

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO(S). 17972 OF 2017  
[ARISING OUT OF SPECIAL LEAVE PETITION  
(CIVIL) NO.14906 OF 2017]

ARSS-SIPS (JV) . . . APPELLANT (S)

VERSUS

UNION OF INDIA & ORS. . . . RESPONDENT (S)

WITH

CIVIL APPEAL NO(S). 17973 OF 2017  
[ARISING OUT OF SPECIAL LEAVE PETITION  
(CIVIL) NO.14907 OF 2017]

ORDER

1. Leave granted in both the Special Leave Petitions.

2. The grant of a contract made in favour of the appellant was cancelled on 19<sup>th</sup> April, 2017 on the ground that the Performance Bank Guarantee was not submitted by the appellant within the stipulated time commencing from the date of issuance of letter of acceptance.

3. We would not like to enter into the dispute as to whether the appellant had actually executed the work pursuant to the grant of the contract inasmuch as the said issue would not be very relevant for the purposes of the present adjudication.

4. The letter of acceptance was issued to the appellant on 14<sup>th</sup> October, 2016 and it was required to deposit the Performance Bank Guarantee within a period of 30 days thereof. The contract visualized submission of the Performance Guarantee within an extended period of another 30 days i.e. 60 days in all, subject to grant of extension by the respondent - Authority. The extension was to be subject to payment of penal interest at the rate of 15% per annum of the initial deposit i.e. 5% of the contract value for the delay beyond 30

(thirty) days i.e. from 31<sup>st</sup> day after the date of issue of letter of acceptance.

5. The parties are at loggerheads as to whether the admitted deposit of Performance Guarantee made on 13<sup>th</sup> December, 2016 is on the 60<sup>th</sup> or 61<sup>st</sup> day of the date of issuance of letter of acceptance dated 14<sup>th</sup> October, 2016.

6. It is fundamental to all computations of limitations that the first day in question, i.e. in the present case the date of issue of letter of acceptance has to be excluded. If that is so, the Performance Guarantee submitted on 13<sup>th</sup> December, 2016 is on the 60<sup>th</sup> day of the issuance of the letter of acceptance and, therefore, within the ambit of the contemplation of the parties in the contract agreement.

7. In paragraph 4 of the reply affidavit of the respondent, the detail procedure as to how cases of delayed deposit of Performance Guarantee is to be processed, including payment of penalty, has been set out. In view of our conclusion that the deposit of Performance Guarantee was within the period of time contemplated by the contract we now direct the respondent(s) to process the matter in accordance with what has been set out in paragraph 4 of the reply affidavit of the respondent and take its final decision in the matter as expeditiously as possible. It will also be open for the appellant to apply to the respondent - Authority for extension and for acceptance of the Performance Guarantee within the extended time subject to deposit of penalty as aforesaid.

8. The appeals are disposed of in the above terms.

....., J.  
(RANJAN GOGOI)

....., J.  
(NAVIN SINHA)

NEW DELHI  
NOVEMBER 03, 2017

ITEM NO.47

COURT NO.3

SECTION XI

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). 14906/2017  
(ARISING OUT OF IMPUGNED FINAL JUDGMENT AND ORDER DATED 27-04-2017  
IN WP NO. 17983/2017 PASSED BY THE HIGH COURT OF JUDICATURE AT  
ALLAHABAD)

ARSS-SIPS(JV)

PETITIONER(S)

VERSUS

UNION OF INDIA &amp; ORS.

RESPONDENT(S)

(FOR APPROPRIATE ORDERS/DIRECTIONS ON IA 58100/2017)

WITH

SLP(C) NO. 14907/2017 (XI)

Date : 03-11-2017 These matters were called on for hearing today.

CORAM : HON'BLE MR. JUSTICE RANJAN GOGOI  
HON'BLE MR. JUSTICE NAVIN SINHA

For Petitioner(s)

Mr. Shyam Divan, Sr. Adv.  
Mr. Sumit Goel, Adv.  
Ms. Swati Bhardwaj, Adv.  
Mr. Shashank Garg, Adv.  
for M/S. Parekh & Co., AOR

For Respondent(s)

Ms. Pinky Anand, ASG  
Mr. Ashok K. Srivastava, Adv.  
Mr. Rishabh Jain, Adv.  
Mr. Hemant Arya, Adv.  
Mr. Raj Bahadur, AOR  
for Mrs. Anil Katiyar, AOR

UPON hearing the counsel the Court made the following  
O R D E R

Leave granted.

The appeals are disposed of in terms of the  
signed order.

[VINOD LAKHINA]

[ASHA SONI]

AR-cum-PS

BRANCH OFFICER

[SIGNED ORDER IS PLACED ON THE FILE]