

IN THE HIGH COURT OF SINDH AT KARACHI

Admiralty Suit No. 09 of 2026
(Orkun Group Zanzibar Limited vs. M.V. "NAPOLIA" / "KEVER" & others)

Plaintiff:	Through Mr. Mayhar Mustafa Kazi, Advocate.
Defendant No.2:	Through M/s Agha Zafar Ahmed & Feroze Advocates.
Dates of hearing:	30.07.2026 & 06.08.2026
Date of Order:	27.08.2026

ORDER

Saman Rafat Imtiaz J; Through this order, I intend to dispose of CMA No. 244/2026 filed by the Defendant No.2 seeking direction to the Nazir of this Court to accept an Insurance Guarantee from Pakistan General Insurance Co. Ltd., ("PGICL") as solvent surety within the meaning of the Order dated 16.06.2026.

2. This suit was filed by the Plaintiff [Orkun Group Zanzibar Limited] against the Defendants for recovery of USD 5,114,975.80. Along with the plaint, the Plaintiff filed CMA No. 123/2026 under Rule 731 of the Sindh Chief Court Rules (Original Side) seeking arrest of the Defendant No. 1 Vessel [M.V. "NAPOLIA" / "KEVER"] as security for the Plaintiff's claim under Section 3(2)(g) and (h) of the Admiralty Jurisdiction of the High Courts Ordinance, 1980 and to detain the same till the Defendants furnish solvent surety/security to the satisfaction of the Nazir of this Court in the sum of USD 5,114,975.80 by way of a bank guarantee of a reputable international bank and/or such other form of security as this Court deems fit. This Court ordered the arrest of the Defendant No. 1 Vessel vide ad-interim Order dated 29-04-2026, which was confirmed vide Order dated 16.06.2026, whereby the Plaintiff was found to have made out a *prima facie* case of its claim of loss and damage on account of mis-delivery of cargo and transportation charges paid aggregating to USD 2,908,804.66 in terms of Section 3(2)(h) of the Admiralty Jurisdiction of the High Courts Ordinance, 1980 for an action in



rem against the Defendant No. 1 Vessel under Section 4(4) and as such allowed CMA No. 123/2026. The said order directs the Defendant No.2 [M/s Konvoy Shipping, LLC] to furnish solvent surety/bank guarantee of USD 2,908,804.66 or its equivalent amount to the satisfaction of the Nazir of this Court upon which the arrest orders passed on 29-04-2026 would be deemed to have been recalled and as a consequence release order shall be issued whereupon the Defendant No. 1 Vessel would be allowed to sail.

3. By way of the instant application, the Defendant No. 2 seeks to furnish an Insurance Guarantee for the release of the Defendant No. 1 Vessel stating that the Defendant No.2 has made sincere and diligent efforts to procure a bank guarantee from a Pakistani commercial bank but has been unable to do so and that the only form of solvent surety available to the Defendant No.2 within Pakistan and capable of being furnished expeditiously is an Insurance Guarantee/Bond. A copy of the draft Insurance Guarantee proposed to be issued by PGICL is attached therewith as Annexure 'A'. The learned Nazir's office when approached for submission of the Insurance Guarantee, has asked the Defendant No.2 to obtain clarification from the court. The Defendant No. 2 has submitted in its application that the Insurance Guarantees are solvent surety as the same are regulated by SECP and it is part of the Insurance Business to issue bail bonds/court guarantees; that no prejudice will be caused to the Plaintiff if Insurance Guarantee is accepted by the Nazir of this Court in terms of the Order dated 16-6-2026 which permits any solvent surety; and that the Defendant No. 2 is unable to put any other form of solvent surety and shall suffer irreparable loss and shall be highly prejudiced if the aforesaid directions/clarifications are not given.

4. The learned counsel for the Defendant No.2 submitted that despite all efforts the Defendant No.2 is unable to secure a Bank Guarantee, however, it is prepared to arrange an Insurance Guarantee from PGICL as per the format annexed with the application. He argued that an Insurance Guarantee is a solvent guarantee as it will be issued to this Court and shall be payable upon direction.

5. On the other hand, the learned counsel for the Plaintiff submitted that an Insurance Guarantee cannot be regarded as solvent guarantee. Moreover, he argued that since order dated 16.06.2026 directs the Defendant No.2 to furnish solvent surety / bank guarantee of USD 2,908,804.66 or its equivalent

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amount to the satisfaction, the security must be equivalent to a bank guarantee which an Insurance Guarantee is not. He explained that a bank guarantee is issued against collateral, whereas no collateral is issued to the insurance company for the issuance of the Insurance Guarantee. In this regard he referred to the Prudential Regulations of the State Bank for corporate commercial banking whereunder all guarantees issued by Banks are to be fully secured whereas, under the Credit and Suretyship (Conduct of Business) Rules, 2018 as amended vide SRO 1010(I)/2022 dated 05.07.2022 of the SECP, which regulates business of Insurance Companies provides that an Insurer shall procure the collections in case of guarantee of the amount equivalent at last 10% of the sum insured / amount of guarantee. He submitted that the financial capability of PGICL is not very strong which is evident from the Rating Report dated 04.10.2025 issued by the Pakistan Credit Rating Agency Limited (“PACRA”) according to which the Insurance Financial Strength (“IFS”) of PGICL is rated as BBB+(ifs) which merely signifies good capacity to meet policy holders and contract obligations with moderate risk factors. Moreover, he highlighted that as per its balance sheet PGICL merely has Rupees 11 million as insurance related assets and Rupees 500 million in investment, whereas the security required by this Court in the instant matter is significantly more. He also pointed out that as per the rating report dated 4-10-2025 PGICL was barred by the SECP in the Credit Year 2017 PGICL from insurance activities due to undercapitalization, inefficient governance and non-compliance with the regulatory framework. The learned counsel argued that unlike banks that issue bank guarantees the insurance companies frequently challenge invocation of guarantees by beneficiaries which results in time delays due to which Insurance Guarantees cannot be regarded as solvent. In this regard he relied upon *Pakistan General Insurance Ltd. v. SECP and others*, 2022 CLD 1528 which he highlighted was a writ petition instituted by PGICL to challenge the Ombudsman’s direction to encash a performance bond which was passed in the year 2009 which writ was dismissed in the year 2022 to emphasize the delay that resulted in realizing the insured amount. The learned counsel for the Plaintiff submitted that this is not an isolated case and that in *Montage Design Build v. The Republic of Tajikistan*, PLD 2015 Islamabad 13 the Islamabad High Court specifically observed that insurance companies promptly issue unconditional guarantees but when the demand is made many avoid fulfilling their absolute commitments and undertakings



and the delay in payment of the guarantee amount allows parties the opportunity to obtain injunctions from Courts. When pointed out that banks also engage in similar tactics, he submitted that at most the banks would allow their customers time to approach the Courts but in the event that stay is not granted they have no choice but to pay up as opposed to insurance companies who themselves linger on the matter by challenging the call on such guarantees and refuse to pay up till the matter is decided by the Court. The learned counsel for the Plaintiff submitted that in case the Defendant No.2 is unable to arrange a bank guarantee, the only equivalent would be a letter of credit or a Protection & Indemnity (P&I) club undertaking.

6. The learned counsel for the Defendant No.2 argued, in rebuttal, that this Court is required to assess whether an Insurance Guarantee is or is not a solvent security not whether it is equivalent to a bank guarantee. He submitted that the rating report relied upon by the Plaintiff shows that the BBB+(ifs) rating means good and that risk factors are moderate. He relied upon the Credit and Suretyship (Conduct of Business) Rules, 2018, and particularly Section 3 (g) which allows an insurer to issue contracts of guarantee / bond and to pay the Court the bail amount if a defendant / bailee fails to appear for the scheduled Court appearances and or any other financial obligations towards any persons as may be decided by the Court. He also submitted that the 2025 PACRA report notes that the bar on PGICL was lifted in CY 2024 and the company began to underwrite insurance business. He, therefore, argued that an insurance bond is legally admissible in Court to secure release of the vessel as in case of failure of the defendant to appear for the scheduled Court appearances the insurance company guarantees to pay the Court.

7. This Court, on 30-07-2026, noted that Section 3 (a) provides that the defendant / bailee must have adequate assets to satisfy the face value of the bond. In the instant case admittedly the defendant No.2 does not have assets in Pakistan and the Insurance Guarantee will be issued with the help of an unnamed benefactor. In such circumstances, the financial strength and capability of the insurance company becomes all the more crucial, therefore, the Defendant No.2 was allowed time to satisfy this Court regarding the financial capability of PGICL.



8. On 06.08.2026, at the very outset, the learned counsel for the Defendant No.2 submitted that the Defendant No.2 is willing to arrange an Insurance Guarantee through another Insurance Company namely, United Insurance Company of Pakistan Limited (“UICPL”), which has a rating of “AA+(ifs)” that denotes a very strong capacity to meet policyholder and contract obligations with very low risk factors. The learned counsel for the Defendant No.2 submitted that the UICPL is financially sound and secure and even otherwise Insurance Guarantees issued are secured by re-insurance. He argued that in the alternative the Plaintiff will have no legal recourse other than by way of sale of the Defendant No. 1 Vessel as the Defendant No. 2 has no assets anywhere in the world nor is it a member of any P&I Club whereas the value of the said vessel is not more than USD. 800,000/-.

9. The learned counsel for the Plaintiff, on the other hand, argued that admittedly that the Defendant No.2 has no assets available anywhere in the world therefore there is a strongly likelihood that Insurance Company would not honour its commitment as per the guarantee and in keeping with past record acknowledged in various courts pronouncements will challenge the call, if any. He submitted that the first quarter report of UICPL also does not reveal figures, which would inspire confidence that it will be able to meet the claimed amount, if it is so granted by this Court in favour of the Plaintiff, from its own sources if the guarantee is called upon. He emphasized that there is not a single past precedent of a vessel being released against an Insurance Guarantee. He submitted that the Plaintiff would rather take chances with the value of the Defendant No. 1 Vessel as the sale proceeds thereof when it is auctioned will be invested. The learned counsel for the Defendant No.2 in support of his arguments has relied upon the case law reported as *Shipyard K. Damen International v. Karachi Shipyard and Engineering Works Ltd.*, PLD 2003 SC 191, *Messrs Granada Textile Mills Ltd. v. Federation of Pakistan*, 1996 SCMR 494, *Sui Southern Gas Co. Ltd. v. Standard Insurance Co. Ltd.*, 2002 CLD 890, *Messrs Platinum Insurance Company Ltd. v. Daewoo Corporation*, PLD 1999 SC 1, *Trustees of Port of Karachi v. Manzoor Sons Corporation and others*, 1993 SCMR 69, *Rajby International (Pvt) Ltd. V. M.V. Annie Sierrs and 2 others*, 2007 CLD 428, *Global Venture Ltd. v. M.V. Rio G. and 2 others*, 2001 YLR 1115 and *Messrs Jalal Construction Company v. Secretary, C&W Department, Government of Punjab and others*, PLD 2025 Lahore 379.



10. Heard the learned counsels for the Plaintiff and Defendant No.2 and perused the record with their able assistance.

11. The Plaintiff vide its application for arrest of the Defendant No. 1 Vessel had prayed for its arrest and detention as security for the Plaintiff's claim till the Defendants furnish solvent surety/security to the satisfaction of the Nazir of this Court by way of a bank guarantee of a reputable international bank and/or such other form of security as this Court deems fit. This Court, vide Order dated 16.06.2026 directed the Defendant No.2 to furnish solvent surety/bank guarantee of USD 2,908,804.66 or its equivalent amount to the satisfaction of the Nazir of this Court for release of the Defendant No. 1 Vessel. The Defendant No. 2 by way of the application, at hand, seeks to furnish an Insurance Guarantee in compliance of such order. The question that arises is whether an Insurance Guarantee constitutes 'solvent surety/security' and whether it can be accepted as security for the release of the Defendant No. 1 Vessel despite reservations of the Plaintiff.

What is meant by 'solvent surety/security'?

12. The phrase 'solvent surety' is not defined as a composite term. However, the term 'solvency' is defined in the Black's Law Dictionary (Sixth Edition) as the ability to pay debts as they mature and become due; excess of assets over liabilities; such status of a person's property that it may be reached and subjected to process of law, without his consent, to the payment of such debts.

13. The term 'surety' is defined as one who at the request of another and for the purpose of securing him a benefit becomes responsible for the performance by the latter of some act in favour of a third person; it is one who undertakes to pay money or to do any other act in the event that his principal fails therein; one who is primarily liable for payment of debt or performance of obligations of another.

14. The term 'security' is defined as protection, assurance, indemnification, which term is usually applied to an obligation, pledge, mortgage, deposit, lien etc., given by a debtor in order to assure the payment or performance of his debt by furnishing the creditor with a resource to be used in case of failure in the principal obligation; it is a collateral given by



the debtor to secure loan and the name is also sometimes given to one who becomes surety or guarantor for another.

15. By combining the individual definitions of 'solvency', 'surety' and 'security', the composite phrase 'solvent surety' would mean one whose assets exceed his liabilities and who at the request of another becomes responsible for and is capable of paying the debt of the latter to a third person and whose property can be reached and subjected to the process of law for the payment of such debts whereas 'solvent security' as is also sometimes used in legal parlance would mean a protection, assurance, indemnification or collateral such as pledge, mortgage, deposit, lien, which is given by a debtor for the fulfillment of an obligation as a resource to be subjected to the process of law, without his consent, in case of failure in the principal obligation.

Whether an Insurance Guaranty can be considered solvent surety/security?

16. A 'guaranty' as per Black's Law Dictionary (Sixth Edition) is a collateral agreement for the performance of another's undertaking. Guarantees are accepted as a form of security, in routine, in Pakistani Courts. A guarantee satisfactory to the claimant is an acceptable form of security in English law. Paragraph 377 of *Halsbury's Law of England*, 4th Edition, titled Introduction in Bail and Other Securities, Practice of High Court, Admiralty is reproduced as follows:

"The usual step following an appearance in action in rem is for the owner of the property arrested to procure its release by giving security for the plaintiff's claim. This may be done either by paying the amount of the plaintiff's claim into court, or by providing bail in sufficient amount, or by furnishing a guarantee acceptable to the plaintiff. The third method is nowadays the most common practice." [Emphasis added].

17. By relying upon the said paragraph, the Supreme Court of Appeal in South Africa in the case of *The Merak S: Sea Melody Enterprises SA v Bulktrans (Europe) Corporation*, 2002 (4) SA 273 (SCA) observed that in England a guarantee that was acceptable to the plaintiff was regarded in maritime legal circles as 'security'. It was also observed that the "*counsels were agreed that arrested vessels were almost invariably released in South African maritime practice in 1983 on the furnishing of P&I Club letters or bank guarantees. Bail bonds and undertaking to give bail bonds were not*



encountered in practice although provided for in the rules in operation until November 1986. Similarly, cash deposits and the giving of guarantees to the court were also seldom, if ever, encountered. From practical point of view, guarantees of the kind in question constituted security as effectual as cash deposits and bail bonds, ... ”

18. An Insurance Guarantee is a guarantee in terms of Section 126 of the Contract Act, 1872¹. The Supreme Court in the case of *Atif Mehmood Kiyani vs. Sukh Chayn Private Limited, Royal Plaza, Blue Area, Islamabad, 2021 SCMR 1446* has clarified that whether it is a bank guarantee or an insurance guarantee, if it contains a categorical undertaking and imposes an absolute obligation on the guarantor i.e., the bank or the insurance company to pay the guaranteed amount irrespective of any dispute which may arise between the parties regarding breach of contract for which performance that one party furnished the guarantee to the other, it is an independent contract therefore the guarantor must discharge its obligations under the contract of guarantee as per the terms thereof independent of the dispute as to performance of the primary contract between the parties.

19. The learned counsel for the Plaintiff argued that there is no past precedent in Pakistan of a vessel under arrest being released on furnishing of an Insurance Guarantee and that the most prevalent form of security in such cases is a bank guarantee and that the equivalent of that would be a letter of credit or a P&I Club undertaking.

20. However, the Supreme Court of Judicature of Jamaica in an Admiralty Claim reported as *Southern Recycling L.L.C., vs. AVRA Towage BV (Owners of Tug North)*, [2012] JMSC ADM 1 allowed release of a vessel from arrest upon the defendant owners furnishing to the claimant a Letter of Guarantee or Undertaking from their **insurers**, Ship Owners Protection Limited and/or any other approved bank, **insurer**, or financial institution. While evaluating the best options available for allowing the release of the Tug, the court considered and reproduced paragraph 392 [inadvertently referred to as 396] of Halsbury's Laws of England, 4th Edition, reissue 1, as follows:

“A guarantee or undertaking by a bank, insurance company, protection and indemnity association, or other guarantor satisfactory to the claimant, to pay any amount found to be due from the defendant

¹ *M/s Universal Insurance Co. Ltd. Vs. Collector, Customs, Central Excise & Sales Tax, Peshawar, 2005 PTD 2355*

and not paid by him is, in practice, usually accepted in lieu of bail or payment into court. The terms of such guarantees are agreed between the parties and no formal procedure is involved. Since the guarantor gives no undertaking to the court, the enforcement of the liability could only be by way of a substantive claim upon the contract of guarantee. In other respects, the effect of acceptance of a guarantee appears to be the same as the effect of giving bail." [Emphasis added].

21. Therefore, the learned counsel for the Plaintiff has failed to convince this Court that an Insurance Guaranty does not constitute solvent surety/security *per se*. Whether an Insurance Guaranty can be considered solvent security would depend on the financial capability of the insurance company, which may vary on a case-to-case basis.

22. It is pertinent to note however that in England the acceptance of a guarantee be it an Insurance Guarantee or otherwise is contingent upon the satisfaction of the claimant. Rule 748 of the Sindh Chief Court Rules (Original Side) envisages release of property arrested on security Rule 742 provides that if security is to be given, it shall be given according to the rules and practice of the Court as to security in the case of an attachment before judgment in an ordinary civil suit.

23. The High Court of Calcutta in *the case of S.B. International Ltd. vs. The Owners and Parties in Vessel M.T. Zaima Wavard*, (1998) ILR 2Cal222 while evaluating the sufficiency of a letter of undertaking by the London Steamship Mutual Owners Insurance Association Ltd., who was a member of the P&I Club, as security also resorted to Rule 17 of the Indian Admiralty Rules (*in pari materia* with Rule 742 of the Sindh Chief Court Rules (Original Side) and Order 38. It was observed that where the bank guarantee or third party like P&I Club is acceptable to both the parties then the court has nothing more to do about it than record it in its order as to what has been found by the parties to be acceptable security however where the parties dispute as to the form or amount of security, the Court sought to resolve the problem by application of the aforementioned rules. It has been explained that a ship touching temporarily at the port of Calcutta is in the same position as a foreign personal defendant who is about to leave jurisdiction. If the claim against the ship is reasonably arguable then to the extent of the reasonably best decree obtainable by the plaintiff, the Court can and should obtain security from the ship before releasing her arrest.



24. Interestingly enough the High Court of Calcutta observed that it is well known that bank guarantees in India generate litigation after litigation, which is akin to the argument made on behalf of the Plaintiff in the instant case in respect of Insurance Guarantees in Pakistan. The High Court of Calcutta rejected the proposition that there is any well-settled practice at the time of the passing of the judgment of accepting guarantees/security furnished by the P&I Club or its members and held that if P&I Club pays up after the suit and appeals are over well and good but the court is more concerned with the possibility as to what will happen if they do not pay up. In that event, the plaintiff has to go abroad, whereas the very purpose of obtaining admiralty security, that the plaintiff does not have to chase the ship or the owners and parties interested in the ship, all over the world, would be defeated because the plaintiff even after winning the admiralty suit would have to go to England to enforce the letter of security. The High Court of Calcutta opined that where the admiralty disputes are really battled out "*the Judges would be better advised, even to look silly by not accepting letters and guarantees from parties whose names should have been acceptable to the Court, than to accept security in a form which ultimately turns out to be useless or difficult of execution after the suit, let us say, has reached a conclusion in favour of the Plaintiff*". It was held that if the plaintiff seriously objects, it would be neither proper nor open to admiralty court to accept security by way of letter or guarantee issued from a foreign party be their economic credentials and business reputation ever so high. Thus, the Letters and Guarantees furnished by the P&I Club member for release of vessel from arrest was refused. The vessel in question was allowed to be released on furnishing of money security.

25. Similarly, the High Court of Kerala in the case of *State of Kerala vs. M. V. MSC Akitera II and others*, MANU/KE/4278/2025 explained that the reason for arrest of a foreign vessel to secure the decree amount that may be passed in an admiralty suit against the defendant is that if the vessel leaves the territorial waters of the country without furnishing the security, the plaintiff will not be able to execute the decree against the foreign national/entity. If a security in the form of letter of undertaking is accepted from a foreign entity in lieu of arrest the decree could not be executed against such entity if such entity refuses to honour the letter of undertaking in which case very purpose of the arrest will be defeated. Relying upon *S.B.*



International Ltd. (Supra), it was held that letter of undertaking from P&I Club cannot be accepted as security for release of arrested vessel.

26. On the other hand, it was observed in *M/V Pacific Pearl Co Limited vs. Osio David Shipping Inc.*, [2022] EWCA Civ 798 that in the United Kingdom, an LOU from an International Group P&I Club will be accepted as reasonable security, with older forms of security (such as bail bonds) having become obsolete or virtually so but that in other jurisdictions that may not be so.

27. What is note-worthy from the said judgments is that no hard fast rule can be laid down regarding the form of security that may be accepted for the release of a vessel in an admiralty suit. According to *M/V Pacific Pearl Co Limited (Supra)* where sophisticated systems exist, the number of arrests is low because when an arrest is threatened the P&I Club in which the ship is entered will provide an LOU. The Supreme Court of Jamaica allowed release upon guarantees from insurers. Whereas, the Plaintiff in the instant matter is insisting on a Bank Guarantee, which appears to be the preferred form of security in South Africa as well as Pakistan. However, such guarantees have not inspired confidence in India due to similar concerns regarding their enforceability as have been cited by the learned counsel for the Plaintiff in the instant case against acceptance of Insurance Guarantees. In the Indian cases discussed above money security was preferred for the release of vessel which are seldom encountered in the United Kingdom or South Africa.

28. The principle settled is that if the plaintiff accepts the form of security offered for the release of the vessel by the defendant that would effectively close the issue but where the plaintiff does not accept the form of guarantee offered the court has to resolve the matter as provided for in Rule 742 of Sindh Chief Court Rules (Original Side) read with Order XXXVIII, CPC. To this end, while evaluating the form of security under dispute in an Admiralty suit where the vessel is in the same position as a foreign defendant about to leave the jurisdiction of the Court, the Court must consider the ease of enforceability of the security in the worst-case scenario i.e., where the surety fails to honor its obligations. The overarching consideration that weighs in on Courts when evaluating the form of security to be accepted for the release of a vessel is whether it will effectively protect the reasonably arguable claim made out by the plaintiff or whether it will make a decree if passed in favour

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of the plaintiff useless or its execution so difficult that it defeats the purpose of security. The High Courts of Calcutta and Kerala refused to accept P&I Club undertakings in the face of objection of the plaintiffs by holding that in case the plaintiffs prevailed in their maritime claim despite which the undertaking was not honored they would have to go to London to have them enforced.

29. On the other hand, the security being offered in the instant case is an Insurance Guarantee from a Pakistani Insurance company. However, the learned counsel for the Plaintiff argued that unlike a bank guarantee which is required to be fully secured pursuant to Regulation 7 of the Prudential Regulations for Corporate/Commercial Banking (Risk Management and Operations) issued by the State Bank of Pakistan an insurer is only required to procure collateral of an amount equivalent to 10% of the sum insured/amount of guarantee under the Credit and Suretyship (Conduct of Business) Rules, 2018 framed by the SECP. He argued that a fully secured bank guarantee ensures that the bank will honor its obligation in case of invocation of the bank guarantee as opposed to an Insurance Guarantee, which is not backed with adequate security.

30. The collateral requirement for an insurance company may be significantly lower than that of a banking company as per their respective applicable rules and regulations, nevertheless the Credit and Suretyship (Conduct of Business) Rules, 2018 do require that the bailee must have adequate assets to satisfy the face value of the bail bonds. Although the Defendant No. 2 admittedly does not have any assets anywhere in the world, the learned counsel submitted that a local benefactor is providing requisite assistance in this regard to procure the Insurance Guarantee.

31. The learned counsel for the Plaintiff vehemently argued that track record shows that insurance companies are prompt to issue unconditional guarantees but reluctant to fulfill their commitments as has been acknowledged and observed in case law particularly in *Montage Design Build (Supra)*. In addition, the learned counsel for the Plaintiff relied upon *Messrs Jalal Construction Company (Supra)* wherein the Lahore High Court while considering whether the endorsement by the Punjab Public Procurement Agency of the decision of procuring agencies in the Province of Punjab to exclude insurance bonds/guarantees as a form of security was

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as per the law observed that such exclusion was consciously and purposely made as the said security was not considered tangible having not been honored in a timely manner as per past experience thereby defeating the purpose of security.

32. The learned counsel for the Defendant No. 2 emphasized that the guarantee that PGICL or UC IPL will issue will be unconditional and payable on demand unlike the performance and mobilization insurance bonds which are payable on default. However, the learned counsel for the Plaintiff has cited cases where the insurance company refused to honor unconditional Insurance Guarantees on demand. Interestingly enough, PGICL in the case of *Pakistan General Insurance Limited vs. Securities & Exchange Commission of Pakistan*, 2022 CLD 1528 challenged the order of the Federal Insurance Ombudsman directing PGICL to encash performance bonds which were admittedly unconditional. Similarly, in *Platinum Insurance Company Limited (Supra)* the Supreme Court found the language of the Mobilization Advance Guarantee to be unconditional and as such held that there was *prima facie* no bona fide dispute as to the liability of the appellant which could have furnished a valid defense to the petition for winding up instituted on account of the appellant insurance company's failure to pay pursuant to the Mobilization Advance Guarantee on demand. In *Montage Design Build (Supra)* the appellant on whose behalf the insurance company issued the Mobilization Advance Guarantee sought a stay on encashment which was rejected by the learned Civil Judge, Islamabad. On appeal, the Islamabad High Court found the terms of the Mobilization Advance Guarantee to be irrevocable and unconditional and held that while a conditional guarantee can be invoked on fulfillment of the conditions stipulated therein e.g., proof of breach of contract in case of an unconditional guarantee the guarantor is under an obligation to honor its commitment by making payment on demand regardless of a dispute between the parties arising out of or connected with the underlying agreement/contract.

33. The petitioners in *Trustees of Port of Karachi (Supra)* too had no objection to the release of the respondent no. 1's goods on furnishing of a bank guarantee but challenged the decision of the learned Senior Civil Judge allowing such release on furnishing of Insurance Guarantees by way of Constitutional petitions which were dismissed by this High Court. It was



submitted on behalf of the petitioners before the Supreme Court that a large number of insurance companies have been black listed by KPT because they did not meet their obligations under the guarantees furnished by them in other cases. Though the Supreme Court dismissed the petitions by finding that the orders under challenge were discretionary and within jurisdiction but not without observing that if the insurance company is not solvent, in the opinion of the petitioners, the petitioners can object and show that it has failed to meet its obligations under an earlier guarantee given by it.

34. The case law demonstrates that Insurance Companies in Pakistan have a propensity of not honoring their obligations under the guarantees they issue thus rendering them inept as security and adding to multiplicity of litigation. While satisfaction of the plaintiff is not expressly required by statute for acceptance of security under Rule 742 of the Sindh Chief Court Rules (Original Side) or under Order XXXVIII, CPC, the plaintiff's concerns do merit deliberation. I have given my anxious consideration to the reasonable concerns raised by the Plaintiff and taking guidance from the above case-law, I find the Insurance Guarantee from PGICL cannot be accepted given the vehement objection of the Plaintiff; PGICL's average rating and proven history of challenging demands of encashment of unconditional guarantee not to mention the bar that was imposed on it by the SECP for a number of years in recent times.

35. Having said that acceptance cannot be unreasonably withheld by the Plaintiff. UICPL has consistently maintained a PACRA rating of "AA+(ifs)" since April, 2024, which according to the rating scale signifies a very strong capacity to meet policyholder and contract obligations with very low risk factors and the impact of any adverse business and economic factor expected to be very small. There is no record before this Court that UICPL has in the past challenged demands of encashment of unconditional guarantees issued by it or failed to meet its unconditional undertakings and obligations.

36. Most importantly, the guarantee proposed to be issued is not a contractual guarantee between the parties. It shall be made to the Court and shall be payable on direction, on first written demand of this Court without demur, protest, or reference to the Defendant and notwithstanding any dispute between the Plaintiff and the Beneficiary/Defendant or upon an order/decreed passed by this Court directing encashment. It is noted that the

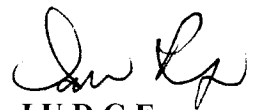


draft requires necessary changes as it appears to be a draft used to serve as security in customs matters. Any issues in this regard may be resolved by the Nazir of this Court.

37. The learned counsel for the Plaintiff questioned the financial capability of UCIPL by drawing the attention of the Court to UCIPL's total equity and cash & bank reported in their 1st Quarter Report. But the fact remains that UCIPL is undisputedly solvent i.e., its assets exceed its liabilities. In fact, the value of the total assets is significantly more than the amount required to be secured not to mention that according to the PACRA rating UCIPL has a strong capacity to meet its contract obligations and risk factors are very low and the report specifically states that its IFS rating reflects the company's sound reinsurance framework.

38. Nevertheless, insofar as the Plaintiff's apprehensions in respect of UCIPL's financial capability are concerned, the affidavit of justification that the insurance company that offers guarantee has to submit in accordance with Rules 101 and 102 of the Sindh Chief Court Rules (Original Side) must state that it has sufficient funds to meet its obligations under the guarantee and that its assets exceed its liabilities, therefore the Plaintiff should have no apprehension on that score².

39. In view of the foregoing, the instant application is allowed only to the extent that the Defendant No. 2 is permitted to furnish, as solvent surety in terms of the directions given vide Order dated 16-06-2026, Insurance Guarantee from United Insurance Company of Pakistan Limited as per the format annexed with CMA 244/2026 with necessary changes as observed herein above to the satisfaction of the Nazir who is directed to accept the same in accordance with and subject to satisfaction of the applicable rules.


JUDGE

² *Trustees of Port of Karachi v. Manzoor Sons Corporation and others*, 1993 SCMR 69