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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **O.M.P.(I) (COMM.) 75/2018**

SRI AVANTIKA CONTRACTORS (I) LIMITED Petitioner

Through **Mr. Sachin Datta, Sr. Adv. with Ms.
Rijuta Mohanty, Advocate**

versus

NTPC LTD. Respondent

Through **Mr. Vikas Singh, Sr. Adv. with Mr.
Puneet Taneja and Ms. Shaheen,
Advocates**

CORAM:

HON'BLE MR. JUSTICE NAVIN CHAWLA

ORDER

% **18.04.2018**

1. The present petition has been filed under Section 9(ii)(e) of the Arbitration and Conciliation Act, 1996 (hereinafter referred to as 'the Act') *inter alia* praying for the following reliefs:-

*“(a) Release the amount already deposited in this Court by the Respondent pursuant to Order dated 26.10.2017 in OMP (COMM.) No. 370 of 2017 to the Petitioner subject to the Petitioner furnishing an unconditional/irrevocable Bank Guarantee to secure the said amount; and
(b) Release the balance amount awarded to the Petitioner vide Award dated 07.07.2017 to the Petitioner, subject to the Petitioner furnishing an unconditional/irrevocable Bank Guarantee to secure the said amount.
(c) Direct the Respondent to pay the balance escalation amount.”*

2. The disputes between the parties arose in relation to the agreement dated 2nd April, 2012 whereby the work of site levelling and infrastructure

works package for the Kudgi Super Thermal Power Project, Karnataka was awarded in favour of the petitioner by the respondent - NTPC Ltd.

3. The disputes have resulted in the Arbitral Award dated 7th July, 2017 passed by the Arbitral Tribunal awarding the following amounts in favour of the petitioner:-

Claims	Claim Amount Awarded in Rs.	Pre-Award Interest at 14% in Rs.	Sum Awarded in Rs.
Claim No. 2	3,08,69,089.00	1,39,35,913.66	4,48,05,002.66
Claim No. 4	5,94,98,878.00	2,68,60,890.73	8,63,59,768.73
Claim No. 5	1,08,74,198.00	49,09,179.03	1,57,83,377.03
Claim No. 6	13,17,67,675.00	5,94,86,787.63	19,12,54,462.63
Claim No. 24	11,29,57,149.00	5,09,94,737.02	16,39,51,886.02
TOTAL	34,59,66,989.00	15,61,87,508.08	50,21,54,497.08

4. The following Counter Claims of the respondent-NTPC Ltd. have also been allowed by the Arbitral Tribunal:-

Counter Claims	Counter Claim Amount Awarded in Rs.	Pre-Award Interest at 14% in Rs.	Sum Awarded in Rs.
Counter-Claim No. 3	1,73,11,839.00	73,90,495.21	2,47,02,334.21
Counter-Claim No. 4	8,94,956.00	3,82,060.39	12,77,016.39
Counter-Claim No. 5	3,77,730.00	1,61,254.49	5,38,984.49
Counter-Claim No. 6	1,43,923.00	61,441.32	2,05,364.32

TOTAL	1,87,28,448.00	79,95,251.42	2,67,23,699.42
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5. After a set-off of the Counter-Claims, the amount of **Rs. 47,54,30,798/-** along with interest @ 8.9% per annum from the date of the award till the date of the payment has been awarded in favour of the petitioner.

6. The above Arbitral Award has been challenged by the respondent- NTPC Ltd. by way of OMP (COMM.) 370/2017 wherein by an order dated 26th October, 2017, the enforcement of the Arbitral Award dated 7th July, 2017 has been stayed subject to the deposit of 50% of the awarded amount by the respondent- NTPC Ltd.

7. In compliance with the above order, the respondent- NTPC Ltd. has deposited a sum of Rs. 23,77,15,399/- in this Court.

8. The learned senior counsel for the respondent submits that this amount should not be ordered to be released in favour of the petitioner as it includes an amount of Rs. 13,17,67,675/- towards the payment with respect to earthwork which is based on forged and fabricated original ground levels and which documents were never proved by the petitioner before the Arbitral Tribunal. He further submits that this, in any case, was an excepted matter and therefore, could not have formed the basis of the Arbitral Award. He further submits that the other amounts awarded by the Arbitral Tribunal are consequential in nature and therefore, would be hit by the same defect. He lastly submits that even an FIR has been registered by the CBI against the petitioner and certain officers of the respondent-NTPC Ltd. as well.

9. On the other hand, the learned senior counsel for the petitioner submits that the Arbitral Tribunal has considered all the pleas raised by both the parties and has thereafter arrived at its conclusion in favour of the

petitioner. This Court, in exercise of its powers under Section 34 of the Act, cannot sit in appeal over such appreciation of evidence.

10. I have considered the submissions made by the counsels for the parties. In my opinion, as the Award is for a sum of Rs. 47,54,30,798/- in favour of the petitioner, the amount of Rs. 23,77,15,399/- deposited by the respondent with the Registry of this Court in OMP (COMM.) No. 370/2017 is ordered to be released in favour of the petitioner, subject to the petitioner furnishing to the respondent an unconditional and irrevocable Bank Guarantee from a Nationalised Bank of the equivalent amount in favour of the respondent.

11. The petition is allowed in the above terms with no order as to costs.

12. At the request of the learned senior counsel for the respondent, this order shall remain in abeyance for a period of two weeks from today.

13. **Dasti.**

APRIL 18, 2018
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NAVIN CHAWLA, J