attracted.

47) Consequently, the statement in the letter dt.25.5.2026 issued by TIDCL to the Axis Bank invoking the Bank Guarantees that:

> *"In this regard, it is stated that <u>the bid submitted by the bidder remained valid during the stipulated bid validity period and the bidder, being the L-1 bidder, was under obligation to honour the bid conditions during the currency of the bid process</u>. <u>The communication received from the bidder conveying unwillingness to continue with the bid process has been treated as withdrawal / non-compliance with the tender conditions</u> and has adversely affected the procurement process"*

cannot be accepted firstly, because the petitioner is not bound by the bid after 2.5.2026 because there was no valid bid extension beyond it; secondly, because it had not withdrawn the bid during the validity of the period of the bid before 2.5.2026; and thirdly, the term 'currency of bid process' has no meaning after 2.5.2026, and there cannot be continuation of the bid process after the bid validity expired.

48) TIDCL is permitted to invoke the Bid Security Guarantees only on fulfillment of conditions mentioned therein. When none of those

conditions were fulfilled, it cannot invoke them. In these circumstances, we hold that by invoking them without valid justification, it had acted arbitrarily, unreasonably and illegally violating Art.14 and Art.300-A of the Constitution of India. It cannot in law be permitted to retain the same.

49) In ***Techno Power Enterprises (P) Ltd. v. Food Corpn. of India***[2]**,** a case which is similar to instant case on facts**,** it was held:

> *"**12.** It is apparent from the above that the bid security could be forfeited if the petitioner had withdrawn its bid during the period of bid validity as specified in the RFP. The RFP provided for the bid validity period of one hundred and twenty days. Admittedly, there is no provision in the RFP which provides for a bid validity period for more than one hundred and twenty days from the bid due date. Thus, there can be no dispute that the petitioner had not withdrawn its bid during the validity period as specified in the RFP. There is no allegation that the petitioner had engaged in any corrupt, fraudulent, coercive, undesirable or restrictive practices as specified in Clause 4 of the RFP documents.*
>
> ***13.** In view of the above, there is no ground for the FCI to retain the bid security (bank guarantees) furnished by the petitioner.*
>
> ***14.** The decision in the case of* **Gujarat Maritime Board** *(supra) is of little assistance to the petitioner. There is no dispute that a bank guarantee constitutes a separate agreement between the bank and the beneficiary and the courts would not interdict invocation of the bank guarantees except in cases of egregious fraud and irretrievable injuries. In the present case, there is no dispute with regard to the invocation of the bank guarantees. The principal controversy relates to the validity of the petitioner's bid. Concededly, if it is accepted that the validity of the petitioner's bid (offer) had expired or was withdrawn after the bid validity period*

[2] 2018 SCC OnLine Del 9740 : AIR 2019 (NOC 260) 86

*as specified in the RFP, the impugned letters accepting the offer would be of no consequence. It is also not disputed that in the circumstances, the FCI would be obliged to refund the bid security."* *(emphasis supplied)*

50) Similar view was also taken by the Bombay High Court in ***Great Eastern Energy Corporation ltd. v. Jain Irrigation Systems Ltd***[3]**.**

51) We fail to understand why the TIDCL, after issuing the tender on 12.9.2025 dragged it's feet till 30.3.2026 to complete the financial evaluation of the various bids, and even thereafter waited till 29.4.2026 to conditionally accept petitioner's bids, gave time to petitioner to respond till 2.5.2026, and even thereafter waited till 5.5.2026 to take action.

52) Coming to the tenuous objection raised by TIDCL about maintainability of the Writ Petition because it allegedly relates to contractual matters, we may refer to the decision of the Supreme Court in ***Unitech Ltd. v. Telangana State Industrial Infrastructure Corpn.***[4]**.**

In that case, the Supreme Court has held that recourse to the jurisdiction under Article 226 of the Constitution is not excluded altogether in a contractual matters where the State or it's instrumentality has acted arbitrarily , unfairly or unreasonably in that arena. A public law remedy is available for enforcing legal rights subject to well-settled parameters. It declared:

*"**38**……However, to clear the ground, it is necessary to postulate that recourse to the jurisdiction under Article 226 of the Constitution is not excluded altogether in a contractual matter. A*

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[3] (2010) SCC ONLINE BOM 248
[4] (2021) 16 SCC 35, at page 59 :

*public law remedy is available for enforcing legal rights subject to well-settled parameters.*

***39.*** *A two-Judge Bench of this Court in* ***ABL International Ltd. v. Export Credit Guarantee Corpn. of India Ltd.***[5] *[ABL International] analysed a long line of precedent of this Court*[15] *to conclude that writs under Article 226 are maintainable for asserting contractual rights against the State, or its instrumentalities, as defined under Article 12 of the Indian Constitution.*

***39.1.*** *Speaking through N. Santosh Hegde, J. the Court held : (ABL International case*[14]*, SCC p. 572, para 27)*

*"27. … the following legal principles emerge as to the maintainability of a writ petition:*

*(a) In an appropriate case, a writ petition as against a State or an instrumentality of a State arising out of a contractual obligation is maintainable.*

*(b) Merely because some disputed questions of fact arise for consideration, same cannot be a ground to refuse to entertain a writ petition in all cases as a matter of rule.*

*(c) A writ petition involving a consequential relief of monetary claim is also maintainable."*

*This exposition has been followed by this Court, and has been adopted by the three-Judge Bench decisions of this Court in* ***State of U.P. v. Sudhir Kumar Singh***[6] *and* ***Popatrao Vyankatrao Patil v. State of Maharashtra***[7].

***39.2.*** *The decision in* ***ABL International****, cautions that the plenary power under Article 226 must be used with circumspection when other remedies have been provided by the contract. But as a statement of principle, the jurisdiction under Article 226 is not excluded in contractual matters.*

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[5] (2004) 3 SCC 553
[6] (2021) 19 SCC 706
[7] (2020) (19) SCC 241

***39.3.*** *Article 23.1 of the development agreement in the present case mandates the parties to resolve their disputes through an arbitration. However, the presence of an arbitration clause within a contract between a State instrumentality and a private party has not acted as an absolute bar to availing remedies under Article 226*[18]*.*

***39.4.*** *If the State instrumentality violates its constitutional mandate under Article 14 to act fairly and reasonably, relief under the plenary powers of Article 226 of the Constitution would lie. This principle was recognised in* ***ABL International*** *: (**ABL International** case, SCC p. 572, para 28)*

*"28. However, while entertaining an objection as to the maintainability of a writ petition under Article 226 of the Constitution of India, the court should bear in mind the fact that the power to issue prerogative writs under Article 226 of the Constitution is plenary in nature and is not limited by any other provisions of the Constitution. The High Court having regard to the facts of the case, has a discretion to entertain or not to entertain a writ petition. The Court has imposed upon itself certain restrictions in the exercise of this power. (See* ***Whirlpool Corpn. v. Registrar of Trade Marks***[19]*.) And this plenary right of the High Court to issue a prerogative writ will not normally be exercised by the Court to the exclusion of other available remedies unless such action of the State or its instrumentality is arbitrary and unreasonable so as to violate the constitutional mandate of Article 14 or for other valid and legitimate reasons, for which the Court thinks it necessary to exercise the said jurisdiction."*

*(emphasis supplied)*

***39.5.*** *Therefore, while exercising its jurisdiction under Article 226, the Court is entitled to enquire into whether the action of the State or its instrumentalities is arbitrary or unfair and in consequence, in violation of Article 14. The jurisdiction under*

*Article 226 is a valuable constitutional safeguard against an arbitrary exercise of State power or a misuse of authority.*

***39.6.*** *In determining as to whether the jurisdiction should be exercised in a contractual dispute, the Court must, undoubtedly eschew, disputed questions of fact which would depend upon an evidentiary determination requiring a trial. But equally, it is well settled that the jurisdiction under Article 226 cannot be ousted only on the basis that the dispute pertains to the contractual arena. This is for the simple reason that the State and its instrumentalities are not exempt from the duty to act fairly merely because in their business dealings they have entered into the realm of contract. Similarly, the presence of an arbitration clause does (sic not) oust the jurisdiction under Article 226 in all cases though, it still needs to be decided from case to case as to whether recourse to a public law remedy can justifiably be invoked.*

***39.7.*** *The jurisdiction under Article 226 was rightly invoked by the Single Judge and the Division Bench of the Andhra Pradesh High Court in this case, when the foundational representation of the contract has failed. TSIIC, a State instrumentality, has not just reneged on its contractual obligation, but hoarded the refund of the principal and interest on the consideration that was paid by Unitech over a decade ago. It does not dispute the entitlement of Unitech to the refund of its principal."*

53) We therefore reject the plea of the TIDCL that petitioner had sought to give an artificial Constitutional colour to what is essentially a purely contractual dispute arising out of the terms and conditions of a commercial tender and the invocation of an unconditional Bid Security Bank Guarantee, and that it's allegations of violation of Art.14, 21 and 300-A of the Constitution are misconceived and that no fundamental or Constitutional right of petitioner has been infringed,.

54) There is also no merit in the contention raised by TIDCL about suppression of facts in para 6.1 of it's counter affidavit.

The letter dt.27.10.2025 of petitioner's Technical bid has no relevance.

The Letter dt.2.5.2026 of petitioner has been filed as Annexure H.

The Bank Guarantee copies having been filed, there cannot be said to be a suppression of actual validity and claim period of the bank Guarantees.

When the ITB in it's entirety has been filed by petitioner on 9.6.2026, to say that clause 19.7 has been suppressed, is ridiculous.

The subsequent letter dt.13.5.2026 of petitioner has not been filed, but this loses it's significance because it is an event long after 2.5.2026 when the bid validity expired. The TIDCL has filed it anyway.

55) The reliance of TIDCL on clause 19.7 permitting forfeiture of bid security by TIDCL is of no avail because

(i) petitioner had not withdrawn it's bid *during the period of bid validity,*

(ii) and no contract was offered for petitioner to sign by TIDCL.

(iii) The question of petitioner failing to furnish performance security in accordance with ITB 45 does not arise because the said clause provides for furnishing it within 28 days of receipt of notification of award through issuance of Letter of acceptance from the TIDCL. Such Letter of Acceptance, never having been issued, this does not apply.

56) There is also no merit in the plea of TIDCL in para 7.4 that mere declaration of petitioner as Lowest Evaluated Substantially Responsive Bidder (L-1) for the two packages creates a corresponding obligation to honour it's bid.

This plea contradicts it's own plea in para 5.7 that declaration of petitioner as Lowest Evaluated Substantially Responsive Bidder (L-1) for the two packages does not automatically culminate in the formation of a concluded contract.

Unless a concluded contract comes into existence, there is no obligation of petitioner to honour it's bid, after the bid's validity expired.

57) Coming to plea of TIDCL in para 7.5 of the counter affidavit, merely because the validity of the bank Guarantees was extended by 28 days beyond bid validity period under clause 19.3 of ITB, the TIDCL cannot violate the terms of the ITB and insist that validity of bid stands extended beyond 2.5.2026, and claim that it can invoke the bank Guarantees even though no condition specified for it's invocation is fulfilled, as explained above.

58) We also do not agree with the plea of the TIDCL in para 7.6 and 7.8 that Bid security does not become automatically refundable upon the expiry of the Bid Validity period.

Once the bid of petitioner lapsed on 2.5.2026, there is no bid of petitioner in existence in the eye of law which can be accepted to create a contract.

So it was the obligation of TIDCL to conclude the contract by issuing Letter of Acceptance during the period of bid validity, and having failed to do so, it cannot fall back on clause 19.3 or clause 19.7. So it was obligated to return both Bank Guarantees to petitioner.

59) Whatever be the justification offered in para 7.7 of the counter affidavit for the delay in TIDCL's slowness in taking action, it could have speeded up it's actions knowing that it has only 6 months to complete the process. Alternatively, it could have asked in writing under Clause 18.2 for a bid validity extension and got the bid validity extended if it felt that some more time is required and it cannot finalise the award./contract by 2.5.2026. It has only itself to blame for the situation.

60) There is also no merit in the plea raised in para 8.6 of the counter affidavit that clause 19.7 (a) states "*notwithstanding clause 24.3*" and so the bid security can be forfeited, if the bidder withdraws it's bid during the bid validity period specified by the bidder. In the instant case, there was no withdrawal of petitioner's bid before 2.5.2026, the last date of expiry of bid validity, and so clause 19.7 has no application.

61) The further plea in para 8.8. of the counter affidavit that the procurement process remained active and ongoing after 2.5.2026 cannot be countenanced because if the bid validity extension was not sought under clause 18.2 in writing by TIDCL, and not agreed to in writing by petitioner before 2.5.2026, there was no scope of TIDCL keeping the procurement process active after 2.5.2026 as a matter of law, and acting on petitioner's bid by TIDCL after 2.5.2026.

62) We do not agree with plea of TIDCL in para 8.10 that petitioner's letter dt.2.5.2026 contained an unequivocal undertaking that it would comply with enhanced performance security arrangements if such relaxation was not granted because it also said it will agree only to 5% enhancement and not 7% or 10% as sought by TIDCL.

63) With regard to stand of TIDCL that the bank guarantee is 'unconditional' we agree since it asks the Axis bank to pay on first demand.

64) But that is different from saying that TIDCL could have invoked it when conditions contained in them to be fulfilled before their invocation do not exist. TIDCL cannot be permitted to mislead the Bank as to fulfilment of conditions therein, invoke them and then retain the amount paid by the Bank to it. That would be a travesty of justice.

65) All other contentions raised by the TIDCL also have no merit for the aforesaid reasons.

66) It is true that the petitioner had sought to restrain the Axis Bank to make payment to TIDCL after the Bank Guarantees were invoked on 25.5.2026 in this Writ Petition filed on 26.5.2026. But, merely because the amount covered by the Bank Guarantees has been paid on 25.5.2026, this court is not helpless and it is entitled as a Constitutional Court to mould relief appropriately to do complete justice.

67) In ***Vashist Narayan Kumar v. State of Bihar***[8], the Supreme Court held :

> *"25. …. A writ court has the power to mould the relief. Justice cannot be forsaken on the altar of technicalities."*

[8] (2024) 11 SCC 785, at page 791

68) In ***M. Sudakar v. V. Manoharan***[9], also the Supreme Court declared:

> *"4. The power to mould relief is always available to the court possessed with the power to issue high prerogative writs. In order to do complete justice it can mould the relief, depending upon the facts and circumstances of the case. In the facts of a given case a writ petitioner may not be entitled to the specific relief claimed by him but this itself will not preclude the writ court to grant such other relief which he is otherwise entitled."*

69) Accordingly, we allow the Writ Petition and direct the TIDCL (respondent no.3) to pay to the petitioner the amount of Rs.94,24,000/- (which the Axis Bank has paid it on 25.5.2026 under the two Bank Guarantees) with interest at 12% p.a on the said amount from 25.5.2026 till actual payment within 4 weeks from today. The TIDCL shall also pay costs of Rs.25,000/- to petitioner within 4 weeks from today.

70) All pending Miscellaneous applications shall stand disposed of.

**(BISWAJIT PALIT, J)** **(M.S. RAMACHANDRA RAO, CJ)**

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[9] (2011) 1 SCC 484