

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO.9841 OF 2017
(Arising out of S.L.P. (C) No.7044/2017)

Andhra Pradesh Industrial Infrastructure
Corporation Ltd.

Appellant(s)

Versus

M/s. IHP-MEIL-KCCPL-BRCPL-TAIPPL (JV)

Respondent(s)

O R D E R

Leave granted.

This Court on 17th April, 2017, after referring to the order dated 2nd March, 2017, had passed the following order:-

"In pursuance of the aforesaid order, a sum of Rs.2,00,00,000/- (Rupees two crores) has been deposited in the Registry. In view of the aforesaid, as agreed to, the matter is now required to be sent for mediation. Learned counsel for the parties have agreed that Hon'ble Mr. Justice R.V. Raveendran, a former Judge of this Court be nominated as the mediator and he may be requested to hold the mediation at Hyderabad or any convenient place as he thinks appropriate. It is ordered accordingly. The mediator shall fix his fees as suggested by learned counsel for the parties."

The learned Mediator has recorded a settlement, which is to the following effect:-

"PREAMBLE

- 1) Under an Agreement dated 24.09.2008, APIIC Ltd., the Petitioner herein awarded the

work of supplying, laying and commissioning of 2200 mm dia. pumping main, with lining and outer coating, from the proposed intake well in Somasila Reservoir to proposed sump at Kanumalonipalli (Package I) for a contract value of Rs.267.38 crores (hereinafter referred to as the aforesaid contract).

- 2) The Respondent submitted RA Bill dated 27.02.2009 for Rs.13,59,01,243/- and RA Bill dated 22.05.2009 for Rs.1,48,70,847/-, in all Rs.15,07,72,090/-. The Petitioner made two part payments aggregating to Rs.5,20,67,784/- to the Respondent against the RA Bill dated 27.02.2009.
- 3) After deducting the work retention amount, sales tax, income tax, NAC amount and labour cess and also the part payments made, the amount due under the said 2 RA Bills was Rs.8.18,36,583.41.
- 4) The Petitioner by letter dated 18.01.2012 among others, promised the Respondent to pay the outstanding amount. Simultaneously, the Petitioner by letter dated 02.04.2012 among others, requested the Government of Andhra Pradesh for release of funds to clear the dues of the Respondent.
- 5) According to Respondent, the Petitioner was also liable to release the retention amount and pay interest by way of damages, in regard to the delayed payments.
- 6) As the amounts remained unpaid, inspite of service of a Notice of Demand as required under the provisions of Companies Act, 1956, the Respondent filed Company Petition No.235 of 2012, before the Hon'ble High Court of Andhra Pradesh. In the said petition, after hearing both sides the Hon'ble High Court by Order dated 26.08.2014 admitted the said Company Petition for winding up and directed newspaper advertisement, if the Petitioner did not deposit the admitted dues of Rs.8,18,36,584/-. The Original Side Appeal filed by the Petitioner (OSA No.31 of 2014) was also dismissed by a Division Bench of

the Hon'ble High Court of Judicature at Hyderabad for the State of Telangana and Andhra Pradesh by Judgment dated 03.01.2017. The said Judgment is challenged by the Petitioner before this Hon'ble Court in this Special Leave Petition [SLP (C) No.7044 of 2017].

- 7) This Hon'ble Court, after hearing the parties, has made an order dated 02.03.2017 directing the Petitioner to deposit an amount of Rs.2 crores in the Supreme Court registry and recording that there was consensus between the parties for reference to mediation. By subsequent order dated 17.04.2017, this Hon'ble Court recorded that Rs.2 crore has been deposited by the Petitioner and appointed a Mediator (Justice R.V. Raveendran, Retd.) by consent of the parties.
- 8) In pursuance of the above, the mediator issued notice of mediation to the parties on 03.05.2017 and held the mediation meetings at Hyderabad on 29.05.2017 and 30.05.2017.
- 9) At the meeting held on 29.05.2017, the Respondent submitted that subsequent to the filing of the aforementioned winding up petition, the Respondent has also filed a civil suit which is now pending as C.O.S. No.14 of 2017 on the file of the Commercial Court (City Civil Court) for recovery of an amount of Rs.16,99,37,200/- made up of the admitted amount of Rs.8,18,36,584/-, damages of Rs.6,26,06,724/- by way of interest, work retention amount of Rs.1,01,92,593/- and several other miscellaneous claims and dues.
- 10) Both parties submitted that the mediation, negotiations should cover not only the dispute relating to the amount of Rs.8,18,36,584/- which was claimed by the Respondent to be the admitted dues by the Petitioner, but the entire suit claim and all pending disputes between the parties in regard to the above said contract.

- 11) Details negotiations took place between the parties on 29th and 30th May, 2017. The Respondent insisted that for the matter to be settled, the Petitioner should pay the entire claimed amount of Rs.16,99,37,200/- and it will not insist for costs; and the Petitioner submitted that it had not admitted any amount to be due and therefore the winding up petition was not maintainable and the claims made by the Respondent in the suit were excessive and not maintainable. After further negotiations, taking note of the orders of the Learned Single Judge and the Division Bench of the Hon'ble High Court recording a finding of fact that there was an admission by the Petitioner in regard to the liability of Rs.8,18,36,584/-, the correspondence between the parties, correspondence between the Petitioner and the State Government and all other relevant facts and circumstances, the parties have reached the following settlement (subject to confirmation by the Board of Directors of APIIC Ltd.).

TERMS OF SETTLEMENT

- 1) This settlement shall come into effect on the approval/confirmation of this settlement by the Board of Directors of APIIC Ltd., which shall be obtained within 30 days from this date.
- 2) The Petitioner shall pay in all Rs.8,00,00,000/- (Rs. Eight Crores only) in full and final settlement of all claims of Respondent against the Petitioner in regard to the aforesaid contract (vide Agreement dated 24.09.2008 regarding Package I.)
- 3) Such payment shall be in full and final settlement of not only the subject matter of the winding up petition, but also the civil suit (COS No.14 of 2017) and all other claims of any nature whatsoever relating to or referable to, or under the aforesaid contract.
- 4) In view of the settlement, the Respondent will be entitled to withdraw the sum of Rs.2,00,00,000/- (Rupees Two crores only)

which has been deposited by the Petitioner in the Registry of the Hon'ble Supreme Court without furnishing any Bank Guarantee. The Petitioner shall deposit the balance of Rs.6,00,00,000/- (Rupees Six Crore only) within 30 days from the date of the order of the Hon'ble Supreme Court accepting and disposing of the Special Leave Petition.

- 5) It is made clear that the Respondent shall not make any claim in regard to the M.S. Pipes which have been supplied by the Respondent, covered by the said 2 RA Bills referred above. The said material ((M.S. Pipes) that have been supplied under the aforesaid contract and lying at the risk of the Petitioner at site, will belong to the Petitioner on "as is where is basis".
- 6) On payment/deposit payment/deposit of the balance agreed amount of Rs.6,00,00,000/- (Rupees Six Crore) the winding up petition shall stand withdrawn. Further, on such payment/deposit of the balance agreed amount of Rs.6,00,00,000/- (Rupees Six Crore) the Respondent with the co-operation/ coordination of the Petitioner shall have the settlement recorded in civil suit (COS No.14 of 2017) in accordance with law and the Respondent shall be entitled to refund of the court fees paid in the civil suit as permissible.
- 7) It is made clear that if the balance of 6,00,00,000/- (Rupees Six Crores) is paid within 30 days of the order of the Hon'ble Supreme Court, the Respondent shall be entitled to recover the same by executing the order of the Hon'ble Supreme Court alongwith interest at 15% p.a. from the expiry of the period of 30 days from the date of the order of the Hon'ble Supreme Court. The liability of the Petitioner, being unconditional shall not depend on the receipt of funds from the State Government or otherwise.
- 8) The Petitioner confirms that it has no outstanding claim of any nature against the Respondent.

- 9) The Respondent has agreed for giving up a large portion of its claim in the special facts and circumstances, subject to settlement being adhered and complied with by the Petitioner in regard to the payment of the agreed amount. In the event of the Board of Directors of Petitioner not approving/confirming the terms of settlement, within the period of 30 days stipulated above, the Respondent will be entitled to pursue all its remedies in accordance with law and the Petitioner will not be entitled to use the terms of settlement as a defence to any of those claims."

Learned counsel appearing for both the parties accept the settlement. The settlement be treated as a part of the order of this Court. The amount that has been deposited before this Court, as agreed to by the learned counsel for the parties, shall be paid to the respondent. Be it clarified, the said amount is in addition to the amount settled in the settlement, which is indisputably Rs.6,00,00,000/- (Rupees six crores only). However, an issue was raised with regard to interest by Mr. V.V.S. Rao, learned senior counsel for the appellant.

Regard being had to the spirit of settlement, we think it proper to apportion the interest between the parties. The respondent shall get Rs.2,00,00,000/- (Rupees two crores only) plus 50% of the interest accrued thereon and the appellant shall get the 50% of the interest. The Registry shall disburse the amount in favour of the parties on proper identification.

The appeal is disposed of accordingly. No order as to costs.

.....J.
[Dipak Misra]

.....J.
[Amitava Roy]

.....J.
[A.M. Khanwilkar]

New Delhi
July 27, 2017.

ITEM NO.2

COURT NO.2

SECTION XII-A

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.7044/2017

(Arising out of impugned final judgment and order dated 03-01-2017 in OSA No. 31/2014 passed by the High Court Of Judicature At Hyderabad For The State of Telangana and The State of Andhra Pradesh)

ANDHRA PRADESH INDUSTRIAL INFRASTRUCTURE
CORPORATION LTD.

Petitioner(s)

VERSUS

M/S IHP-MEIL-KCCPL-BRCPL-TAIPPL (JV)

Respondent(s)

Date : 27-07-2017 This petition was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE DIPAK MISRA
HON'BLE MR. JUSTICE AMITAVA ROY
HON'BLE MR. JUSTICE A.M. KHANWILKAR

For Petitioner(s) Mr. V.V.S. Rao, Sr. Adv.
Mr. Guntur Prabhakar, AOR
Ms. Vijayshree, Adv.

For Respondent(s) Ms. Pratibha Anand, Adv.
Ms. Nidhi Agrawal, Adv.
Mr. Ashok Mathur, AOR

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

Leave granted.

The appeal is disposed of in terms of the signed
order.

(Chetan Kumar)
Court Master

(H.S. Parasher)
Court Master

(Signed order is placed on the file)