

HON'BLE SRI JUSTICE NOOTY RAMAMOHANA RAO

AND

HON'BLE DR. JUSTICE B. SIVA SANKARA RAO

CIVIL REVISION PETITION No.992 of 2016

ORDER: *(Per Hon'ble Sri Justice Nooty Ramamohana Rao)*

The Arbitral Tribunal at Hyderabad passed its award on 31.03.2015 in arbitration case No.205 of 2016 between the parties herein. Calling in question the sustainability of the award, the petitioner herein has already instituted arbitration O.P.No.803 of 2015 under Section 34 of the Arbitration and Conciliation Act, 1996 (for short 'the Act') prior to its amendment on 01.01.2016. However, without any regard for the pendency of the Arbitration O.P.No.803 of 2015, the 1st respondent herein has moved E.P.No.375 of 2015 which is entertained by the II Additional District Judge, Ranga Reddy District.

Once an O.P. is filed under Section 34 of the Act for setting aside the award, the award cannot be enforced in view of the provision contained under Section 36 making it clear that where such an application under Section 34 is made, unless it has been refused, the award cannot be enforced under the code of Civil Procedure Code, 1908.

In view of the principle spelt out by the Supreme Court in **National Buildings Construction Corporation Limited Vs. Llyods Insulation India Limited**^[1] holding that there is no power in a Court to direct execution of an award when an application under Section 34 challenging the award was pending.

Hence, we allow the civil revision petition by setting aside the E.P. and preserving liberty to the 1st respondent to file E.P. afresh in case the result in the arbitration O.P. comes in its favour in an appropriate court.

Consequently, miscellaneous petitions, if any shall stand closed.
No costs.

JUSTICE NOOTY RAMAMOHANA RAO

15.03.2016
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[\[1\]](#) (2005) 2 SCC 367