



Pollution) Act, 1981 assailing the order dated 7.3.2012 of the State Pollution Control Board, Odisha (hereinafter referred to as "the Board") addressed to the Chief Manager, State Bank of Patiala – respondent no.2, asking for forfeiture of the Bank Guarantee amounting to Rs. 25,00,000/- furnished by the present appellant as per direction of the Board.

2. For the limited purpose of disposal of this appeal, the facts may be stated in brief as follows:

On 29.4.2009, the Board intimated the appellant – company regarding non-compliance of certain conditions, which were found during the inspection of the appellant-unit and to ensure compliance, asked the appellant unit to furnish a Bank Guarantee of Rs. 25,00,000/-. The appellant furnished the Bank Guarantee and subsequently the consent to operate was granted in favour of the appellant-company. The said consent was extended from time to time on assurance given by the appellant for rectification of the defects without ensuring full compliance. The appellant-company from time to time has requested for extension of time for removal of the defects, but since nothing tangible happened on the ground, the respondent no. 1, the Board, directed the State Bank of Patiala on 7.3.2012 for forfeiture of the Bank Guarantee. Stating that completion of up-gradation of pollution control measures, satisfactory environmental compliance, restricting emission within limit etc., and taking care of total solid



waste were duly taken care of by the appellant-company and the delay, if any, for full compliance was not deliberate, the appellant-company has submitted that the order of the Board for forfeiture of the Bank Guarantee was illegal.

3. At the time of hearing, it was submitted by the learned Senior Law Officer, Level-I and Mr.B.P. Pattajoshi, Legal Consultant of respondent no. 1, the Board, that the forfeiture of the Bank Guarantee was absolutely justified since the appellant-company did not comply with the directions of the Board in removing the defects within the stipulated time limit despite granting of time on several occasions. It was further submitted that in two earlier appeals vide Appeal No. 4-A of 2012 (*M/s. Patnaik Steels and Alloys Limited v. Orissa State Pollution Control Board, Bhubaneswar and another*) and Appeal No. 6-A of 2012 (*M/s. Swastik Ispat Private Limited v. Orissa State Pollution Control Board, Bhubaneswar*), this Authority had set aside the orders of forfeiture of the Bank Guarantees in similar circumstances. The said orders were assailed before the National Green Tribunal, Principal Bench, New Delhi and the Hon'ble National Green Tribunal by a common judgment dated 9.1.2014 set aside the orders of this Authority in both the appeals, inter alia holding that the condition requiring the Companies to furnish the Bank Guarantee is not penal and encashment thereof is neither unjustified nor covered under any of the exceptions stated in the judgment of the Hon'ble



Supreme Court in the case of **Vinetec Electronics Pvt. Limited v. HCL Infosystems Ltd.** (2008) 2 SCC544). It was further submitted that the Hon'ble National Green Tribunal has issued a general guideline in the said order observing that "where-ever the Board requires a Unit to furnish Bank Guarantee for compliance of conditions of consent order, installation of anti-pollution devices and ensuring that it is a pollution-free unit, then, in such cases, the Board should ensure that its order provides for a 'time targeted action plan', in default of which and upon inspection, such Bank Guarantee would be liable to be invoked/encashed for environmental compensation and restoration purposes". Thus, it was submitted by the Senior Law Officer, Level-I and Mr. Pattajoshi, Legal Consultant of the Board that in the instant appeal, the appellant has no merit, since the violation remained admitted justifying revocation of the Bank Guarantee.

4. However, at the time of hearing, learned counsel appearing for the appellant did not assail the revocation of Bank Guarantee, but only submitted that the amount of Bank Guarantee as has been encashed by the Board should be utilized for removal/rectification of the defects found out in the appellant-company. In this regard, it was submitted on behalf of the Board that as per established procedure, on encashment of the Bank Guarantee, the amount is deposited with the Odisha Environmental Management Fund, which takes care of the utilization of the amount.



5. Considering the submissions of both the parties, it would be profitable to put on record the specific directions of the Hon'ble National Green Tribunal, Principal Bench, New Delhi given in paragraphs-74 and 75 of the judgment, as referred to on behalf of the Board, which read as follows:

"74. In view of our detailed discussion supra, we partially allow these appeals and set aside the order of the appellate authority under appeal. We hold that the condition requiring the respondents to furnish the bank guarantee is not penal and encashment thereof is neither unjustified nor covered under any of the exceptions stated in the judgment of the Supreme Court in the case of Vinetec Electronics Pvt. Ltd.(supra).

75. However, we further direct that the amounts received by the Board against encashment of bank guarantee shall, in preference to all other, be utilized for the compensatory purposes or restoration of the degraded environment resulting from emission and discharge of effluents and other pollutants in violation of the prescribed standards by the industry. Remnant, if any, may be utilized for installation of such effluent treatment plants/anti-pollution devices, directed to be installed under the order of consent or otherwise in the unit of the industry as it would help in bringing down the emission/pollution levels and bringing it in line with the prescribed parameters, thus protecting the environment. The Board shall have no authority or power to forfeit this amount and use it for any other, including for its own, purposes."

6. It may be further mentioned that the Board in exercise of its powers introduced Bank Guarantee system vide Resolution No. 17617 dated 18.8.2003 (Annexure-A/1 to the written notes of submission made on behalf of the Respondent no.1). In the said resolution, it was categorically mentioned that the minimum Bank



Guarantee should not be less than 10% of the pollution control equipment necessary for the purpose and the amount so forfeited will be utilized faithfully for pollution control abatement schemes/programmes of the said industry.

7. In view of the aforesaid positions as to the specific directions issued by the Hon'ble National Green Tribunal as a general guideline and the provisions in the resolution of the Board regarding utilization of the forfeited amount, no further direction needs to be issued regarding utilization of the forfeited amount.

8. As stated earlier, forfeiture of the Bank guarantee has not been assailed on behalf of the appellant in course of hearing and suffice it to say that the utilization of the amount, so encashed, should be done following the general guidelines prescribed in the afore-quoted order of the Hon'ble National Green Tribunal in letter and spirit and observing the standard procedure.

9. The appeal is disposed of accordingly.

*J. agape*

Dr. D.K. Rout, Member :

*Sd/-*  
Jusutice J.P.Das,  
Vice-Chairman.

*Sd/-*  
Dr. D.K.Rout,  
Member

Date : 09.03.2021.  
K.K. Biswal, P.A.

