

**HIGH COURT OF DELHI AT NEW DELHI**

No.76 /Rules/DHC

Dated: 25.06.2021

**PRACTICE DIRECTIONS**

In compliance of the directions given by this Court on 02.06.2021, in the case titled "*Ircon International Vs. Hindustan Construction Co. Ltd.*" {FAO (OS) (COMM) 173/2018 & FAO (OS) (COMM) 174/2018}, the following practice directions are issued in respect of those matters where Bank Guarantees are required to be furnished in this Court:-

- i). That henceforth, a clause of term shall be necessarily incorporated in every Bank Guarantee furnished by a party in this Court for release of the amounts deposited in the Court. Such term shall be to the effect, that in case the Bank Guarantee is not renewed, at least ten days before the expiry of the Bank Guarantee, by the party at whose instance the Bank Guarantee has been furnished, the Bank shall, without any further demand by the beneficiary or reference to the party at whose instance the Bank Guarantee has been furnished, proceed to encash the Bank Guarantee and remit the amount thereunder to the beneficiary under the Bank Guarantee.
- ii). In order to save time, inconvenience and cost to the parties and the bank, the Bank Guarantees, both at the time when they are initially furnished and even at the time of their renewal, be verified through video conferencing, unless one, or the other party- for good valid reasons, insists on production of authorized officer from the bank before the Court for the purpose of verification, which that party has to satisfy the Hon'ble Court /Registrar, by giving reasonable reasons for permitting the physical production of authorized/competent officer.

The copy of the above-mentioned judgment is also attached herewith for reference.

**These Practice Directions shall come into force with immediate effect.**

By Order  
Sd/-  
**(MANOJ JAIN)**  
**REGISTRAR GENERAL**

§-8 & 12.

\* IN THE HIGH COURT OF DELHI AT NEW DELHI

+ FAO(OS) (COMM) 174/2018

+ FAO(OS) (COMM) 173/2018

IRCON INTERNATIONAL

Through:

..... Appellant  
Mr. Gauhar Mirza, Mr. Prakhar Deep,  
Mr. Nishant Doshi & Mr. Jasvinder  
Singh, Advocates.

versus

HINDUSTAN CONSTRUCTION CO LTD

Through:

..... Respondent  
Mr. Dayan Krishnan, Senior  
Advocate with Mr. Rishi Agrawala,  
Ms. Shruti Arora & Mr. Sanjeevi  
Seshadri, Advocates.

CORAM:

HON'BLE MR. JUSTICE VIPIN SANGHI

HON'BLE MR. JUSTICE JASMEET SINGH

ORDER

02.06.2021

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C.M. Nos.17708/2021 & 17824/2021

1. The applications filed by the appellant do not survive since the respondent has punctually renewed the Bank Guarantees with information to this Court and the applications were filed only since the appellant had not been put to notice of the said renewals.
2. We think it appropriate to issue certain '*Practice Directions*' to plug any loophole in the matter of renewal of Bank Guarantees furnished by the parties as a condition for release of amount in their favour, which may be deposited by the opposite party during the proceedings pendency in the

Court.

3. Particularly, in appeals against money decrees, or judgment in the nature of money decrees, whenever an appeal is preferred – keeping in view the legal position adumbrated in Order XLI Rule 5 of the Code of Civil Procedure, 1908, the Court directs the appellant to deposit the money under the decree, which is then allowed to be withdrawn by the respondent against furnishing of solvent security, more often than not the security offered by the respondent in the form of a Bank Guarantee. Once the Bank Guarantee is furnished, the same is verified before the Registrar by production of the competent officer of the Bank which furnished the Bank Guarantee. His statement is recorded to the effect that the Bank Guarantee given by the Bank (at the instance the party who desires to get the amount deposited in the Court released in his favour): has been actually furnished by the Bank at the instance of the respondent; that the officer has authority to appear on behalf of the Bank, which furnished the Bank Guarantee and make a statement, and; the Bank would honour its Guarantee in its terms, if and when invoked.

4. The Bank Guarantees furnished by the Banks are not open-ended and have a fixed life during which they remain valid, and invariably, on account of heavy pendency, the proceedings/ appeal in which the Bank Guarantee has been furnished, may not get decided before the date of expiry of the Bank Guarantee and it may be necessary for the respondent to cause the renewal of the Bank Guarantee till the matter is finally heard by the Court. Since the respondent receives the deposited decretal amount by furnishing the Bank Guarantee, the obligation to get the Bank Guarantee renewed in

time squarely falls on the respondent, to secure the amount that receive, upon furnishing and verification of the initial Bank Guarantee.

5. Several orders have been brought to our notice passed by the Registrars of this Court while accepting the Bank Guarantees upon verification. The orders direct the Registry to ensure listing of the matter before the Registrar two to four weeks before the date of expiry of the Bank Guarantee so that, in case the respondent does not renew the Bank Guarantee in time, the same could be invoked to protect the interest of the beneficiary under the Bank Guarantee.

6. It is under the orders passed by the Court that, during pendency of the appeal proceedings, the appellant makes the deposit of the decretal amount, which is further released to the respondent against furnishing of Bank Guarantee. It, thus, falls upon the Court to ensure that the interest of the appellant is adequately protected and it should not happen that – on account of omission on the part of the Registry in listing the matter before the Registrar before the expiry of the Bank Guarantee, the Bank Guarantee lapses without renewal and the appellant is exposed to a situation where money has been withdrawn by the respondent against the Bank Guarantee which has lapsed, and even after being called upon to renew the Bank Guarantee, and restitute the amount, the respondent complies with neither of these directions for myriad reasons. The respondent, deliberately, may not renew the Bank Guarantee, or it may not be in a position to renew the Bank Guarantee on account of its financial condition. In either case, if the Bank Guarantee is not renewed in time, the appellant would be put to serious financial prejudice. Since the amount is released to the respondent against

furnishing of a Bank Guarantee, the onus to renew the Bank Guarantee squarely falls on the respondent to ensure that the same is kept alive till the matter is finally disposed of.

7. We are, therefore, of the view that henceforth whenever Bank Guarantees are furnished by a party for release of the amounts deposited in Court, Bank Guarantees should also contain a term to the effect, that in case the Bank Guarantee is not renewed, at least ten days before the expiry of the Bank Guarantee, by the party at whose instance the Bank Guarantee has been furnished, the Bank shall, without any further demand by the beneficiary or reference to the party, at whose instance the Bank Guarantee has been furnished, proceed to encash the Bank Guarantee and remit the amount thereunder to the beneficiary under the Bank Guarantee. Incorporation of such a clause in the Bank Guarantee furnished by the Bank would obviate the problem caused by possible failure on the part of the Registry to list the matter before the Registrar two or four weeks before the expiry of the Bank Guarantee, as directed.

8. We, therefore, direct that such a clause should henceforth be necessarily incorporated in every Bank Guarantee furnished to the satisfaction of the Registrar of the Court, by any party.

9. We find that during the Covid-19 Pandemic, the Bank Guarantees furnished to the Court have been got verified through video-conferencing mode. In our view, the same can be adopted as the normal mode of verification of the Bank Guarantees – both at the time when they are initially furnished, and even at the time of their renewal, so as to save time,

inconvenience to parties, and costs to the parties and the Bank, unless one, or §  
the other party – for good and valid reasons, insists on production of the  
authorised officer from the Bank before the Court for the purpose of  
verification. In such a situation, a party who has reservations against  
verification of the Bank Guarantee at its initial furnishing, or upon renewal,  
should satisfy the Court on the reasonableness of its reservation by  
disclosing the reasons as to why physical production of the competent/  
authorized officer of the Bank is considered necessary.

10. We direct the Registry to incorporate the terms of this order into  
'Practice Directions' and the same should be made aware to all the  
Registrars dealing with cases of acceptance of Bank Guarantees and renewal  
thereof.

11. We, once again, make it clear that the mere fact that we have issued  
these 'Practice Directions' in the present appeals, does not mean that we  
find the conduct of the respondents in these appeals to be, in any way,  
blameworthy insofar as renewal of Bank Guarantees is concerned in the  
present appeals.

12. The applications stand disposed of.

**JUNE 02, 2021**  
B.S. Rohella

sd -  
VINAY KANGHI, J  
sd -  
JASMEET SINGH, J