



2025:CGHC:36397-DB

NAFR

HIGH COURT OF CHHATTISGARH AT BILASPUR

WPC No. 4033 of 2022

M/s Educomp Solutions Limited Having Its Registered Office At 1211, Padma Towar- I, 5 Rajendra Place, New Delhi- 110008 And Corporate Office At 514, Udyog Vihar Phase- I I I, Gurugram- 122001, Haryana Through Its Authorized Signatory Shri Santosh Tiwari, S/o Shri Ram Jawahar Tiwari, Aged About 42 Years

... Petitioner

versus

1 - State of Chhattisgarh Through The Director, Directorate of Public In- structions, Department Of School Education, Government of Chhattis- garh, Pension Bada, Raipur- 492001, Chhattisgarh

2 - State Bank of India Through The Asst. General Manager, A M T- 3 (Infra- III), State Bank of India, Corporate Centre Stressed Assets Reso- lution Group, 21st Floor, Maker Tower E, Cuffe Parade, Mumbai- 400005

... Respondents

(Cause-title taken from Case Information System)

For Petitioner	:	Mr. Kshitij Sharma, Advocate
For State/Respondent No.1	:	Mr. Prafull N. Bharat, Advocate General assisted by Mr. Shashank Thakur, Deputy Advocate General
For Respondent No.2	:	Mr. P.R. Patankar, Advocate

Hon'ble Shri Ramesh Sinha, Chief Justice
Hon'ble Shri Bibhu Datta Guru, Judge

Order on Board

Per Ramesh Sinha, Chief Justice

28.07.2025

1. Heard Mr. Kshitij Sharma, learned counsel for the petitioner as well as Mr. Prafull N. Bharat, learned Advocate General assisted by Mr. Shashank Thakur, learned Deputy Advocate General, appearing for the State/respondent No.1 and Mr. P.R. Patankar, learned counsel, appearing for respondent No.2.
2. The present petition has been filed by the petitioner with the following relief(s):-

“10.1) The Hon'ble Court may kindly be pleased to call for the records pertaining to the subject matter for the kind perusal of this Hon'ble Court; and/or

10.2) The Hon'ble Court may further kindly be pleased to issue such writ/orders/direction setting aside and quashing the email dated 11.07.2022 (Annexure P16) written by the Respondent No. 2 to the Petitioner wherein the Bank Guarantee dated 15.07.2011 has been sought to be invoked and encashed being fraudulent, malafide, illegal, and arbitrary; and

10.3) The Hon'ble Court may further kindly be pleased to issue such writ/orders/direction to the Respondent No. 2 restraining it from

acting upon the direction of the Respondent No. 1 made vide its communication to the Respondent No. 2 and in consequence, restraining it from remitting the proceeds of the Bank Guarantee to the Respondent No. 1; and

10.4) Cost of the petition may also be granted to the petitioner.

10.5) Any other relief, which this Hon'ble Court deems fit and proper, may also kindly be granted to the petitioner, in the interest of justice."

3. Learned counsel for the petitioner submits that the impugned email communication dated 11.07.2022, issued by Respondent No. 2, whereby Respondent No. 1 has sought to invoke and encash the Bank Guarantee bearing reference No.5079411BG0002240 dated 15.07.2011 for an amount of ₹3,03,60,030/-, is wholly illegal, arbitrary, malafide and without jurisdiction. It is submitted that the validity of the said Bank Guarantee had expired on 15.11.2016 and, in terms of its express stipulations, any claim arising thereunder could have been made only up to 15.12.2016. Therefore, the invocation made nearly six years later is not only barred by limitation but is also in contravention of the terms of the Bank Guarantee itself. It is further submitted that the Petitioner has been undergoing Corporate Insolvency Resolution Process ('CIRP') pursuant to an order dated 30.05.2017 passed by the Hon'ble National Company

Law Tribunal ('NCLT'), Principal Bench. As a consequence of the said order, a moratorium under Section 14 of the Insolvency and Bankruptcy Code, 2016 ('IBC') has been imposed, which prohibits the institution or continuation of any proceedings or enforcement actions against the corporate debtor during the subsistence of the CIRP. Learned counsel submits that the act of Respondent No. 1 in attempting to invoke and encash the Bank Guarantee during the period of moratorium is in blatant violation of Section 14 of the IBC, which has overriding effect under Section 238 of the said Code. Such an attempt is legally untenable and amounts to an abuse of process of law. It is also submitted that the action of the Respondents is tainted with malafides and is an attempt to unjustly enrich themselves at the cost of the corporate debtor in defiance of legal provisions and contractual limitations. In light of the above, learned counsel prays that the impugned communication dated 11.07.2022 be quashed and the Respondents be restrained from taking any coercive steps for invocation or encashment of the said Bank Guarantee.

4. On the other hand, learned State counsel opposes the submission advanced by learned counsel for the petitioner and submits that the Co-ordinate Bench of this Court, while disposing of the arbitration appeal, was pleased to grant liberty to the appellant to seek appointment of an arbitrator afresh *de novo*, as permissible under the governing statutory provisions. Pursuant to the liberty so granted vide order dated 05.03.2025, fresh arbitration

proceedings have already been initiated before the learned Sole Arbitrator. It is further submitted that the dispute forming the subject matter of the present writ petition is also under active adjudication in the said Arbitral proceedings between the same parties. It has been contended that in light of the aforesaid developments, particularly, the fact that fresh arbitration proceedings are already underway and pending consideration before the learned Arbitrator, no cause of action now survives for adjudication in the present writ petition. Accordingly, it is submitted that the present petition has been rendered infructuous and may kindly be dismissed as such.

5. In view of the submissions made by the learned counsel for the parties and taking into consideration the fact that fresh arbitration proceedings have already been initiated in pursuance to the order dated 05.03.2025 passed by the Co-ordinate Bench of this Court in ARBA No.67/2021 and the said arbitration proceedings are currently pending and are under active consideration before the competent Arbitral forum, we are of the considered opinion that no fruitful purpose would be served in continuing with the present petition. Accordingly, the present petition is dismissed as having rendered infructuous.

Sd/-
(Bibhu Datta Guru)
Judge

Sd/-
(Ramesh Sinha)
Chief Justice