

**IN THE HIGH COURT OF JUDICATURE AT HYDERABAD
FOR THE STATE OF TELANGANA AND THE STATE OF
ANDHRA PRADESH**

O.S.A. NO.31 OF 2014

Between:

Andhra Pradesh Industrial Infrastructure
Corporation Limited .. Appellant

and

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

DATE OF THE JUDGMENT PRONOUNCED: 03.01.2017

SUBMITTED FOR APPROVAL:

**THE HON'BLE SRI JUSTICE SANJAY KUMAR
AND
THE HON'BLE SMT. JUSTICE ANIS**

1. Whether Reporters of Local newspapers
may be allowed to see the judgment? Yes/No
2. Whether the copies of judgment may be
marked to Law Reporters/Journals Yes/No
3. Whether Their Lordships wish to
see the fair copy of the judgment? Yes/No

SANJAY KUMAR, J

ANIS, J

*** THE HON'BLE SRI JUSTICE SANJAY KUMAR
AND
THE HON'BLE SMT. JUSTICE ANIS**

+ O.S.A. NO.31 OF 2014

% DATED 3rd JANUARY, 2017

Andhra Pradesh Industrial Infrastructure Corporation Limited .. Appellant

Vs.

\$ M/s. IHP-MEIL-KEEP-BRCPL-TAIPPL(JV) .. Respondent

<Gist:

>Head Note:

! Counsel for the Appellant : Advocate General (AP)

^Counsel for the Respondent : Sri R.Raghunandan and
Ms.Shireen Sethna Baria

? CASES REFERRED:

1. (2010) 10 SCC 553
2. Mark Bovens, Professor of Public Administration, Utrecht School of Governance, Utrecht University, Netherlands.
3. AIR 1971 SC 2600

**THE HON'BLE SRI JUSTICE SANJAY KUMAR
AND
THE HON'BLE SMT. JUSTICE ANIS**

O.S.A.NO.31 OF 2014

J U D G M E N T

(Per Hon'ble Sri Justice Sanjay Kumar)

This appeal under Clause 15 of the Letters Patent is directed against the order dated 26.08.2014 passed by the learned Company Judge in Company Petition No.235 of 2012 whereby, the said petition filed for winding up of the Andhra Pradesh Industrial Infrastructure Corporation Limited (for brevity, 'the APIIC'), was admitted and advertisement thereof was permitted to be carried out in the event the APIIC failed to deposit the sum of Rs.8,18,36,584/- to the credit of the company petition within a time frame. Aggrieved thereby, the APIIC preferred this appeal.

By order dated 06.11.2014, the appeal was admitted and interim stay of operation of the order under appeal was granted for a period of six weeks. The said stay was extended until further orders on 18.12.2014. Application No.7 of 2015 was filed by the respondent, the petitioner in C.P.No.235 of 2012, to vacate the interim order dated 06.11.2014. Thereupon, this Court was informed on 22.06.2015 that the APIIC was attempting to make payment of the admitted amount due and the case was accordingly adjourned. Again, on 07.12.2015, the learned Advocate General appearing for the APIIC sought time to secure instructions as to deposit of the money due to the respondent. On a similar plea, the case was again adjourned on 29.12.2015. However, as no amicable settlement materialized between the parties and comprehensive arguments were advanced by both sides, the appeal is taken up for final disposal.

The case of the respondent herein, M/s. IHP-MEIL-KEEP-BRCPL-TAIPPL, a joint venture, represented by its partner in-charge, M/s.Indian Hume Pipe Company Limited, Mumbai, the petitioner in C.P.No.235 of 2012, was as under:

The APIIC, a company incorporated under the provisions of the Companies Act, 1956 (for brevity, 'the Act of 1956'), with its registered office at Parishrama Bhavan, Fateh Maidan Road, Hyderabad, invited tenders for implementing the 'Somasila Drinking Water Supply Scheme', whereby drinking water supply to Kadapa was proposed to be augmented. As the tender conditions permitted participation of joint ventures, the company petitioner joint venture was formed under agreement dated 28.07.2008 and it submitted its bid which was found to be the lowest and the APIIC accordingly awarded the contract in its favour. The company petitioner entered into an agreement with the APIIC on 24.09.2008. Under this agreement, the company petitioner was to undertake manufacturing, supplying, lowering, laying, jointing, testing and commissioning of 2200 millimetre dia MS pumping main with cement mortar factory in-lining and out-coating and other appurtenance from the proposed intake well near old Madhavaram on the foreshore of Somasila Reservoir to the proposed sump at Kanumalonipally on Kadapa-Rajampet Highway, including maintenance and operation for a period of 24 months (defect liability period) under Package-I. The approximate value of the work to be done was Rs.267,38,71,778/-. The stipulated period for completing the project was 12 months. The company petitioner furnished five bank guarantees equivalent to 2½% of the contract value valid till completion of the original defect liability period. The company petitioner also submitted bank

guarantees for a mobilization advance of Rs.26,75,03,538/-, but the APIIC failed to remit the mobilization advance, resulting in expiry of these bank guarantees. However, as the APIIC assured the company petitioner that prompt payment of bills would be made, it was persuaded to commence the work without a mobilization advance and executed work of the value of more than Rs.15.00 crore against supply of pipes and Rs.25.00 lakh against execution of civil work. According to the company petitioner, as per Clause 68 of the agreement, Running Account (RA) bills raised by it for the work executed were to be paid within 14 days from the date when such bills were raised. The company petitioner claimed that it submitted two RA bills for a net amount of Rs.13,39,04,368/- on 27.02.2009 and 22.05.2009. These bills were certified by the Zonal Manager, APIIC, Kadapa, on 27.02.2009 and 22.05.2009 respectively. However, the APIIC made only part-payment and released in all a sum of Rs.5,20,67,784/-, leaving a balance of Rs.8,18,36,584/-. The company petitioner claimed that despite several efforts and attempts on its part to secure the balance amount, the APIIC failed to discharge the same. Reliance was placed upon the letter dated nil-7-2011 of the Zonal Manager, APIIC, Kadapa, admitting liability in this regard. The company petitioner claimed that though it maintained good progress in execution of the work, officials of the APIIC asked it to stop and not to proceed further in December, 2009. The company petitioner claimed that due to this sudden stoppage of payments and the work, its men and machinery were left idle and it was constrained to leave the work midway. The Managing Director of the APIIC addressed letter dated 18.01.2012 to the company petitioner acknowledging and confirming liability as to the amount

outstanding and informing it that upon receipt of funds from the Government, the bills would be cleared and a decision would be taken on the subject scheme. Statutory notice dated 11.09.2012 was issued to the APIIC under Section 434 of the Act of 1956 calling upon it to pay the outstanding balance of Rs.8,18,36,584/- within 21 days. The APIIC, having received the said notice, did not choose to either pay the amount or respond thereto. Thereupon, the company petitioner approached this Court under Sections 433 and 434 of the Act of 1956 praying for winding up of the APIIC.

The APIIC filed a counter before the learned Company Judge denying its liability to pay the amount claimed by the company petitioner. It asserted that there were seriously disputed questions of fact involved in the case and therefore, summary proceedings under Section 434 of the Act of 1956 could not be resorted to. Reliance was placed upon the arbitration clause in Clause 73 of the agreement to contend that the said dispute resolution mechanism should be taken recourse to in the first instance. The APIIC further alleged that the company petitioner had abandoned the work in December, 2009, leaving the work incomplete and had failed to discharge its contractual obligations. The APIIC pointed out that under Clause 60 of the agreement, it was entitled to forfeit the earnest money deposit and other amounts of the company petitioner owing to its failure and that Clause 61 thereof empowered it to recover losses arising therefrom from the company petitioner. The APIIC denied having admitted liability and sought to explain the letters relied upon by the company petitioner in this regard. As to the statutory notice which was left unanswered, the APIIC stated that the company petitioner had earlier issued statutory notice dated 11.06.2012 which was

answered by the APIIC on 17.09.2012 and therefore, the question of a second statutory notice did not arise. The APIIC therefore sought dismissal of the company petition.

The learned Company Judge observed that the requirements to be satisfied to order winding up of a company for inability to pay its debts were that it should be indebted in excess of Rs.500/- and despite service of notice upon it by such creditor, it must have failed to pay the same for more than three weeks after such service of notice. The learned Judge also took note of the fact that if the debt in question was disputed *bonafide* and the defence was a substantial one; the Company Court should not resort to winding up the company on the strength of such a company petition. Conversely, the learned Judge also noted that in the event the plea of denial of the debt was mere moonshine or a cloak, the Company Court could exercise its discretion to order the company to be wound up. On facts, the learned Judge found that the correspondence between the parties reflected in no uncertain terms that the debt due to the company petitioner from the APIIC was a genuine one and was also admitted. The learned Judge also took note of the fact that though reliance was placed on Clauses 60 and 61 of the agreement by the APIIC, it had not initiated any action thereunder against the company petitioner and that could be only because the company petitioner had stopped the work owing to the APIIC itself being unable to pay the bills for the work already executed. As regards the arbitration clause contained in Clause 73 of the agreement, the learned Judge rejected the plea of the APIIC in this regard as there was no dispute to be resolved with regard to payment of admitted bills and as the special jurisdiction of the Company Court under Sections 433 and 434 of the

Act of 1956 could not be barred by such an arbitration clause. The learned Judge therefore concluded that the debt of the company petitioner was an undisputed one and the denial thereof by the APIIC could be characterized as mere moonshine. However, taking note of the fact that the APIIC would have to be proceeded against for winding up owing to what was principally the default committed by the State Government, the learned Judge deferred publication of the advertisement as to admission of the company petition to enable it to make efforts to discharge the sums due to the company petitioner within the time frame stipulated. However, despite this indulgence shown by the learned Judge and notwithstanding the many adjournments granted during the pendency of this appeal, no settlement materialized between the parties.

The learned Advocate General for the State of Andhra Pradesh appearing for the APIIC would reiterate before us that the debt of the company petitioner was not admitted and that there are several disputes with regard thereto. Learned Advocate General would contend that the case on hand was not a fit and proper one to be entertained under Sections 433 and 434 of the Act of 1956. In this regard, he would place reliance upon the fact that there is no clarity as to whether the company petitioner stopped work in December, 2009 owing to the instructions of the APIIC or on its own accord. He would also contend that the terms of the contract under Clauses 60 and 61 authorized the APIIC to take penal action against the company petitioner for its failure to complete the project and that no steps were initiated in this regard only because the amounts due and payable to the company petitioner were still lying with the APIIC. He would also point out that the company petitioner wrongfully claimed

that no reply had been issued to its statutory notice, as the earlier statutory notice dated 11.06.2012 addressed by the company petitioner was suitably answered by the APIIC under its letter dated 17.09.2012. He would also place reliance on the stipulated rate of progress in the contract which required the company petitioner to meet the milestones at the end of 3 months, 6 months, 9 months and 12 months, and assert that once the company petitioner failed to abide thereby, it constituted failure on its part in discharge of contractual obligations and the same would give rise to a counter-claim by the APIIC. He would contend that in such a situation, the liability to the company petitioner could not be said to be an admitted one and therefore, the learned Company Judge ought not to have initiated summary proceedings under Sections 433 and 434 of the Act of 1956 by admitting the company petition. He would further assert that such disputes would necessarily have to be resolved through the contemplated alternate dispute resolution mechanism of arbitration or by recourse to the civil Court. Learned Advocate General would therefore pray that the order of admission of the company petition made by the learned Company Judge be set aside.

Per contra, Sri R.Raghunandan, learned senior counsel representing Ms.Shireen Sethna Baria, learned counsel for the respondent/company petitioner, would contend that though the company petitioner was required to complete the work entrusted to it under the agreement dated 24.09.2008 within 12 months, there was failure on the part of the APIIC to live up to its initial obligations thereunder which contributed to the slow rate of progress and thereafter, to complete stoppage of the work. Learned senior counsel would draw our attention to Clause 85 of the contract which dealt

with the mobilization advance. Thereunder, the APIIC was required, if it considered necessary, to facilitate mobilization advance up to 10% of the value of the contract towards labour and material against bank guarantees. He would point out that the company petitioner offered bank guarantees in this regard but despite the same, the APIIC failed to pay the mobilization advance and the bank guarantees furnished by the company petitioner expired thereafter. Learned senior counsel also placed reliance on Clause 68 of the contract which provided for payment being made to the company petitioner under the certificates issued at frequent intervals by the Zonal Manager of the APIIC. The clause posited that within 14 days from the date of each certificate, intermediate payment would be made by the Zonal Manager of a sum equal to 92½% of the value of the work so certified and the balance 7½% would be withheld and retained as security for the due fulfillment of the contract.

Learned senior counsel would state that two RA bills duly certified by the Zonal Manager, APIIC, Kadapa, were submitted for release of payment in terms of this clause but only part-payment was made in relation thereto. Reference was also made by him to the correspondence addressed to the APIIC during November and December, 2008 and between January and May, 2009, informing it of the steps taken by the company petitioner towards implementing the Water Supply Scheme and detailing the steps required to be taken by the APIIC to facilitate expeditious completion thereof. Specific reference was made to the letter dated 29.05.2009 addressed by the company petitioner to the APIIC, wherein it was stated that blasting permission had not been secured by the APIIC to enable the company petitioner to start excavation of trenches for laying and jointing the

pipeline and the learned senior counsel pointed out that though this letter was addressed just five months prior to the end of the stipulated 12 month period for completing the work, the APIIC did not even raise any issue of delay in the rate of progress or any lack of progress attributable to the company petitioner. Learned senior counsel would also stress upon the fact that no steps were initiated by the APIIC at any point of time under Clauses 60 and 61 of the contract. He would point out that under Clause 60, the Zonal Manager of the APIIC is required to form an opinion that the contractor was delaying commencement or rate of progress of the work and advise the contractor in writing, demanding compliance, and if the contractor neglected to comply with such demand within seven days, it would be lawful for the Zonal Manager to determine the contract, enforcing forfeiture of the security deposit and other amounts due to the contractor. Under Clause 61, if the Zonal Manager is of the opinion that the contractor neglected or failed to proceed with the work with due diligence in terms of the scheduled rate of progress or committed default in any manner, he is empowered to give notice in writing to the contractor requiring that the work be proceeded with in accordance with the terms of the contract. Learned senior counsel would point out that at no point of time, the APIIC resorted to give any such notice, be it under Clause 60 or Clause 61. He would further point out that it is not the case of the APIIC that it took steps to get the work completed through any other agency after stoppage of the work by the company petitioner, whereby it could claim that it had incurred losses owing to extra expenditure incurred. He would therefore assert that the APIIC was

resorting to illusory grounds which amounted to mere moonshine to ward off the attack of the company petitioner.

Learned senior counsel would lay emphasis upon the letter dated 03.01.2012 addressed by the company petitioner to the APIIC, wherein it stated that Rs.10.00 crore payment due to it was still pending for over two years and requesting necessary action. In response thereto, the Chief Engineer of the APIIC at Hyderabad addressed letter dated 18.01.2012, wherein he stated that the APIIC was addressing the Government of Andhra Pradesh constantly for release of funds for clearing the outstanding bills pertaining to the Somasila Drinking Water Supply Scheme but no funds had been received after April, 2009. The Chief Engineer further stated that the subject work was stopped by the company petitioner duly withdrawing men and machinery from the work site as no payment was made for the work already done and as the APIIC was not able to persuade it to resume the work in the absence of funds from the Government of Andhra Pradesh. He concluded by stating that the APIIC had taken up the said Water Supply Scheme at the instance of the Government of Andhra Pradesh and the bills could be paid only after receipt of funds from the Government and informed the company petitioner that after receipt of funds from the Government, the outstanding bills would be cleared and a decision would be taken on the subject scheme. Prior thereto, the Zonal Manager, APIIC, Kadapa, addressed a letter signed on 25.07.2011 to the company petitioner informing it that he had requested the Head Office of the APIIC to issue necessary instructions regarding release of the pending payments due to it. He informed the company petitioner

that as soon as his office received necessary instructions from the Head Office, the pending payments would be processed.

More clinching, *per* the learned senior counsel, is the letter dated 02.04.2012 addressed by the Vice Chairman & Managing Director of the APIIC to the Principal Secretary, Government of Andhra Pradesh. Therein, the Managing Director referred to the fact that during the meeting held by the then Chief Minister of the State on 07.05.2008, it had been decided to provide drinking water to certain areas in Kadapa and Anantapur Districts by drawing it from Somasila Reservoir. He stated that the APIIC was directed to take up the scheme on priority basis to ensure its expeditious completion and that the then Chief Minister had assured Government funding for the scheme. This scheme involved laying of a MS pipeline of the length of 220 kilo metres with a pumping head over 500 metres at a total cost of Rs.1500.00 crore. To start with, initially, it was decided to take up the head works (intake well, installation of pumps, electrical sub station etc.) and laying of MS pipeline from Somasila Reservoir to bring 4 TMC of water to Kadapa under Phase-I at a cost of about Rs.500.00 crore. Under Phase-I, the work of laying 2200 millimetre dia MS pipe from Somasila to Kanumalonipally-Package-I, being a distance of 28 kilo metres at a cost of Rs.300.00 crore was awarded to the company petitioner, while the laying of 1500 millimetre dia MS pipe from Kanumalonipally to Kadapa-Package-II, involving a length of 24 kilometres at a cost of Rs.115.00 crore, was awarded to another agency. The Managing Director stated that both the packages were grounded in September, 2008, without receipt of funds from the Government and reported the existing status of the works. As regards the company petitioner, he informed the Government that

2.19 kilometres length of pipe had been fabricated and supplied at site under Package-I. As regards the financial progress, he noted that a sum of Rs.6.00 crore had been paid to the company petitioner as against the value of the work done, viz., Rs.15,43,03,122/- and that the balance amount due was Rs.9,43,03,122/-. He also informed the Government that these figures were as per the measurement records of the APIIC though the agencies were claiming more than the stated sums. About Rs.20.00 crore were stated to have been released against the value of the work done to the tune of Rs.50.00 crore by both the agencies under Packages I & II. He also stated that in the absence of funds from the Government as assured, further work was held up since October, 2009. He further stated that the Chief Minister had reviewed the status of the Water Supply Scheme on 23.04.2010 and it was decided in the meeting to find out a feasible financial model to take up the scheme without changing the original scope of the scheme but without relying on Government budget. He further stated that it had been decided to identify an alternative water source to supply water to Kadapa. He then stated that as directed by the Chief Minister, a study was conducted to explore the feasibility of an alternative source to supply 1 TMC water to Kadapa and it was found that it was neither feasible nor viable to draw water from Penna River, as it was not a perennial flow and in the alternative, if efforts were made to tap water from Penna during the monsoon, large storage facilities were required to impound water to meet the annual demand, which would be uneconomic and prohibitive in terms of cost. He therefore stated that the only option for drawal of water was Somasila Reservoir. As regards financial structuring, the Managing Director informed the Government that the

APIIC could not invest funds on the subject scheme, which was aimed at meeting the drinking water requirement of various municipalities, which would have the option of tapping other funding options available from the Government. He therefore reported, under these circumstances, that decisions were to be taken on several issues to bail out the APIIC from crisis. One such issue was release of funds to the tune of Rs.30.00 crore to clear the outstanding bills of both the agencies to avoid contractual obligations.

Learned senior counsel would state that the company petitioner had issued two statutory notices and the APIIC responded to the first of the two. He would state that there was no suppression as to the reply issued by the APIIC to the first notice, which was also filed with the company petition. He would therefore assert that once the admitted liability was still unpaid, the APIIC had no grounds to say that there was any dispute in relation thereto. Learned senior counsel would point out that if the argument of the learned Advocate General was to be accepted, the company petitioner had to complete the entire work costing about Rs.260.00 crore without receiving any payment, which would be wholly unrealistic. Learned senior counsel would point out that the Supreme Court, in ***IBA HEALTH (INDIA) PRIVATE LIMITED V/s. INFO-DRIVE SYSTEMS SDN. BHD.***¹, observed that merely because a company is commercially solvent, it cannot claim immunity from winding up. He would therefore justify the order of admission of the company petition and pray that the appeal be dismissed.

In reply, the learned Advocate General would contend that the company petitioner unilaterally stopped the work and non-payment

¹ (2010) 10 SCC 553

of bills was not cited by it as the reason for such stoppage at any point of time. He would further contend that, this being the situation, the company petitioner could have sued for damages for the delay in such payment and that Section 434 of the Act of 1956 was not the remedy. He would also point out that no remedial measures were taken recourse to by the company petitioner and would point out that Clause 71 of the contract entitled the APIIC to retain or deduct the amounts due to the contractor towards recoveries provided for in the contract. He would assert that the APIIC therefore had the right to raise a counter-claim against the company petitioner, which right it could not raise in a winding up petition under Sections 433 and 434 of the Act of 1956, as the learned Company Judge would have no jurisdiction to settle such a counter-claim. He would therefore reiterate that this is not a fit and deserving case to be entertained under Sections 433 and 434 of the Act of 1956.

The admitted factual position is that the company petitioner was awarded the work of laying the pipeline in relation to Somasila Drinking Water Supply Scheme up to a length of 28 kilometres. This work was to be completed within 12 months, i.e., by September, 2009. It is also an admitted fact that no mobilization advance was released in favour of the company petitioner despite the contract envisaging the same, subject to conditions. It is also not in dispute that the RA bills of the company petitioner were not released in their entirety within the stipulated period of 14 days from the date of certification by the Zonal Manager, APIIC, Kadapa. The amount paid to the company petitioner in this regard was to the tune of about Rs.6.00 crore and the admitted amount due, even according to the APIIC, is over Rs.8.00 crore. The claim of the APIIC, as forcefully put

forth by the learned Advocate General, is that this is not an admitted due and that there are several disputed aspects in relation thereto, which disentitle the company petitioner from invoking the jurisdiction of the Company Judge under Sections 433 and 434 of the Act of 1956. Learned Advocate General would however concede that no action was initiated against the company petitioner under Clauses 60 and 61 of the contract for its alleged failure to live up to its obligations under the contract. The feeble explanation offered for this inaction is that the amounts due to be paid to the company petitioner were lying with the APIIC and therefore, the APIIC was waiting for the company petitioner to approach it or raise a dispute. The letters of the Zonal Manager; the Chief Engineer; and the Vice Chairman & Managing Director of the APIIC are sought to be brushed aside by the learned Advocate General by stating that these should not be taken to be admissions of the amount due to the company petitioner.

This Court, however, is not impressed with this wishful thinking. These letters put it beyond doubt that the APIIC was not on the offensive but clearly on the defensive. These letters also bring out the fact that the APIIC itself accepted that the company petitioner had stopped the work owing to non-payment of the bills. Though the learned Advocate General would argue otherwise, this Court is not impressed by his argument that the company petitioner should have completed the project within 12 months irrespective of whether it was paid for the work already executed. Being a business venture for the company petitioner, it could not be expected to plod ahead with work of such a huge magnitude unmindful of payment being made for the work done. This argument lacks commercial sensibility.

The last letter dated 02.04.2012, having been addressed by no less than the Managing Director of the APIIC, completely settles the issue. This letter brings out discomfiting details of what really went on and for which the learned Advocate General has no answer. It is clear therefrom that this project was envisaged by the then Chief Minister of the State, who also gave an assurance to the APIIC that the entire project would be funded by the Government. However, after change of the political leadership in the State, it appears that this project was sidelined by the successor Chief Minister. Various alternative measures seem to have been contemplated so as to do away with the Government's responsibility in financing this project or dropping it altogether. The Chief Minister seems to have had a meeting in this regard in April, 2010, but it was found that there was no other alternative for providing drinking water to Kadapa except by drawal of water from Somasila Reservoir. The APIIC, having undertaken this project upon the Government's assurance that it would fund the scheme, seems to have then been left to fend for itself. It therefore asked the Government to bail it out from the crisis.

It is fairly conceded by the learned Advocate General that this project was left incomplete thereafter and no steps were taken to get it completed through another agency after stoppage of the work by the company petitioner in December, 2009. To the extent the work was completed through the company petitioner and the other agency which undertook Package-II of the scheme, the amount spent was to the tune of Rs.50.00 crore. These contractors were also left high and dry and their pending dues have not been cleared, be it by the APIIC or the State Government. These monies would obviously have to come from the public exchequer.

This Court is appalled, to say the very least, at how public funds are frittered away by political bosses of the day with absolutely no sense of responsibility or accountability. The political executive of the day is liable to change but governance is a continuum. Such governance should be aimed at planned cost-effective development of the entire State. It is for the permanent executive to ensure that the reigning political executive does not squander away public money on subjective whims. A Chief Minister hailing from a particular region may want to go out of the way for its betterment and a succeeding Chief Minister belonging to another region may have no interest in pursuing the development scheme implemented in part by the predecessor. It is in such situations that the permanent executive should ensure that this kind of partial and biased treatment is not meted out by political bosses of the moment and ensure uniform growth of all regions of the State. The case on hand presents a shocking instance of how public money is wastefully depleted without care or conscience to suit vested political interests.

In his article, **‘Public Accountability: A framework for the analysis and assessment of accountability arrangements in the public domain’**², Professor Mark Bovens states that the word ‘accountability’ is Anglo-Norman in origin and semantically, it is closely related to accounting in its literal sense of bookkeeping, but in contemporary political discourse, ‘accountability’ and ‘accountable’ no longer convey a stuffy image of bookkeeping and financial administration, but hold strong promises of fair and equitable governance. According to the Professor, the most concise description of accountability would be: ‘the obligation to explain and justify

² Mark Bovens, Professor of Public Administration, Utrecht School of Governance, Utrecht University, Netherlands.

conduct'. He asserts that 'political accountability' is an extremely important type of public accountability within democracies.

Bimal Jalan, economist and former Governor of the Reserve Bank of India, in his **'The Future of India – Politics, Economics and Governance'** stresses upon the political role of the Government expanding substantially in ensuring availability of public goods, such as roads and water, and asserts that this would have to be implemented by the permanent executive, balancing the diverse and rival needs of different parts of the State, by taking suitable steps to advise the political executive of the day so as to minimize subjectivity in decisions relating to supply of such public goods. Significantly, he states as under in his epilogue:

‘.....New governments are entitled to change macroeconomic and other policies initiated by a previous government, but not without adequate reason and debate. In the long term interests of the country, policies should be determined on merits and not on the basis of ministerial whims or personal ideological preferences.’

The case on hand presents a deplorable example of how public monies are squandered away by the transient political executive to suit its own vested interests. This project, which was left half-way, involves expenditure of Rs.50.00 crore of the tax-payer's monies. Having incurred this expenditure with a seemingly lofty objective, the State conveniently turned its back not only on the unfortunate APIIC, the executing State instrumentality picked by the then Chief Minister, but also the ill-fated contractors who were unlucky enough to be selected for implementation of the project. The project was abandoned mid-way and it is not known as to who was held accountable, if at all, for this wasteful expenditure at the cost of the

public exchequer. In this day and age when so much stress is being laid by the present day political executive upon citizens paying their taxes honestly, there has to be a corresponding duty cast upon the political executive to account for and explain how it is spending the mandatory levies collected from tax-payers. The duty cast upon the citizen to diligently pay taxes cannot exist independently without the corresponding duty of the political executive to account as to how wisely it is spending the citizens' hard earned monies.

On facts, it is clear from the material placed on record that there is an admission by the APIIC at the highest level, viz., the Managing Director, that a substantial amount of money is due and payable to the company petitioner after adjustment of the amount already paid. The company petitioner's dues stand at Rs.8,18,36,584/-. No action having ever been initiated by the APIIC to raise a dispute as to its liability to pay the amount aforesaid or as to delayed discharge of contractual obligations by the company petitioner, it is too late in the day for it to now raise the ruse of a *bonafide* dispute to ward off the summary proceedings initiated under the Act of 1956 for its winding up. As pointed out by the Supreme Court in ***IBA HEALTH (INDIA) PRIVATE LIMITED***¹, mere commercial solvency of the APIIC is of no avail in the present situation as the same would only be a useful aid in deciding whether the refusal to pay the debt is a result of a *bonafide* dispute as to the liability or whether it reflects an inability to pay. The Supreme Court further observed that if there is no dispute as to the company's liability, the solvency of the company might not constitute a stand alone ground for setting aside a notice under Section 434(1)(a), meaning thereby, if a debt is undisputedly owing, then it has to be

paid and if the company refuses to pay without genuine and substantial grounds, it should not be able to avoid the statutory demand.

M/S. MADHUSUDAN GORDHANDAS AND CO. V/s. MADHU WOOLEN INDUSTRIES PRIVATE LTD.³ relied upon by the learned Advocate General does not further his case as the said decision would have application only when there is a *bonafide* dispute raised by the company. Presently, there is no *bonafide* dispute discernible on facts.

We therefore find no grounds to interfere with the order of admission of the company petition. However, we are of the opinion that another opportunity should be afforded to the APIIC to make good the payment due to the company petitioner in terms of the order under appeal, as the real fault in this regard lies, not with it, but elsewhere. We therefore grant two months time from today to the APIIC to deposit the sum of Rs.8,18,36,584/- to the credit of Company Petition No.235 of 2012 before the Registrar (Judicial) of this Court. In the event the APIIC does so, the company petition itself would stand dismissed as ordained by the learned Company Judge. The company petitioner would be entitled to withdraw the amount so deposited by approaching the Registrar (Judicial). However, if the APIIC fails to comply with this direction as stated above, the company petitioner is given liberty to cause advertisement of the admission of the company petition in The Hindu (English Daily) and Sakshi (Telugu Daily) newspapers having circulation in the States of Telangana and Andhra Pradesh within a month from the expiry of the two month period stipulated above. The advertisement

³ AIR 1971 SC 2600

shall state the next date of hearing of the company petition as the day falling immediately after expiry of three weeks from the date of publication of the advertisement. In such an event, the company petition shall be posted before the learned Company Judge on the day, as stipulated above.

The O.S.A. stands dismissed, subject to the above observations. Pending miscellaneous applications, if any, shall also stand dismissed. In the circumstances, there shall be no order as to costs.



SANJAY KUMAR, J

ANIS, J

3rd JANUARY, 2017

**Note: L.R. copy to be marked
B/o Svv**