IN THE COURT OF APPEAL OF THE DEMOCRATIC SOCIALIST REPUBLIC OF SRI LANKA

In the matter of an Application for an Injunction under and terms of Article 143 of the Constitution of the Democratic Socialist Republic of Sri Lanka.

Case No.CA/INJ/04/2025

Global Med (Pvt) Ltd.,
No.C1/1, Stace Road,
Colombo 14.
[Also, of No.425-3, ½ Thimbirigasyaya Road, Colombo 05]

PETITIONER

Vs.

1. State Pharmaceuticals Corporation of Sri Lanka,
   16th Floor,
   Mehewara Piyasa,
   No.41, Kirula Road,
   Colombo 05.

2. Dr. Manuj C. Weerasinghe,
   Chairman,
   State Pharmaceuticals Corporation (SPC)
   16th Floor,
   "MEHEWARA PIYASA",
   No.41, Kirula Road,
   Colombo 05.
3. Senior Manager,

Hatton National Bank PLC
[Wattala Branch]
No.270, 270/1, Negombo Road,
Wattala.
Through
Hatton National Bank PLC,
No.479, T.B. Jayah Mawatha,
Colombo 10.

RESPONDENTS

Before: **R. Gurusinghe J.**

&

Dr. Sumudu Premachandra J.

Counsel: Theekshana Pathirana with Dilhara Arachchige instructed by R. M. Sanduni Nisansaal for the Petitioner.

Written Submissions: Not filed.

Not filed.

Supported On: 08/12/2025

Order On: 09/12/2025.

Dr. Sumudu Premachandra J.

1] This is an application for a constitutional injunction, supported ex parte, and the order has to be considered overnight, as the learned counsel for the Petitioner has requested that performance bonds be encashed tomorrow by the Hatton

National Bank PLC, since they have requested the original bonds to encash those.

2] Basically, the Petitioner prays for the following reliefs;

a. Issue notices on the respondents

b. Grant a restraining order in the first instance until the issuance of a final injunctive relief restraining the 1st respondent from demanding the payment of the value of LKR 9,690,750.00 [via P10 (B)] pledged under and in terms of the Performance Bond bearing No. 035BGTEE2500201 [P6] from the 3rd respondent

c. Grant a restraining order in the first instance until the issuance of a final injunctive relief restraining the 3rd respondent from honoring the demand of the 1st respondent to pay a sum of LKR 9,690,750.00 [via P10 (B)] under and in terms of the Performance Bond bearing No. 035BGTEE2500201 [P6]

d. In the alternative to the relief [b] a restraining order in the first instance until the issuance of a final injunctive relief restraining the 1st respondent from utilizing the amount so realized, if any, under the Performance Bond bearing No. 035BGTEE2500201 [P6] and for such sums so realized, if any, to be held in a constructive trust, under and in terms of the Trust Ordinance No.09 of 1917, to the credit of the petitioner

e. An injunction under Article 143 of the Constitution of the Democratic Socialist Republic of Sri Lanka restraining the 1st respondent from demanding the payment of value of LKR 9,690,750.00 [via P10 (B)] pledged under the Performance Bond bearing No. 035BGTEE2500201 [P6] from the 3rd respondent for a period of one month

f. An injunction under Article 143 of the Constitution of the Democratic Socialist Republic of Sri Lanka restraining the 3rd respondent from honouring the demand of the 1st respondent to pay a sum of LKR 9,690,750.00 [via P10 (B)] under and in terms of the Performance Bond bearing No. 035BGTEE2500201 [P6] for a period of one month

g. An injunction under Article 143 of the Constitution of the Democratic Socialist Republic of Sri Lanka restraining the 1st respondent from utilizing the amount so realized, if any, under the Performance Bond bearing No. 035BGTEE2500201 [P6] and for such sums so realized, if any, to be held in a constructive trust, under and in terms of the Trust Ordinance No.09 of 1917, to be credit of the petitioner for a period of one month

h. Such other and further relief as Your Lordships' Court shall deem meet.

3] The brief history of the case is as follows: The Petitioner, a medical corporation, successfully tendered for the supply of the product to the 1st Respondent. The total bid consideration was LKR 62,125,000.00 exclusive of VAT [P4]. After being awarded the tender, the Petitioner was required to submit a Performance Bond ([P6], dated 29/07/2025, for LKR 9,690,750.00, which effectively encapsulates a total consideration of LKR 96,907,500.00 inclusive of 18% VAT).

4] The dispute arose when the 1st Respondent forwarded a revised Purchase Order [P7] dated 06/08/2025, reflecting a higher total consideration of LKR 82,124,999.76 (which the Petitioner contends is contradictory to the accepted bid price of LKR 96,907,500.00, including VAT). The Petitioner subsequently emailed the 1st Respondent to adjust the contract document to align with the VAT component, maintaining the original unit price of LKR 36,500.00 and the total contract value inclusive of VAT as LKR 96,907,500.00.

5] The Petitioner contends that the Performance Bond [P6] is premature and may be unenforceable because it was based on an altered value (LKR 9,690,750.00) that does not reflect the original accepted price/unit value and was executed before a valid contract related to the Award of Tender [P4] or the Purchase Order [P7] was finalized. The 1st Respondent admitted via email (04/11/2025) an inability to add the VAT amount equivalent to the original unit price and instead suggested accepting the amount of LKR 36,500.00, unit inclusive of the VAT component. The 1st Respondent later officially responded to the Purchase Order [P7] discrepancy with a title, 'VAT Discrepancy' ([P8]). The Petitioner argues that the Performance Bond [P6] is void and unenforceable in the absence of a valid contract or because it is a non-performance of a premature contract, thus exposing the Petitioner to material prejudice.

6] The Petitioner seeks court intervention to prevent the 1st Respondent from enforcing or encashing the Performance Bond [P6] and recovering monies under it, claiming that the enforcement would amount to unjust enrichment for the 1st Respondent and that the balance of convenience lies with the Petitioner. The court's jurisdiction is invoked on the basis of the Petitioner suffering grave, irremediable, and irreparable damage if the Performance Bond is honoured by the 3rd Respondent (the bank) in favour of the 1st Respondent. The Petitioner requests an order declaring that the Performance Bond [P6] is null and void and that the 3rd Respondent is not obliged to honour it until a valid contract relating to the Award of Tender [P4] is entered into.

7] The Petitioner said since the 1st Respondent is a government-related organization under section 461 of the Civil Procedure Code, they should give one month's notice to the Attorney General to institute an action, thus, Article 143 Constitutional Injunction should be granted until such time.

8] Article 143 provides that the Court of Appeal may grant an injunction to prevent any irremediable mischief which might ensue that a party making an application for such an injunction could prevent the same by bringing an action in any Court of First Instance. It says;

> *"143. The Court of Appeal shall have the power to grant and issue injunctions to prevent any irremediable mischief which might ensure before a party making an application for such injunction could prevent the same by bringing an action in any Court of First Instance:*
>
> *Provided that it shall not be lawful for the Court of Appeal to grant an injunction to prevent a party to any action in any court from appealing to or prosecuting an appeal to the Court of Appeal or to prevent any party to any action in any court from insisting upon any ground of action, defence or appeal, or to prevent any person from suing or prosecuting in any court, except where such person has instituted two separate actions in two different courts for and in respect of the same cause of action, in which case the Court of Appeal shall have the power to intervene by restraining him from prosecuting one or other of such actions as to it may seem fit."*

9] The purpose of this article is to stop serious, irreversible damage (irremediable mischief) that could occur while waiting for a primary court action. The essence is to maintain the status quo and prevent injustice before final judgment.

10] This relates to P6, the performance bond. It should be noted that courts can grant injunctions to stop bank guarantee or performance bond payments, in the rarest instances, requiring strong proof of fraud (not just a dispute) and the bank's knowledge of that fraud, as guarantees are independent promises. Under the autonomy principle, Bank guarantees, Performance Bonds are separate from the main contract; the bank must pay on demand unless fraud intervenes. Issuing an injunction is wholly exceptional in cases of clear, established fraud, not just breaches of contracts or disagreements between the parties. Not only that, the knowledge of the bank that the demand was made on a fraudulent basis is sine qua non. The Petitioner must present a strong prima facie case, not merely by filing uncorroborated statements or affidavits. Moreover, the application should be filed without delay as delay defeats equity.

11] The above principles are well settled, and they are considered succinctly as follows: first and foremost, demand guarantees are mentioned in Article 5(a), ICC Uniform Rules for Demand Guarantees (URDG 758). It says;

> *"A guarantee is by its nature independent of the underlying relationship and the application, and the guarantor is in no way concerned with or bound by such relationship. A reference in the guarantee to the underlying relationship for the purpose of identifying it does not change the independent nature of the guarantee. The undertaking of a guarantor to pay under the guarantee is not subject to claims or defences arising from any relationship other than a relationship between the guarantor and the beneficiary.*

12] The nature of performance bond is explained by Parakrama Karunaratna in his article named "**BANK GUARANTEES AND ENJOINING ORDERS: AN EXAMINATION OF THE BANKERS' OBLIGATIONS"** [1]as;

> *"A performance bond is similar to a letter of credit. Both these documents have an applicant, a beneficiary and a banker. The liability of the banker under a performance bond is strict and he must pay according to the terms*

[1] https://www.lawnet.gov.lk/wp-content/uploads/Law%20Site/a10 Sri%20Lankan%20Articles/CV31.html (accessed on 08/12/2025)

of the bond when demand is made. Banks are not concerned with the disputes between the parties and the courts should permit the banker to honour its obligations However, it is in the interest of the banks that they should resist any interim orders restraining them from carrying out their obligations."

13] He further notes with regard to issuing enjoining orders or injunctions against bank guarantees and performance bonds, as;

"Enjoining orders and interim relieves should not be granted for the mere asking. Court should satisfy itself that the applicant warrants immediate relief keeping in mind the principles of law"

14] It should be noted that the above principles are developed by a plethora of superior court cases. In ***HEMAS MARKETING (PVT) LTD. v. CHANDRASIRI AND OTHERS*** [1994] 2 SLR 181, His Lordship RANARAJA, J., discussed in depth on issuing constitutional injunctions against encashing bank guarantees and bond; His Lordship noted;

"In the absence of a prima facie case being made out an injunction should not have issued restraining payment on the bank guarantees given against due performance...

A guarantee is an accessory contract by which the promisor undertakes to be answerable to the promisee for the debt, default or miscarriage of another person whose primary liability to the promisee must exist or be contemplated. Bank Guarantees were established as a universally acceptable means of payment equivalent to cash in trade and commerce, on the basis that the promise of the issuing bank to pay was wholly independent of the contract between the buyer and seller and the issuing bank would honour its obligations to pay regardless of the merits or demerits of the dispute between the buyer and the seller...

When a bank has given a guarantee, it is required to honour it according to its terms and is not concerned whether either party to the contract which underlay the contract was in default. The whole purpose of such commercial instruments was to provide security which was to be readily, promptly and assuredly realisable when the prescribed event occurred...

The only exception to the rule is where fraud by one of the parties to the underlying contract has been established and the bank had notice of the fraud. A mere plea of fraud put in for the purpose of bringing the case within this exception and which rests on the uncorroborated statements of the applicant will not suffice*…"* [Emphasis is added]

15] In ***INDICA TRADERS (PVT) LTD. v. SEOUL LANKA CONSTRUCTION (PVT) LTD. AND OTHERS***, [1994] 3 SLR 387, His Lordship S. N. SILVA, J. (As he then was), considered issuing ex parte interim injunction restraining a bank from paying on a bond or guarantee as;

"The proper approach of a court to a consideration of an ex parte application for an interim injunction restraining a bank from paying under an irrevocable letter of credit (LC), a performance bond or guarantee should be to ask whether there is any challenge to the validity of the letter, bond or guarantee itself. If there is not or if the challenge is not substantial, prima facie no injunction should be granted and the bank should be left free to honour its contracted obligation although restrictions may well be imposed on the freedom of the beneficiary to deal with the money after he has received it. ***The wholly exceptional case where an injunction may be granted is where it is proved that the bank knows that any demand for payment already made or which may thereafter be made will clearly be fraudulent****.* ***But the evidence must be clear, both (1) as to the fact of fraud and (2) as to the bank's knowledge.*** *It would certainly not normally. be sufficient that this rests on the uncorroborated statement of the customer, for irreparable damage can be done to a bank's credit in the relatively brief time which must elapse between the granting of such an injunction and an application by the bank to have it discharged.*

Business transactions between a bank and a beneficiary, constituted in the nature of a performance bond, a performance guarantee, letter of guarantee or irrevocable letter of credit, whereby the bank is obliged to pay money to a beneficiary, are not tripartite transactions between the bank (surety) the beneficiary (creditor) and the party at whose instance the bond, guarantee or letter is issued (the principal debtor) but, simply transactions between the bank and the beneficiary. A bank thereby guarantees to the beneficiary *payment of money and is obliged to honour that guarantee according to its terms. Any dispute that may arise between the beneficiary (creditor) and the party at whose instance the guarantee or letter is given (the principal debtor), on the underlying contact, cannot be urged to restrain the bank from honouring the guarantee or letter according to its terms"* [Emphasis is added]

16] Further in ***<u>Pan Asia Bank Ltd. Vs Kandy Multi Purpose Co-operative Society and Others</u>*** [2012] 1 S.L.R. 78, ERIC BASNAYAKE J., held;

> *"Judges who are asked to issue an injunction restraining payment by a Bank under a bond or a guarantee or letters should ask whether there is any damage to the validity of the letter, bond or the guarantee itself, if there is not.... prima facie no injunction should be issued and the Bank should be left free to honour its contractual obligations."*

17] Moreover, in ***<u>HYDERABAD INDUSTRIES LTD. v. IDAC TRADING (PVT) LTD., AND TWO OTHERS,</u>*** 1995 2 SLR 304, His Lordship Ranaraja, J., noted that if the damages are quantified, no injunctive relief is to be given. His Lordship notes;

> *"A fundamental rule of the law on injunction is that where the damages or loss caused to a party seeking injunctive relief is quantified in damages on a prima facie balance of convenience. Courts should refrain from granting injunctive relief."*
>
> *…As in the case of an irrevocable or confirmed Letter of Credit, a Letter of Indemnity obliges the 3rd Respondent Bank to pay the 2nd Respondent - Shipping Company on it irrespective of any dispute between the Petitioner and the 1st Respondent on the contract regarding the goods. It is an irrevocable obligation with which courts will not interfere with except when there is fraud, by one of the parties to the underlying contract and the Bank had Notice of that fraud.*
>
> *…The Courts jurisdiction to grant injunctions is wide, but this is not a case in which in the exercise of the Courts discretion it ought to grant an injunction."*

18] Very recently, in ***<u>Seylan Bank Limited vs Lanka Milk Foods (CWE) Limited,</u>*** SC Appeal No. SC/CHC/16/2007, Decided on: 19/03/2025, His

Lordship A.L. Shiran Gooneratne J., decided that performance bond liability is triggered by demand as;

> *"A Performance Bond generally takes the form of a demand guarantee, where liability is triggered by a demand in the form of a statement that the applicant is in breach of its obligations under the underlying relationship."*

19] In the instant case, the demand has been made as the original bond was asked to fulfil the liability. Sharvananda J. in ***Yasapala v Wickramasinghe***, S.C. Application 103 of 1980, S.C. Minutes of 8.12.1980, case cited with approval, English Authority Carltona Ltd. v Commissioners of Works, [1943] 2 All ER 560, 564. And noted;

> *"All that the Court can do is to see that the power which it is claimed to exercise is one which falls within the four corners of the power given by the legislature and to see that those powers are exercised in good faith.* ***Apart from that, the Courts have no power at all to inquire into the reasonableness, the policy, the sense, or any other aspect of the transaction****."* [Emphasis is added]

20] In the above-mentioned judgement, the Supreme Court noted Kerr J.'s findings in ***R. D. Harbottle (Mercantile) Ltd. v. National Westminster Bank*** [1977] All ER 862, 870,

> *"…the machinery and commitments of banks are on a different level. They must be allowed to be honoured free from interference from courts. Otherwise, trust in international commerce could be irreparably damaged."*

21] In ***United City Merchants (Investments) Ltd v Royal Bank of Canada*** [1982] 2 All ER 720, Lord Diplock considered issuing an injunction on bank bonds as

> *"The exception for fraud on the part of the beneficiary seeking to avail himself of the credit is a clear application of the maxim ex turpi causa non*

oritur actio, or, if plain English is to be preferred, 'fraud unravels all.' The courts will not allow their process to be used by a dishonest person to carry out a fraud."

22] In ***Commercial Bank of Ceylon PLC v Ace Containers (Pvt) Ltd*** [2015] 1 S.L.R. 223, is a significant Sri Lankan Supreme Court case (SC Appeal 142/14) that affirmed the principle of **autonomy in demand bank guarantees**, holding that a bank must pay upon first demand regardless of underlying contract disputes, reinforcing the separation of the guarantee from the main contract, and addressing necessary parties in guarantee disputes.

23] Recently in ***Attorney General vs Ceylinco General Insurance Ltd,*** SC APPEAL NO: 170/2019, Decided on: 17.11.2022, His Lordship Mahinda Samayawardhena, J. considered the principle of autonomy and held;

> *"Notwithstanding that these performance bonds are autonomous and standalone, **if fraud is alleged and prima facie established, of which the guarantor has knowledge or notice, this general principle can be relaxed appropriately**. In such event, **the court can even issue an interim injunction preventing the bank from making payment on the instrument pending determination of the action. I must add that the mere sending of a notice by the principal to the guarantor alleging fraud on the part of the beneficiary will not allow the guarantor to refuse payment; nor will the court clothe itself with jurisdiction on such bare assertions** to stop payment on bonds or guarantees considered to be the lifeblood of international commerce or equivalent to cash. The court shall not make interim orders ex parte or inter partes unless a strong prima facie case has been made out on fraud. **The fraud shall be of a serious character that goes to the root of the underlying contract**; an alleged violation of a term of the contract such as delivery of substandard goods, an allegation of overpayments or underpayments are not sufficient enough to establish fraud. The court must guard itself against making this universally acceptable mode of payment in national and international trade ineffectual or nugatory by granting interim orders as a matter of course or as a matter of routine."* [Emphasis is added]

24] In the case in hand, the learned counsel for the Petitioner merely said that fraud had been committed but failed to prove and establish that fraud had been committed. It is seen that the liability of the Guarantee would automatically be null and void after 28/01/2026. If any injunction is issued, it will affect the said bond and automatically be null and void. P8 (dated 07/08/2025) and P9(dated 04/11/2025 show that the Petitioner had ample time to resolve and get redress from the court of first instances, and they failed to do so. In fact, they could have given one month's notice under section 461 of the Civil Procedure Code, if need be. Moreover, with leave of the court, they could have notice and ask for an injunction in the original court, and thereafter the matter could be adjourned for one month, enabling the notice to be served. The Law does not compel to do impossible things. The principle ***'lex cogit ad impossibilia'*** is well established, and if one month's notice cannot be given in the attended circumstances, with leave of the court, an injunction ought to have been supported in the right forum. Thus, I am of the view that the Petitioner is guilty of laches, and there are no available circumstances to seek a constitutional injunction under Article 143 of the Constitution. On the other hand, in the case of bank guarantees and performance bonds, fraud has to be made out, and this factor(Fraud) should be considered along with general principles enunciated relating to issuing an interim injunction in ***Felix Dias Bandaranayake v. The State Film Corporation and Another*** – [1981] 2 SLR – 287. In this case, damages can be quantified, and although P6 is encashed, the Petitioner is left with a remedy. Thus, the application must fail.

25] For the aforementioned reasons, we refuse to issue an injunction as prayed for and dismiss this application, which was made under and in terms of Article 143 of the Constitution.

Judge of the Court of Appeal

I agree

R. Gurusinghe

Judge of the Court of Appeal