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

\+ OMP (ENF.) (COMM.) 39/2021

NCC VEE JV ..... Decree Holder

Through: Ms Malvika Trivedi, Sr. Adv. with Mr Ashish Chaudhary, Mr Shailendra Slaria and Ms Sujal Gupta, Advs.

versus

NATIONAL HIGHWAYS AUTHORITY OF INDIA ..... Judgement Debtor

Through: Mr S. Nandakumar and Ms. Deepika Nandakumar, Advs.

CORAM:
HON'BLE MR. JUSTICE JASMEET SINGH

<u>O R D E R</u>

% **16.02.2024**

1. This is a petition seeking enforcement of the Award dated 08.10.2020 and 08.03.2021 wherein the claims of the decree-holder was allowed to the tune of Rs. 13,80,17,478/- along with interest at the rate of 12% per annum.

2. Pursuant to the filing of the execution petition, the parties herein entered into a Settlement Agreement dated 24.08.2021. The relevant clause of the said Settlement Agreement reads as under:

> *"2. THE AMOUNT OF FULL AND FINAL SETTLEMENT*
>
> *2.1. Parties hereby agree that amount of full and final settlement of the disputes is <u>Rs. 36.11 Cr.</u>*

2.2. For avoidance of doubt, it is agreed between both the parties that there are no past, present or outstanding liabilities, compensation, claims or counter claims pertaining to the project made by either Party.

3. OBLIGATIONS OF PARTIES

3.1. OBLIGATIONS OF NHAI

3.1.1. To pay an amount of Rs.36.11 Cr. against the Arbitration Awards dated 08.10.2020 and 08.03.2021 within 20 days of signing of this Agreement."

3. A perusal of the above clause shows that the judgment-debtor had agreed to pay an amount of Rs. 36.11 crores against settlement of the amounts awarded in Arbitration Awards dated 08.10.2020 and 08.03.2021 within 20 days of signing of the agreement. The settlement clearly shows that there was no bifurcation of the settlement amount as principal and interest.

4. Subsequently, the judgment-debtor wrote a letter dated 12.10.2021 wherein some deductions were sought to be made out of Rs. 36.11 crores on account of Labour Cess and GST.

5. The decree-holder vide Letter No. 1289 dated 29.09.2021 agreed to deduction of TDS of Rs. 72,22,000/- on Income Tax and Conciliation Fee of Rs. 5 lakhs.

6. Thereafter, the judgment-debtor on 09.03.2022 has addressed a letter to the decree-holder which reads as under:

11033/NH-28/Pkg-7/Arbitration/2020-21 / 3386 Date: 09.03.2022

To,

General Manager,
M/s NCC-VEE(JV),
B-5/21, Vishal Khand,
Gomti Nagar, Lucknow-226010

Sub: In the matter of Arbitration between M/s NCC-VEE (JV) and NHAI for the work of 4 laning from Km. 279.800 to Km. 319.800 of Gorakhpur to Gopalganj Section of NH-28, in Uttar Pradesh Civil Contract Package No.: LMNHP-EW-II(WB) Package-7- (Ref.- II)
- Deposition of additional amount pending at your end - reg.

Ref.: (i) RO-UP (E) noting No. 157506 dated 08.03.2022
(ii) Your office letter No. 1289 dated 29.09.2021

Sir,

Kindly refer your office letter at (ii), vide which, a request was made for release of arbitration settlement amount of Rs. 36.11 Cr.

The same has been sent to Competent Authority. However, Competent Authority has conveyed for deposition of additional TDS income tax amount of Rs. 12,18,371/- along with applicable interest to be deposited by the Contractor in NHAI Account.

The details of balance payment is as under:-

No.	Description	Amount paid (in Rs.)	Amount to be paid taking into consideration, NHAI Circular dated 11.05.2020 (in Rs.)	Balance to be paid
1 (a)	Total Principal amount as per Settlement Agreement	36,11,00,000	21,02,11,662	21,884
1 (b)	Total Interest amount as per Settlement Agreement		15,09,10,222	
2	Total Gross amount as per Settlement Agreement 1 (a+b)	36,11,00,000	36,11,21,884	21,884
3	Less: Income Tax @ 2% on Principal amount	72,22,000	42,04,233	-30,17,767
4	Less: Income Tax @ 10% on Interest amount		1,50,91,022	1,50,91,022
5	Less: TDS on GST @ 2% as on Rs.36.11 Cr.	72,22,000	-	-72,22,000
6	Less: Income Tax @ 2% as on Rs.36.11 Cr.	36,11,000	-	-36,11,000
7	Less: Fee for Conciliation & Settlement (as per NHAI policy circular dated 09.04.2021)	5,00,000	5,00,000	0
8	Net Payable Amount (2-3-4-5-6-7)	34,25,45,000	34,13,26,629	-12,18,371

Also, the legal Counsel of NHAI, M/s S.Nandakumar vide mail dated 01.03.2022 has informed that the Contractor, M/s NCC-VEE(JV) has not withdrawn the OMP (ENF) (COMM) No. 39 of 2021. It is also brought to your knowledge that as per Cl. 3.2.2 of the Settlement Agreement, the withdrawal of the above OMP was to be done at your end. However, the same has not been withdrawn till date.

In view of above, it is requested to deposit the balance amount of Rs. 12,18,371/- in the below mentioned account and also withdraw the OMP No. 39 of 2021 as per the settlement agreement.

Beneficiary Name	NHAI PIU Gorakhpur
Current Account No.	1658201001505
Bank Name	CANARA BANK
Branch	Bank Road, Gorakhpur
IFSC Code	CNRB0001658

Encl: as above.

(C.M. Dwivedi)
GM (T)/Project Director

7. It is this letter which is now the subject matter of the execution petition.

8. A perusal of the settlement agreement clearly shows that the judgment-debtor has agreed to pay a sum of Rs. 36.11 crores in full and final settlement. The settlement agreement does not show that as to what amount of Rs. 36.11 crores is towards Principal Agreement and what amount is towards interest. Hence, the bifurcation by the judgment-debtor of Rs. 36.11 crores into Rs. 21,02,11,662/- as principal amount and Rs. 15,09,10,222/- towards interest is not agreeable to the decree-holder and is a self serving document. The same cannot be accepted. Hence, the judgment-debtor cannot deduct income tax at 10% on the interest amount.

9. For the said reasons, the present petition is disposed of in terms of the settlement agreement dated 24.08.2021 arrived between the parties and consequently, the outstanding amount of Rs. 1.08 crores due and payable to

the decree-holder is directed to be paid within a period of ten days from today.

10. In case the amount is not paid, the decree-holder shall be entitled to revive the present execution petition.

11. It is clarified that if there is any liability on account of the income tax on interest, the same shall be borne by the decree-holder.

12. The letter dated 09.03.2022 handed over in Court today is taken on record.

JASMEET SINGH, J

FEBRUARY 16, 2024

sr

Click here to check corrigendum, if any