

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR

WRIT PETITION NO.5365/2019

Maharashtra State Power Generation Company Limited.

Vs.

ACB (INDIA) Limited.

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Office Notes, Office Memoranda of
Coram, appearances, Court's orders
of directions and Registrar's orders

Court's or Judge's order

.....
Shri Deoul Pathak and Shri A. M. Ghare, Advocate for the petitioner.
Shri Shyam Dewani a/w N.A.Lalwani, Advocates for the
respondent-sole.

CORAM : **R.K. DESHPANDE &
MILIND N. JADHAV, JJ.**

DATED : **02nd DECEMBER, 2019**

1. Undisputedly, the issue involved in the matter is concluded by the recent decision of the Hon'ble Apex Court delivered on 27.11.2019 in Writ Petition No.1074 of 2019 reported in (2019) SCC Online SC 1520. The Hon'ble Apex Court has struck down the provision of Section 87 of the Arbitration and Conciliation Act, 1996. Consequently, it is not in dispute that the Commercial Court can pass an order on the application of the parties to deposit an amount as it deems fit and proper in the facts and circumstances of the case.

2. In view of the aforesaid position, the order impugned in the present petition directs the petitioner to deposit 50% of the total amount of Award of Rs.14,51,97,859/- after deducting the amount of

Rs.1,93,62,902/- within a period of two months from the date of the order along-with the interest at the rate of 15% per annum from the date of Award.

3. We have gone through the order impugned in all these matters. The Commercial Court has in exercise of its jurisdiction, after taking into consideration the relevant factors, passed an order and we do not find any reason to interfere except to put a condition that the respondent shall be permitted to withdraw the amount deposited by the petitioner only upon furnishing bank guarantee to the satisfaction of the Commercial Court, which shall continue to remain valid for during the pendency of the application under Section 34 of the Arbitration Act, 1996.

4. We also make it clear that the bank guarantee furnished shall continue to operate for one month after the order is passed by the Commercial Court either accepting the application under Section 34 of the Arbitration Act, 1996 or rejecting it. Undisputedly, the question of furnishing bank guarantee for withdrawal of sum of Rs.1,93,62,902/- does not arise. The application is in time. The Commercial Court shall decide the application as expeditiously as possible.

5. We extend further period of six weeks to deposit the amount in terms of the order passed by the Commercial Court.

6. This Writ Petition is disposed of.

JUDGE

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