

OCD-4 & 5

IN THE HIGH COURT AT CALCUTTA
Ordinary Original Civil Jurisdiction
(Commercial Division)
ORIGINAL SIDE

AP/370/2018

KALINDEE RAIL NIRMAN-RAHEE INFRATECH JV
VS
AYESA INGENIERIA Y ARQUITECHTURA S.A.U.

EC/367/2018
IA NO: GA/2/2021, GA/3/2021, GA/4/2023

AYESA INGENIERIA Y ARQUITECHYURA S.A.U
VS
KALINDEE RAIL NIRMAN- RAHEE

BEFORE:

The Hon'ble JUSTICE RAVI KRISHAN KAPUR

Date : 30th November, 2023.

Appearance:

Mr. Dhruva Ghosh, Sr. Adv.

Mr. R. Banerjee, Adv.

Mr. E. Bhattacharya, Adv.

Ms. A. Choudhury, Adv.

Ms. P. Saha, Adv.

...for the petitioner

Mr. Priyabrat Tripathi, Adv.

Mr. Sailesh Mishra, Adv.

...for the award-holder

The Court : This is an application under Section 34 of the Arbitration and Conciliation Act, 1996, challenging an award dated 30th April, 2017.

Clause V of the award, inter alia, provides as follows:

“Gist of Award:

Awarded that the Respondent shall Pay to the claimant the aforesaid basic sum of INR. 154,89,105/- [(R.55,64,105+Rs.92,25,000+7,00,000/-) (Indian Rupees One Crore Fifty Four Lakhs Eighty Nine Thousand One Hundred Five only)] on which applicable Service Tax together with simple interest @

12% P.A. on the basic sum from 30.09.15 to the date of payment within 45 days hereof (12.03.17), failing which the entire awarded amount along with Service Tax and Interest shall carry further interest @18% P.A. The respondent would deduct Income Tax at the applicant rate.”

During the hearing of this application both parties have amicably resolved their differences. It is submitted that pursuant to an earlier order of Court, an aggregate sum of Rs.186,157,82/- has been deposited with the Registrar, Original Side by the award-debtor. Both parties agree that the award-holder is permitted to forthwith withdraw the entire deposited amount lying with the Registrar, Original Side in terms of the order dated 7th July, 2023 alongwith any accrued interest.

Insofar as the balance amount is concerned, the parties have agreed that the remaining dues payable by the award debtor inclusive of interest be crystallized at Rs.1,22,55,389.82/-.

The balance payment shall be paid in four equal monthly instalments commencing from January, 2024 till April, 2024. The payment shall be made positively by the 15th of each month. In default of any one payment, the award-holder shall be entitled to execute the original awarded amount in its entirety after giving any credit for the payments received by this order.

The Registrar, Original Side is directed to act in terms of the aforesaid directions and make payment of the entire amount lying deposited with the Registrar, Original Side alongwith all accrued interest to the award-holder forthwith.

The Advocate appearing on behalf of the award-holder shall furnish a statement of the total dues received from the Registrar, Original Side which would be ultimately adjusted against the awarded amount.

Nothing survives in this application. With the aforesaid directions AP/370/2018 stands disposed of. EC/367/2018 also stands dismissed as infructuous. All connected applications being IA NO:GA/2/2021, GA/3/2021, and GA/4/2023 also stand disposed of.

Liberty is granted to the award-holder to file a fresh execution application, if the circumstances so warrant in accordance with law.

Mr. Ashim Kumar Bhattacharya, Project Coordinator on behalf of the award-debtor is present in Court and submits that the aforesaid arrangement has been duly authorized by Mr. Prakash Kejriwal of Kalindee Rail Nirman and Mr. Pradip Khaitan of Rahee Infratech JV both persons in actual control of the joint venture award-debtor.

(RAVI KRISHAN KAPUR, J.)

SK.