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Title of the Ph.D. : ***Law Relating to Bank Guarantee with Special
Reference to JK Bank Ltd.-A Case Study of
the State of Jammu &Kashmir.***

Abstract

Bank guarantee is ordinarily a contract distinct and independent to the underlying contract. It imposes an absolute obligation on the bank to fulfill the terms of the guarantee. It is a contract under which the bank undertakes unconditionally and unequivocally to abide by the terms of the contract. The bank giving the guarantee is bound to honour it as per its terms irrespective of any dispute raised or pending between the persons at whose instances and to whom the bank issues the guarantee. It is a wellsettled rule that the courts cannot restrain the bank for honouring their guarantees by issuing the injunction. The only exception where the courts can grant an injunction to restrain the payments under the contract of guarantee are in case of fraud and irretrievable damages.

During the course of study, it was endeavored to achieve the objectives viz. ; to understand the true nature and scope of bank guarantee in general and JK Bank in particular, to make systematic evaluation of law and judicial approach relating to bank guarantees, to evaluate the compatibility of the bank guarantees issued by the JK Bank Ltd. with the domestic law and polices, to objectively assess the existing JK Bank guarantee system and identify improvements / changes required in the bank guarantee system in the light of new regime and system followed by the banks generally.

The JKBank Ltd. has been playing a great role for the growth and prosperity of trade and commerce of the state in particular and country in general. One of the most important services furnished to the business community by the JK Bank Ltd. is the furnishing of guarantees. The analysis of the data reveals that all the branches of the JK Bank are empowered to provide the bank guarantees. The maturity period for bank guarantee varies

from case to case but in no case it exceeds 10 years. The JK Bank Ltd. can provide all types of bank guarantees on behalf of its customers. The bank is mainly providing guarantees on behalf of its customers but the bank will not hesitate to provide guarantee on behalf of persons other than customer if they will come with 100% cash margin. The guarantees issued by the bank are unconditional guarantees. The JK Bank Ltd. honours its guarantees irrespective of any dispute raised or pending between the parties to the principal contract. The guarantees issued by the JK Bank Ltd. are always secured guarantees which are secured either fully by cash margin or partly by cash margin and partly by any other means. The bank guarantees issued by the JK Bank Ltd. are always written. The guarantees issued by the bank can be renewed later on. The guarantees are issued on the commission basis and the rate of commission varies from case to case - higher the cash margin, lower the commission and lower the cash margin, higher the commission rate. The rate of commission normally varies from 0.15 – 1 %. To conclude the present study, it is submitted here that the JK Bank Ltd. is following the law and policies while issuing the guarantees.

In the study, certain suggestions have been incorporated. Firstly, the principle of co-extensiveness of the surety's liability with that of principal debtor, could not be imported in the case of bank guarantee and, therefore, be treated as exception to the set principle by enacting suitable enactment/ amendment. Secondly, while issuing bank guarantees, the banks should ensure that the contract of guarantee is unambiguous, clear and self-consistent. Thirdly, the bank guarantees should contain specific periods during which the guarantees will remain in force. Total liability undertaken by the bank and the claim period, if any, should be stated clearly without self-contradiction. Fourthly, the Indian Contract Act, 1872 may be amended to include the separate provision which will govern the bank guarantee. Fifthly, the bank guarantee for all purposes should be taken to be a credit-note issued by the bank in favour of the beneficiary. Sixthly, the appropriate modification could be made in the bank guarantee system in the light of the rules of the International Chamber of Commerce on Uniform Rules for Demand Guarantees. Seventhly, bank guarantees should be written and signed by the parties. Eighthly, the law may be amended to incorporate the majority view of the Supreme Court regarding the words any variance in section 135 of the Indian Contract Act, 1872. Lastly the limitation period for invoking the bank guarantee should be equated.