



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

Date of decision: 10th MAY, 2024

IN THE MATTER OF:

+ **W.P.(C) 13824/2023 & CM APPL.62107/2023**

ROADWINGS INTERNATIONAL PRIVATE LIMITED .. Petitioner

Through: Mr. Koshy John and Mr. Prateek
Khanna, Advocates.

versus

CONTAINER CORPORATION OF INDIA LIMITED & ORS.

..... Respondents

Through: Mr. Sudhir Nandrajog, Sr. Advocate
with Mr. Rishi K. Awasthi, Mr.
Piyush Vatsa and Mr. Rahul Mishra,
Advocates for CONCOR.

Mr. Vineet Dhanda, CGSC with Ms.
Gurleen Kaur and Mr. Archit
Aggarwal, Advocates for R-2.

CORAM:

HON'BLE MR. JUSTICE SUBRAMONIUM PRASAD

JUDGMENT

1. The Petitioner has approached this Court for a direction to the Respondent/Container Corporation of India to settle the claim of the Petitioner in accordance with the Vivad Se Vishwas-II (Contractual Disputes) Scheme which was brought on 29.05.2023 by Respondent No.2.

2. The said scheme was applicable to all the Autonomous Bodies of the Government of India, Public Sector Banks and Public Sector Financial Institutions, all Central Public Sector Enterprises, Union Territories without legislature and organizations like Metro Rail Corporations where



Government of India has 50% shareholding. There is a stipulation in the Scheme that the organizations as such can opt out of the Scheme at their discretion with the approval of the Board of Directors.

3. Material on record discloses that a contract is executed between the Petitioner and Respondent No.1 which is a Central Public Sector Enterprise wherein the Ministry of Railways holds more than 50% shares. Pursuant to the tender floated by the Respondent for transportation of containers between ICD, Sabarmati and JNPT / NSICT / GTIL / MBPT / DON / DRT / Greater Mumbai Area, disputes arose between the parties under the contract. Arbitration proceedings were initiated and an Arbitral Award was passed in favour of the Petitioner awarding the following amount:-

- i. Rs. 76,01,821/- towards reimbursement of new taxes of the subject first contract and towards reimbursement of the subject extended contract;
- ii. Rs. 33,01,350/- towards interest on the principal amount for a period from the date on which the said amount became payable to the Petitioner by Respondent No. 1 until filing of the claim petition;
- iii. Interest at the simple rate of 10% p.a. on the principal amount from the date of claim petition i.e., 15.03.2019 till the date of the award;
- iv. Cost of 50% of the amount of expenses incurred by the Petitioner towards the fees of the Ld. Arbitrator and other administrative expenses subject to verification by administrative assistant appointed by the Tribunal;
- v. Rs. 2,00,000/- as cost towards legal and other expenses;



- vi. Interest at the simple rate of 12% p.a. on the awarded amounts from the date of award until realisation.
4. The award was challenged by Respondent No.1 before the court of competent jurisdiction by way of a petition under Section 34 of the Arbitration & Conciliation Act, 1996. Pending the challenge, a One Time Settlement Scheme i.e., Vivaad Se Vishwas Scheme-II was brought out by Respondent No.2. The objective of the Scheme was to settle the disputes involving government undertakings and other organizations as enumerated above to clear that backlog of pending litigations arising out of said disputes provided that the claimant is prepared to accept an amount lesser than the amount awarded in terms of the Scheme.
5. Since the award was passed before 31.10.2023, the Petitioner filed a claim under the Scheme claiming 65% of the amount awarded by the arbitral award coming to Rs. 1,17,45,199.05/-. Despite several reminders, the claim of the Petitioner has not been settled and the Petitioner has filed the instant writ petition with the following prayers:-

" a. Issue a writ of mandamus or any appropriate writ directing Respondent No. 1 to accept and settle the Claim of the Petitioner in accordance with the Scheme dated 29.05.2023;

b. Issue a writ of mandamus or any appropriate writ directing Respondent No. 2 to ensure implementation of the Scheme and take necessary steps/actions in order to facilitate settlement of the Petitioner's Claim in accordance with the provisions of the Scheme;

c. Issue a writ of mandamus or any appropriate writ directing Respondent No. 3 to take necessary steps/actions in order to facilitate settlement of the



Petitioner's Claim in accordance with the provisions of the Scheme;

d. Pass such further or other order(s) as this Hon'ble Court may deem fit and proper on the facts and in the circumstances of the case. "

6. The writ petition came up for hearing on 18.10.2023, when the learned Senior Counsel for Respondent No.1 prayed for some time to seek instructions as to whether the case of the Petitioner is covered under the Scheme or not.

7. Since the last date of filing the application under the Scheme was 31.10.2023, learned Counsel for Respondent No.1 made a submission in Court on 30.10.2023 when the case was listed, that the case of the Petitioner can be considered even after 31.10.2023 since the case of the Petitioner has been filed prior to the said date.

8. On 21.02.2024, learned Counsel for the Respondent made a statement that the Respondent is actively considering to opt out of the Scheme, and therefore, time was sought in the matter and matter was adjourned to 27.02.2024. On 27.02.2024 also, time was sought to get instructions and the matter was adjourned to 12.03.2024. Since the Respondent had not opted out of the Scheme, arguments were heard on 12.03.2024 and the matter has been reserved.

9. Written submissions have been filed in the matter. It is the case of the Petitioner that the Petitioner is squarely covered under the Scheme and since the claim of the Petitioner is under an arbitral award having only a monetary value less than Rs. 500 crores, the Respondent is bound to accept the claim.

10. It is necessary to extract the salient features of the Scheme. The same



reads as under:-

Office Memorandum

Subject: Vivad se Vishwas II (Contractual Disputes).

The undersigned is directed to refer to Rule 227 A of the General Financial Rules (GFRs), 2017 and Department of Expenditure's (DoE's) "General Instructions on Procurement and Project Management" containing instructions to deal with dispute cases. Para 16.4 of the "General Instructions" is reproduced below:

Statistics have shown that in cases where the arbitration award is challenged, a large majority of cases are decided in favour of the contractor. In such cases, the amount becomes payable with interest, at a rate which is often far higher than the Government's cost of funds. This results in huge financial losses to the Government. Hence, in aggregate, it is in public interest to take the risk of paying a substantial part of the award amount subject to the result of the litigation, even if in some rare cases of insolvency etc. recovery of the amount in case of success may become difficult. Instructions have been issued in this matter in the past but have not been fully complied with.

2. NITI Aayog had also established a Task Force on Conciliation Mechanism, and had circulated the final report of the Task Force. Following excerpt from the final report is highlighted:

A consideration of even more importance with respect to contracts between Government and Private entities. The same being critical not only to facilitate an overall pro -business environment but also to attract private investment in the country, to encourage private investors to



establish and continue short-term and long-term contractual association with the Government, and not be wary of it.

3. It is understood, however, that more efforts are required to clear the backlog of old litigation cases. Such cases are holding back fresh investment, reducing the ease of doing business with the Government, tying up scarce working capital and indirectly reducing competition for newly floated tenders. In this context, after due study of the experience in past cases, Government has decided to implement a one time settlement scheme called "Vivad se Vishwas II (Contractual Disputes)" to effectively settle pending disputes. Applicability:

4. The scheme will apply to contractual disputes where one of the parties is either the Government of India and/ or an organisation detailed below. Apart from Ministries/ Departments, attached and subordinate bodies, notwithstanding anything contained in Rule 1 of the GFRs 2017, the scheme shall also be applicable

- a) to all Autonomous Bodies of the Government of India;*
- b) to public sector banks and public sector financial institutions;*
- c) to all Central Public Sector Enterprises;*
- d) to Union Territories without legislature and all agencies/ undertakings thereof; and*
- e) to all organisations, like Metro Rail Corporations, where Government of India has shareholding of 50%; however, these organisations can opt out of the scheme at their discretion, with approval of the Board of Directors.***

The above mentioned organisations shall hereinafter be referred to as "procuring entities." The other party



in dispute with the procuring entity shall be referred to as contractor(s) hereinafter.

5. Disputes where the award by court/ Arbitral Tribunal (AT) is only for monetary value will be eligible for settlement under this scheme. In case the award stipulates specific performance of contract (either fully or partially); such awards will not be eligible for settlement through this scheme.

6. Cases shall satisfy following criteria to be eligible for settlement under this scheme:

<i>Status of dispute</i>	<i>The award shall have been issued upto the following date</i>
<i>Arbitral Award passed</i>	<i>31.01.2023.</i>
<i>Court Award passed</i>	<i>30.04.2023 .</i>

7. The scheme will be applicable only to those contractors who wish to participate in the scheme. Central Public Sector Enterprises (CPSEs) etc., who are contractors to the procuring entities as listed above, are also eligible to submit their claims under this scheme.

8. The scheme shall apply only for cases involving domestic arbitration and cases under international arbitration are not eligible to be settled under this scheme.

9. The scheme shall be applicable to al l kinds of procurement including procurement of goods, services and works. The scheme is also applicable to al l "earning contracts" (i.e. contracts where government receives money in exchange for goods, services, rights,



etc.) as well as contracts under Public Private Partnership (PPP) arrangements. Amount payable under the scheme

10. The settlement amount that shall be offered to Contractors for various categories of disputes is as under:

<i>Sl. No.</i>	<i>Status of dispute</i>	<i>Settlement Amount</i>
<i>(a)</i>	<i>Court Award passed on or before 30.04.2023. Notes: i. Case may or may not be under further appeal. ii. Court award will include the cases where the parties have approached the courts directly or approached the court subsequent to arbitral award (under any provision of the Indian Arbitration and Conciliation Act, 1996). However, Interim Orders under Section 9 of the Indian Arbitration and Conciliation Act, 1996, shall not be considered as an award eligible for settlement under this scheme.</i>	<i>85% of the net amount awarded/ upheld by the court or 85% of the claim amount lodged by the contractor under this scheme, whichever is lower.</i>



(b)	<i>Arbitral Award passed on or before 31.01.2023.</i> <i>Notes:</i> <i>i. Case may or may not be under challenge/ appeal before a Court.</i> <i>ii. Arbitral Award passed by the Micro and Small Enterprises Facilitation Council (MSEFC) or Arbitral Tribunal appointed on reference by MSEFC under the provisions of the Micro, Small and Medium Enterprises Development Act, 2006, shall also be included under this scheme.</i> <i>iii. However, Interim Orders of the Arbitral Tribunal under any provision of the Indian Arbitration and Conciliation Act, 1996, shall not be considered as an award eligible for settlement under this scheme.</i>	<i>65% of the net amount awarded/ upheld by the court or 65% of the claim amount lodged by the contractor under this scheme, whichever is lower.</i>
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Notes for both (a) and (b) as above

1. In case, the award directs 'X' to be paid to contractor and 'Y' to be paid to procuring entity by the contractor, then the net amount awarded shall be (X-Y) and the amount payable under this scheme will be 85% or 65%, as the case may be, of (X-Y).

2. In case no payment or only partial payment has been made as per the award within the stipulated time given in the award itself (time should be taken as 30 days in case there is no time stipulated in the award for making payments), simple interest at the rate of 9% per annum will be payable on 85%/ 65% of the net amount awarded, as the case may be, minus the amount already paid, if any, for time period beyond such stipulated period till date of acknowledgement email, as specified in Step 3 of para 14, by the procuring entity.

3. It is further clarified that such 9% interest will be paid only on the net amount payable under this scheme after deducting the payments already made.

4. Even if award mentions any rate of interest (may be below or above 9%) for payments made after the stipulated period for making such payments, still interest payable under this scheme shall only be 9% simple interest per annum.

Illustration 1:

Award	Rs. 1,00,000/- in favour of contractor plus interest as indicated below.

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Submission of claims and Time periods

14. Contractors should submit their claims through Government e-Marketplace (GeM), for which GeM will provide a dedicated link on their portal for implementation of this scheme. The link/ portal will provide functionality to contractors to register their claims through their authorized personnel. For non-GeM contracts of Ministry of Railways, contractors should register their claims on !REPS (www.ireps.gov.in). The information regarding contracts for which claim is to be lodged on !REPS will be provided on GeM as well as IREPS. The broad features of these portals are as under:

Step 1: The registered contractor shall list out the eligible disputes which it is willing to settle under this scheme, on the portal. The list of the procuring entities will be available through drop down menu on the portal. The details of the dispute should contain atleast the following: contract number, procuring entity/ contracting authority, paying authority, net award amount (as detailed in para 1 O(a) and 1 O(b)), claim amount with details thereof and the status of the dispute.

Step 2: GeM shall intimate (through dashboard) such details to the procuring entities to verify the dispute under this scheme. The procuring entity shall verify the claim details and update the same, if any. Each entry on the portal shall be dispute specific. There can be more than one dispute under same contract, which shall be claimed, under this scheme, separately.



Step 3: The procuring entities shall evaluate the settlement amount due, as per this scheme and offer it to contractor for acceptance normally within two weeks of receipt of claims on the portal. The contractor will be required to accept the offer within the prescribed time period. If the contractor accepts the offer Step 4 shall follow else Step 5 shall follow. Time available for contractor to respond to the offer shall be 30 (thirty) calendar days only (Calendar day ending at midnight). There shall be no option for any relaxation, including claims of GeM portal not working on last day, etc. However, the procuring entity shall have the authority to amend/ withdraw the offer, under this scheme, at any time before the acceptance by the contractor.

Immediately on acceptance of the settlement offer under the scheme, an acknowledgement through email, of the parties reaching such settlement, shall be automatically generated and sent to both the parties by the portal.

Step 4: The contractor will be given 45 days (or longer period if permitted by the procuring entity), from the date of the acknowledgement email as indicated in Step 3 above, to file application for withdrawal of the case before the court. However, only after the contractor uploads the document indicating that court has permitted to withdraw the case, if applicable, should the settlement agreement under this scheme be executed and the payments made by the procuring entities.

In case the procuring entity has to withdraw the case from court, the procuring entity shall also file an application for such withdrawal within 45 days. The settlement agreement shall be executed within 30 days of submission of application of withdrawal of case



from the court in such cases, without waiting for formal permission of the court regarding withdrawal of the case.

If the contractor agrees to the settlement under this scheme, a settlement agreement (a model agreement is at Annexure I which the procuring entities are free to appropriately modify, without changing core terms, based on their past experience, local needs etc.) may be digitally signed, preferably in pdf format, by both the parties. The settlement agreement shall have the same meaning and consequence as the settlement agreement consequent to successful conciliation as per The Arbitration and Conciliation Act, 1996. The settlement agreement shall be signed only by the parties without any need for attestation of any conciliator. Stamp duty for the settlement agreement, in all cases under this scheme, shall be paid by the contractor.

The settlement agreement shall clearly state that even though the dispute is finally settled, the settlement does not decide on any issue, either of law or of fact, under dispute. Further, it should be clearly stated and implied from the settlement agreement that as a process of settlement the parties shall withdraw all litigation pending related to this dispute, willingly, without duress and after fully understanding the consequences.

The Settlement Agreement shall contain a statement to the effect that each of the persons signing thereto (i) is fully authorized by the respective Party he/ she represents, (ii) has fully understood the contents of the settlement agreement, (iii) is signing on the settlement agreement out of complete free will and consent, without any pressure, undue influence, and (iv) the settlement agreement shall be final and binding on and



enforceable against the Party and the persons claiming under/ through him.

The procuring entity or the contractor, as the case may be, shall make payments within 30 days of the execution of the settlement agreement.

Step 5: If the contractor does not accept the offer: the ongoing litigation process may continue.

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18. In all cases where the claim amount is Rs. 500 crore or less, procuring entities will have to accept the claim, if the claim is in compliance with these guidelines."
(emphasis supplied)

11. It is pertinent to mention that Clause 18 of the said Scheme provides that where the claim is 500 crore or less, then the entity will have to accept the claim if the claim is covered as per the guidelines. In the present case, the claim is less than 500 crore, and therefore, the Respondents are bound to accept the claim if it is otherwise compliant with the guidelines.

12. Applying the Scheme to the facts of the present case it is seen that the claim arises out of a domestic arbitral award which has been passed in favour of the Petitioner. The amount under the Award is for a monetary value. The Petitioner has expressed his willingness to participate in the scheme by filing a claim and the Respondents which is Central Public Sector Enterprise wherein the Government of India, Ministry of Railways holds more than 50% shares is bound to accept the claim if the claim is otherwise in accordance with law.

13. The Respondents have filed written submissions stating that the award



is under challenge in the City Civil Court, Ahmedabad. The operation of the award is stayed and the matter has been partly heard and there exist pending insolvency proceedings against the Respondents. It is stated that the instant petition has been filed in a purely commercial matter which is not permissible.

14. The Respondent also places reliance on the Minutes of Meeting dated 08.12.2023 wherein it has been decided to review the claim of the Petitioner for rejection of the Petitioner and that since the matter is under active consideration, the writ petition ought not to be decided. It is also stated that the Respondents have conducted a meeting of the Board of Directors, and on 15.02.2024, the board of directors have decided to opt out of the Scheme.

15. The Petitioner filed its claim on 08.08.2023. The Scheme prescribes a time table within which a claim has to be considered. It is stated in the claim that the procuring entity i.e., Respondent will evaluate the settlement amount due as per the Scheme and offer it for acceptance to the contractor i.e., Petitioner within two weeks of the receipt of the claim and the contractor has to accept the offer within the time stipulated in the offer or within 30 days from the date of the offer. It is also stipulated that there is no option for any relaxation. The Respondent has not followed the procedure laid down under the Scheme.

16. The purpose of the Scheme is to reduce the number of litigation which the government undertakings engage in to increase further investments in various sectors. The Scheme has been issued with the object of settlement of claims and that is why Scheme prescribes that settlement will be made at a lesser amount. In this case, the Petitioner who was successful in the arbitration having an award in his favour has accepted 65% of the claim



amount and at a lesser rate of interest i.e., in the present case 9% instead of 12% as awarded.

17. When the Scheme was brought out, an option was given to any organization to opt out of the Scheme. Admittedly, the facts of the case, the decision of the Board of Directors which is much after the time period prescribed under the Scheme.

18. It is well settled that an instrumentality of the State is under an obligation to act fairly and act in accordance with the policies of the government. The Scheme was applicable to the Respondent and the Respondent having chosen to keep quiet and not opt out of the Scheme is duty bound to honour its claims under the Scheme. A decision taken after the time period prescribed under the Scheme cannot be made retrospectively applicable to the Petitioner also. The case of the Petitioner is primarily based on the doctrine of legitimate expectation which is found on the principles of fairness. The Petitioner has been led to believe that in order to cut down pending litigation, if a person who got an award is willing to accept lesser amounts, then instead of prolonging the litigation, the claims of such persons would be settled without awaiting the results of challenge to award. The Petitioner claims this amount on the assurance from the government which it legitimately believed would be acted on. The acts of the Respondents in not accepting the claim is, therefore, arbitrary and capricious and violative of Article 14 of the Constitution of India.

19. The reasons given by the Respondents in its written submissions cannot be accepted. The Scheme was floated in May, 2023. The judgment was reserved in the month of March, 2024. The claim of the Petitioner ought to have been settled much before that and should have in ordinary course



before the Petitioner actually came to courts.

20. In view of the above, this Court is inclined to accept the claim of the Petitioner and allow the writ petition.

21. The writ petition is allowed. The Respondents are directed to act in accordance with the scheme and give its offer to the Petitioner within two weeks and the Petitioner is directed to give its acceptance in accordance with the Scheme if they so desire. Pending application(s), if any, stand disposed of.

SUBRAMONIUM PRASAD, J

MAY 10, 2024

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