

EXPORT FINANCE (OVERSEAS LENDING) GUARANTEE

भारतीय निर्यात ऋण गारंटी निगम लि.
(भारत सरकार का उद्गम)

EXPORT CREDIT GUARANTEE CORPORATION OF INDIA LTD.

(A GOVT. OF INDIA ENTERPRISE)

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Gram : INDERIC



Issued by THE EXPORT CREDIT GUARANTEE CORPORATION OF INDIA LIMITED (hereinafter called "THE CORPORATION") to the INSURED named in the SCHEDULE hereunder written (hereinafter referred to as "the SCHEDULE").

WHEREAS the INSURED has made a Proposal in writing requesting the CORPORATION to insure him against a percentage specified in the SCHEDULE of loss that may be sustained by him by reason of certain risks hereinafter mentioned in connection with his granting to the BORROWER named in the SCHEDULE of a loan in foreign exchange under the loan agreement described in the SCHEDULE (hereinafter called "the Loan Agreement") which the CORPORATION has agreed to do subject to and upon the terms and conditions hereinafter in these present expressed and contained.

NOW, THEREFORE, in consideration of the amount of premium stated in the SCHEDULE as paid by the INSURED and the further premiums to be paid by him as stipulated therein, the CORPORATION hereby insures the INSURED against the said risks, subject to all the terms of this GUARANTEE including provisos, conditions and definitions hereincontained, against a percentage of loss as mentioned in the SCHEDULE (which forms part of this GUARANTEE) that may be sustained by the INSURED due to the failure of the BORROWER to repay to the INSURED any INSURED DEBT by reason of the risks of INSOLVENCY or PROTRACTED DEFAULT.

INSURED DEBT shall in this GUARANTEE mean so much of any loan granted to the BORROWER in accordance with the terms and conditions of the Loan Agreement as shall for the time being remain unpaid and any unpaid interest and other charges, if any, incurred with the consent in writing of the CORPORATION and which the INSURED is entitled in terms of the Loan Agreement to demand and recover from the BORROWER upto the due date for repayment of the loan.

PROVISOS

PROVIDED ALWAYS that the CORPORATION shall not be liable for any loss :

(a) if the INSURED agrees to postponement of the due dates of payment of any INSURED DEBT or part thereof without the prior consent in writing of the CORPORATION;

(b) if the INSURED accepts a composition or arrangement with the BORROWER without the prior approval in writing of the CORPORATION;

(c) if any right under the GUARANTEE is assigned by the INSURED without the prior approval in writing of the CORPORATION;

(d) for which a claim has not been made to the CORPORATION in writing in the form prescribed by it within twelve months from the due date of payment;

(e) if the project contract between the BORROWER and the foreign employer, any of the terms and condition thereof or the execution thereof are or is illegal and/or unenforceable either wholly or in part;

(f) if the Loan Agreement between the INSURED and the BORROWER or any of the terms and conditions thereof or the execution thereof are or is illegal and/or unenforceable either wholly or in part.

TERMS AND CONDITIONS

1. It shall be the duty of the INSURED to exercise reasonable care and prudence in granting or disbursing loans and in withholding the grant or disbursal of loans, including the examination and checking up of the accounts of the BORROWER from time to time and also the safeguarding and whenever necessary in enforcement of the securities held by the INSURED for and in connection with the said loans. The INSURED shall continue to exercise all the necessary care and prudence until such loans are repaid.

2. The INSURED shall retain for his own account and shall not insure with any other person :

- (a) so much of the INSURED'S LOSS (as hereinafter defined) as exceeds the INSURED PERCENTAGE as referred to in the SCHEDULE hereto; and
- (b) so much of any loss of the INSURED as exceeds the Maximum Liability under this GUARANTEE.

PROPOSAL

3. The Proposal made by the INSURED is expressly accepted by the INSURED and the CORPORATION as being of the essence and the basis of the contract contained in this GUARANTEE and by accepting the GUARANTEE the INSURED hereby warrants that to the best of his knowledge and belief, the statements made in the Proposal were true on the date of the Proposal and on the date when the CORPORATION agreed to issue and issued this GUARANTEE but this condition is not to be construed as limiting the obligations imposed on the INSURED by law to disclose to the CORPORATION from time to time all material circumstances, to exercise all reasonable care, diligence and prudence and generally to observe the utmost good faith at all times, and to disclose all facts directly or indirectly in any way affecting the liability of the CORPORATION under this GUARANTEE, immediately on his becoming aware thereof. If any of the statements contained in the Proposal be untrue or incorrect in any respect, this GUARANTEE shall be void but the CORPORATION may retain any premium that has been paid.

DECLARATIONS

4. The INSURED shall periodically declare to the CORPORATION in the form prescribed by the CORPORATION details regarding loans disbursed to the BORROWER, interest and approved charges accrued and payments received from the BORROWER, etc. Submission of such declarations should be according to the stipulations in this regard contained in the SCHEDULE hereto.

PREMIUM

5. The further premium payable under this GUARANTEE shall be calculated and paid by the INSURED in accordance with the stipulations in this regard contained in the SCHEDULE hereto.

6. Due payment of premium according to condition No. 5 of this GUARANTEE at the rate specified in the SCHEDULE and observance of all the other terms and conditions and provisos of this GUARANTEE are conditions precedent to any liability of the CORPORATION under this GUARANTEE.

FALSE OR FRAUDULENT CLAIMS

7. If the INSURED makes any claim knowing it to be false or fraudulent in any way, or connives at, assists, encourages or abets the BORROWER in creating or bringing into existence any fraudulent circumstances leading or giving rise to a claim under this GUARANTEE this GUARANTEE shall become void and all claims under it shall be forfeited and any sums previously paid by the CORPORATION under the GUARANTEE shall forthwith become repayable by the INSURED but the CORPORATION shall be entitled to retain all payments made to it by way of premium or otherwise.

MAXIMUM LIABILITY

8. The total liability of the CORPORATION under this GUARANTEE shall be limited to Rs. (Rupees) or such other sum as may be agreed to in writing between the INSURED and the CORPORATION on an application made therefor by the INSURED.

CONSULTATION

9. In the event of an INSURED DEBT not being paid on the due date as defined hereinafter or in the event of the BORROWER being at any time to the knowledge of the INSURED in financial difficulties, the INSURED shall notify the CORPORATION thereof immediately and shall take all steps necessary by way of enforcement of any security or otherwise in connection with any loss which the INSURED may have incurred or may be likely to incur, including, if so required by the CORPORATION in writing, the institution at the costs of the INSURED of legal proceedings and such other steps as the CORPORATION may require the INSURED to take for minimising the loss or for recovery of the INSURED DEBT from the BORROWER.

CLAIMS

10. Upon the occurrence of INSOLVENCY or PROTRACTED DEFAULT of the BORROWER the INSURED shall be entitled to make a claim under this GUARANTEE in respect of any INSURED DEBT, arising by reason of such INSOLVENCY or PROTRACTED DEFAULT and (subject always to the provisions of Conditions 11, 12, and 14 of this GUARANTEE and after taking into account any interim payments and recoveries) the CORPORATION shall thereafter pay to the INSURED the insured percentage (as referred to in the SCHEDULE hereto) of the INSURED'S LOSS in Indian Rupees. The INSURED DEBT expressed in foreign currency shall, for this purpose, be converted into Indian Rupees either at the exchange rate given in the SCHEDULE for the purpose of premium calculation or at the Bank T.T. Selling Rate of Exchange in Bombay on the date of ascertainment of loss, whichever of the two is the lower amount in terms of Rupees.

11. The INSURED shall be entitled to make a claim under this GUARANTEE

(A) Where the loss is due to INSOLVENCY OF THE BORROWER, unless otherwise agreed to in writing by the CORPORATION, either

- (i) one month after the loss has been admitted to rank against the Insolvent's estate in favour of the INSURED on a claim which shall be filed by the INSURED in a competent Court of Law immediately on being apprised of the INSOLVENCY of the BORROWER, or
- (ii) after four months from the date of INSOLVENCY OF THE BORROWER, whichever of the two dates is the earlier,

PROVIDED THAT, where the claim is payable as in this clause (ii), the INSURED shall deliver to the CORPORATION

- (a) evidence satisfactory in the opinion of the CORPORATION that the INSURED has filed his claim validly and effectively in such INSOLVENCY of the BORROWER and
- (b) a declaration in writing that he has done or omitted nothing whereby such claim is liable to be rejected by the Court in such INSOLVENCY.

(B) In the case of PROTRACTED DEFAULT, immediately after the expiry of four months from the due date of payment.

RECOVERY STEPS AND SHARING OF RECOVERIES

12. Upon payment by the CORPORATION of the amount of claim due hereunder to the INSURED the INSURED shall at his costs take all steps which may be necessary or expedient or which the CORPORATION may at any time require, to effect recoveries whether from the BORROWER or from any other person from whom such recoveries may be made including, if so required, the institution of legal or other proceedings including legal proceedings if necessary, in a foreign country.

13. Notwithstanding anything to the contrary contained in the Loan Agreement or any other Agreement between the INSURED and the BORROWER upon recovery by the INSURED or by the CORPORATION of any sum in respect of the amount due from the BORROWER to the INSURED, the sum so recovered shall forthwith be divided between the INSURED and the CORPORATION in the proportion of 1:3/1:9.

The INSURED shall pay all sums so recovered to the CORPORATION forthwith upon their being received by him or by any other person on his behalf, the INSURED hereby acknowledging and declaring that until such payment is made to the CORPORATION, he receives and holds such sums in trust for the CORPORATION.

RECOVERY EXPENSES

14. Any expenses incurred by the INSURED with the consent in writing of the CORPORATION or by the CORPORATION for the purpose of effecting recoveries from the BORROWER or any other source shall be a first charge on any amount recovered.

DISCLOSURE

15. The CORPORATION may at any time examine or take copies of any letters, accounts, or other documents in the possession or control of the INSURED relating to or connected with this GUARANTEE or connected with the subject matter of this GUARANTEE and the INSURED shall at the request of the CORPORATION supply to the CORPORATION any information in his possession or power and take at his own costs any reasonable steps to obtain for the CORPORATION any information or the sight of any document in the possession of any third party relating to or connected with this GUARANTEE.

CANCELLATION

16. The CORPORATION may at any time and at its sole discretion give notice in writing to the INSURED reducing the Maximum Liability or cancelling the cover granted by the GUARANTEE in respect of the BORROWER and such reduction or cancellation shall apply to any loan granted and disbursed immediately after such notice has been received by the INSURED.

DEFINITIONS

1. INSOLVENCY

The BORROWER shall be deemed to be INSOLVENT for the purpose of this GUARANTEE when :

- (a) he is declared bankrupt by a competent court of Law in India ; or
- (b) he has made a valid assignment composition or other arrangement for the benefit of his creditors generally; or
- (c) a Receiver has been appointed in respect of his business or his property or any part thereof; or
- (d) If the BORROWER be an incorporated body :
 - (i) an order has been made for its compulsory winding up by a competent court of Law; or
 - (ii) an effective resolution has been passed in General Meeting for its voluntary winding up, provided that such resolution is not merely for the purpose of reconstruction or amalgamation; or
- (e) an arrangement binding on all the creditors has been sanctioned by a competent Court of Law in India.

2. INSURED'S LOSS

"The INSURED'S LOSS" means so much of an INSURED DEBT as shall be admitted to rank against the Insolvent estate of the BORROWER or, in the case of PROTRACTED DEFAULT, so much of the INSURED

DEBT as is outstanding in the books of the INSURED on the Due Date of Payment (as hereinafter defined) and as shall not be in dispute between the BORROWER and the INSURED, after taking into account the whole of the amount of any recoveries relating thereto made up to the date of claim in respect of loss payable under this GUARANTEE.

3. RECOVERIES

"Recovery" means the amount of moneys that may be realised from (including dividends paid or payable out of an Insolvent estate) securities, indemnities, guarantees, rights of action, counter-claims or set-off or other rights or advantages held by the INSURED or otherwise available for the purpose of reducing the amount of any indebtedness of the BORROWER.

4. DUE DATE OF PAYMENT

The words "Due date of Payment" shall mean the due date of repayment of the Loan or any instalment thereof mentioned in the Loan Agreement and shall include and shall be deemed to include in any case where the time of payment has been extended by the INSURED with the approval in writing of the CORPORATION, the date or dates to which the time has been so extended.

Date :

CHAIRMAN & MANAGING DIRECTOR

Place : Bombay