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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 16.11.2021

CORAM

THE HON'BLE MR.JUSTICE PARESH UPADHYAY
AND
THE HON'BLE MR.JUSTICE SATHI KUMAR SUKUMARA KURUP

W.A.NO.2574 OF 2021

Tamil Nadu Generation & Distribution
Company Limited (TANGEDCO),
Rep. By its Chief Financial Controller,
No.144, Anna Salai,
Chennai - 600 002.

...Appellant

Vs

1.Arkey Energy (Rameswarm) Limited,
Rep. By its Authorized Signatory T.S.Das,
No.20, Old No.129, Chamiers Road,
Nandanam, Chennai - 600 035.

2.Sudip Bhattacharya
Resolution Professional -
Ind-Barath Thermal Power Limited,
903, Queensgate CHS, Hiranandani Estate,
Off Ghodbander Road,
Thane-West, Mumbai,
Maharashtra - 400 607.

3.Anish Nanavaty
Resolution Professional -
Ind-Barath Power Gencom Limited,
Deloitte Touche Tohmatsu India LLP,
India Bulls Finance Centre, Tower - 3,
27th Floor, Senapati Bapat Marg,
Elhinstone Road(West), Mumbai - 400 013.

...Respondents

Appeal preferred under Clause 15 of Letters Patent against
the order dated 05.01.2021 made in W.P.No.23856 of 2018.

Prayer in W.P.No.23856 of 2018 : Petition filed under Article
226 of the Constitution of India praying for Issue of Writ of
Mandamus directing the respondent to pay a sum of
Rs.168,85,00,000/- (Rupees One Hundred and Sixty Eight Cores and
Eight Five Lakhs Only) being the sum admitted as payable to the
petitioner vide Minutes of Meeting dated 24.05.2018 which was
recorded vide order of the National Company Law Appellate
Tribunal Vide Order dated 29.05.2018.



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For Appellant : Mr.J.Ravindran,
Additional Advocate General
assisted by
Mr.L.Jaivenkatesh

For Respondents : Mr.M.S.Krishnan,
Senior Advocate,
for Mr. Anirudh Krishnan for R1

JUDGMENT

(Delivered by PARESH UPADHYAY, J.)

Challenge in this appeal is made by the original first respondent to the order dated 05.01.2021 in W.P.No. 23856 of 2018.

2. Heard Mr.J.Ravindran, learned Additional Advocate General for the appellant and Mr.M.S.Krishnan, learned Senior Advocate for the contesting respondent - the original writ petitioner.

3. Learned Additional Advocate General for the appellant/original first respondent has submitted that, the direction by the learned Single Judge to pay the amount of Rs. 73,85,00,000/- to the petitioner is unsustainable, since according to him, not only that amount is not payable by the appellant, more amount is recoverable by the appellant from the group of companies of the original writ petitioner. It is further submitted that the contest put forward before learned Single Judge in two counter-affidavits filed on behalf of the appellant dated 18.01.2019 & 07.09.2020 is not properly considered. It is submitted that, if the case of the present appellant is taken into consideration along with the settlement before the NCLAT, the impugned order is unsustainable and the same needs to be interfered with. It is submitted that this appeal be entertained.

4. On the other hand, learned Senior Advocate for the original writ petitioner (contesting respondent in this appeal), has submitted that the basis for the petition was the amount agreed by the present appellant before the NCLAT and admitted before this Court by it even while filing counter-affidavit, and therefore the impugned order can not be faulted. It is submitted that no interference be made by this Court.

5. Having heard learned advocates for the respective parties and having considered the material available on record, this Court finds as under:-

5.1. The cause of action for the writ petitioner was the inaction on the part of the present appellant to pay outstanding



amount which was based on the settlement between the parties dated 24.05.2018 as reflected in the order of the NCLAT dated 29.05.2018 recorded on Company Appeal (AT) No. 215 of 2017. The said settlement / order, has attained finality. The learned Single Judge has taken into consideration the said settlement between the parties and the obligations cast upon both the sides, flowing there-from.

5.2. Part payment was already made by the present appellant to the writ petitioner but the balance was not being paid, for the reasons which are put forward in the counter-affidavits filed in the writ petition. We have taken into consideration the contents thereof. By no stretch of imagination it can be said that, the amount asked for by the petitioner was still to be adjudicated/ reconciled.

5.3. Having examined the matter from that angle, the only thing which was required to be confirmed from the original writ petitioner was - whether it has discharged its obligation flowing from the said order of NCLAT. Learned Single Judge has noted in detail, how all the matters - which were required to be withdrawn by the writ petitioner were, as a matter of fact withdrawn.

5.4. We have considered the findings recorded by learned Single Judge. We do not find any infirmity therein to interfere in this intra-court appeal. We further find that, having heard learned advocates for the respective parties and having considered the material on record, we also arrive at the same conclusion, where the learned Single Judge has arrived at. Further, the financial difficulties on the part of the appellant, as put forward in the counter, is already taken care of by the fact that though the impugned order is dated 05 January, 2021, till date, that amount is yet not paid. Viewing from any angle, no relief can be granted to the present appellant. This appeal, therefore needs to be dismissed.

6. For the reasons recorded above, the writ appeal is dismissed. No costs. Consequently, connected C.M.P.No.16786 of 2021 is closed.

Sd/-
Deputy Registrar

// True Copy //

Sub Assistant Registrar

ssm



To

The Chief Financial Controller,
Tamil Nadu Generation & Distribution,
Company Ltd., (TANGEDCO),
144, Annasalai, Chennai - 2.

+1cc to Mr.L.Jaivenkatesh, Advocate SR.No.58830

+1cc to M/s.Anirudh Krishnan, Advocate SR.No.58863

W.A.No.2574 of 2021

JP-II(CO)
RVM(01/12/2021)