

S U P R E M E C O U R T O F I N D I A
R E C O R D O F P R O C E E D I N G S

Petition(s) for Special Leave to Appeal (C) No(s).26555/2017

(Arising out of impugned final judgment and order dated 15-03-2017
in AP No.810/2016 passed by the High Court Of Delhi At New Delhi)

WAPCOS LTD.

Petitioner(s)

VERSUS

SALMA DAM JOINT VENTURE & ANR.

Respondent(s)

(IA No.83949/2017-EXEMPTION FROM FILING C/C OF THE IMPUGNED
JUDGMENT IA No.83951/2017-PERMISSION TO FILE ADDITIONAL DOCUMENTS
and IA No.134526/2017-PERMISSION TO FILE ADDITIONAL DOCUMENTS)

Date : 11-12-2017 These matters were called on for hearing today.

CORAM :

HON'BLE THE CHIEF JUSTICE
HON'BLE MR. JUSTICE A.M. KHANWILKAR
HON'BLE DR. JUSTICE D.Y. CHANDRACHUDFor Petitioner(s) Mr. Tushar Mehta, ASG
Mr. Milanka Chaudhury, Adv.
Ms. Naina Dubey, Adv.
Ms. Satakshi Sood, Adv.
Mr. M. R. Shamshad, Adv. [AOR]For Respondent(s) Mr. Ranjit Kumar, Sr. Adv.
Mr. Sachin Dutta, Sr. Adv.
Ms. Prity Sharma, Adv.
Mr. Pratap Shanker, Adv.
Mr. A. Shivani, Adv.
Ms. Surabhi, Adv.
Mr. Swetank Shantanu, Adv. [AOR]

Mr. Shyam Divan, Sr. Adv.
Mr. R.K. Sanghi, Adv.
Mr. Satyendra Kumar, Adv.
Mr. Anil Kumar Tandale, Adv. [AOR]UPON hearing the counsel the Court made the following
O R D E R

Leave granted.

The appeal stands disposed of in terms of the signed order.
There shall be no order as to costs.(Subhash Chander)
AR-cum-PS(H.S. Parasher)
Assistant Registrar

[Signed Order is placed on the file]

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO.21783 OF 2017

[Arising out of S.L.P. (C)No.26555 of 2017]

WAPCOS Ltd.Appellant

Versus

Salma Dam Joint Venture & Anr.Respondents

O R D E R

Leave granted.

Heard Mr. Tushar Mehta, learned Additional Solicitor General for the appellant; Mr. Ranjit Kumar, learned senior counsel for respondent no.1; and Mr. Shyam Divan, learned senior counsel for respondent no.2.

In this appeal by special leave, the appellant assails the order dated 15th March 2017 passed by the learned Single Judge of the High Court of Delhi at New Delhi in Arbitration Petition No.810 of 2016 moved by respondent no.1 whereby, in exercise of the power under Section 11(6) of the Arbitration and Conciliation Act, 1996 (for brevity 'the Act'), the learned Single Judge has appointed a former Judge of this Court as arbitrator. The relevant part of the order reads thus :

"15. For all the mentioned reasons, the Court is of the view that none of the objections of the Respondent to the appointment of Arbitrator on their behalf is tenable. It is seen that the Petitioner nominated a Technical person as his arbitrator.

16. After considering the respective submissions of learned counsel for both the parties, and nature and value of the claim, the Court appoints Justice Vikramajit Sen, a former Judge of the Supreme Court (Mobile No.9818000290) as arbitrator on behalf of the Respondent. Mr. Justice Sen will determine his own terms and fees and communicate to the parties. The two

Arbitrators will now appoint a third Arbitrator within a period of four weeks from today."

When the matter was listed on 03rd November 2017, the following order was passed :

"As Mr. Sachin Datta, learned senior counsel has entered appearance on behalf of the respondent, no further notice needs be issued.

In the course of hearing, we feel it appropriate to implead M/s. Angelique International Limited. Issue notice to the said concern. Dasti, in addition, is permitted.

List on 11.12.2017.

As an interim measure, we direct that there shall be stay of further proceedings before the arbitrator."

It needs to be clarified, the appellant had entered into an agreement with the joint venture, namely, 'Salma Dam Joint Venture' - respondent no.1 of which respondent no.2 is a constituent member. In the course of hearing, it is submitted by Mr. Divan that respondent no.2 was not a party before the High Court and he is to submit many factual aspects because there is no privity of contract and the arbitrator could not have been appointed for certain reasons. The said submissions have been seriously controverted by Mr. Ranjit Kumar, learned senior counsel for respondent no.1.

It is submitted by Mr. Tushar Mehta that one constituent of the joint venture, i.e., first respondent could not have appointed the arbitrator. The said submission has been seriously controverted by Mr. Ranjit Kumar by stating that he has an authority in the joint venture agreement which is part of the main contract. It is the first respondent who alone has the

responsibility of appointing the arbitrator.

As all these aspects have not been kept in view by the High Court, we think it appropriate to allow the appeal and set aside the order passed by the High Court and remit the matter to the High Court to deal with the same from all the aspects and proceed to pass appropriate order as envisaged under Section 11(6) of the Act, keeping in view that respondent no.2 was not a party before it. Needless to say, all contentions are kept open. There will be no order as to costs.

We may hasten to add, the appellant and the first respondent have no grievance against any individual arbitrator or umpire.

The appeal stands disposed of in the above terms. There shall be no order as to costs.

.....CJI.
[DIPAK MISRA]

.....J.
[A.M. KHANWILKAR]

.....J.
[Dr. D.Y. CHANDRACHUD]

New Delhi.
December 11, 2017.