

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 16.12.2019

Coram::

The Honourable Dr.Justice G.Jayachandran

Original Petition No.1040 of 2019
& Application No.9642 of 2019

M/s. Indian Oil Corporation Ltd.,
AP State Office,
No.3-6-436 to 438,
2nd and 3rd Floor,
"NASPUR" House,
Himayat Nagar,
Hyderabad – 500 029.

... Petitioner

/versus/

M/s. N.R.P.Projects Private Ltd.,
Rep. by its Partner,
Mr.Hitesh J. Patel,
1st Floor, Desabandhu Plaza,
No.47, Whites Road,
Chennai – 14.

... Respondent

Prayer: This Petition filed under Section 34(2) (b) (ii) (2A) of the Arbitration and Conciliation Act, 1996, as amended in 2015, praying to set aside the Arbitration Award dated 22.10.2018 and the order dated 04.12.2018 passed by the Learned Arbitrator which had arisen out of the dispute between the Petitioner and the Respondent, besides directing the Respondent to pay the Costs of the Petition and pass such order.

For Petitioner : Mr.M.S.Krishnan, Senior Counsel

For Respondent : Mr.Menon

J U D G M E N T

This Application O.P.No.1040 of 2019 is filed under Section 34(2) (a) (4) & (5) and (B) (2) of the Arbitration and Conciliation Act, 1996, by the Indian Oil Corporation to set aside the arbitration award passed on 22.10.2018, holding that the M/s.N.R.Patel & Company, the Claimant/respondent herein is entitled for a sum of Rs.4,15,400,942.60 as on date of award, besides interest of 18% on the award amount, from the date of presentation of the award, till the date of payment.

2. The Applicant/Indian Oil Corporation, besides filing the above petition to set aside the arbitration award, has taken out an Application No.9642 of 2019 to stay the operation of the arbitration award dated 22.10.2018 and the rectification order dated 14.12.2018 and consequential the Execution Petition No.87 of 2019, pending on the file of Master of this Court.

3. The Learned Counsel appearing for the respondent stoutly opposed the application for stay on the ground that, Section 36 Clauses 2 & 3 of the Arbitration Act read together clearly indicates that, pendency of application to set aside the arbitral award is not a bar for enforcing the award and stay of the operation of the arbitral award should be subject to condition as it may deem fit.

4. According to the respondent counsel, the applicant/petitioner does not deserve the indulgence of this Court of granting stay of the award since the matter which is pending for nearly 18 years was protracted by the applicant under one pretext or another depriving the respondent its legitimate dues.

5. Particularly, it is contended by the learned counsel that, after a prolonged legal battle, the award was passed on 22.10.2018 thereafter, the application was filed for rectifying error and same was also considered and order was passed on 04.12.2018. Thereafter, the applicant did not prefer petition to set aside the award in time. The delay in filing the application and further delay in filing representation were liberally condoned. Taking note of the fact that, the applicant has

deposited the award amount. The said deposit of award amount was not voluntary but only after the order passed by the Master in the Execution Petition directing the garnishee to deposit the amount. Therefore, there is no bonafide in the contention of the applicant to seek stay of the operation of the arbitral award pending its application to set aside the same.

6. As far as merit of the application, the Learned Counsel for the Respondent submit that, the award does not fall under any of the ground enumerated under Section 34(2) of the Act for the Court to interfere and set aside the award.

7. After considering the rival submissions and the fact of the case, perusing the grounds of appeal preferred against the Arbitration award, this Court finds that there is no merit in this Application and no part of the award attract the provisions of Section 34(2) of the Act. However, having fought the battle for more than 18 years, this Court thought that, an amicable settlement could be arrived between the parties. Hence, requested the concerned counsel to bring their respective parties to the Court to find out a solution. Accordingly, Mr.C.Rama Rao,

on behalf of the applicant and Mr.Hitesh J.Patel, on behalf of the respondent were present today (16.12.2019).

8. After hearing the parties, this Court found that from the year 2008-2017 this dispute was laying dormant in the Court corridor without any progress. This has enhanced the liability towards the interest for the applicant, otherwise there is no merit to canvas for the applicant. As a concession for the delay caused by the stake holders including the Court, this Court is of the view that out of Rs.4,84,31,417.63/- deposited by the applicant herein, they shall be entitled to get back a sum of Rs.75,00,000/- (Rupees Seventy Five Lakhs only), which will be more or less towards the interest at nominal rate of 6% payable by the applicant, for a period between 2009-2017. The balance amount of Rs.4,09,31,417.63/- with the accrued interest for the money deposited shall be paid to the respondent. The Director of the respondent company who is present in the Court agreeable to the proposal. In the result, the Application is disposed of with the following terms:-

(i). The applicant herein who has deposited the money in the E.P account (E.P.No.87 of 2019), shall be entitled for a sum Rs.75,00,000/- (Rupees Seventy Five Lakhs only). The balance sum of Rs.4,09,31,417.63/- and the accrued interest will be payable to the respondent.

(ii). The Master before whom the Execution Petition is pending, shall pay the amount as stated above to the respective parties, on application for payment out.

9. Accordingly, the **Original Petition No.1040 of 2019 is disposed of**. Consequently, the Application No.9642 of 2019 is closed.

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Index :Yes/No
Speaking Order/Non-speaking order
bsm

Note: Issue Order Copy by 16.12.2019

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Dr.G.Jayachandran,J.

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