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

\+ OMP (ENF.) (COMM.) 246/2022

IDEB-SUCG JV, IDEB PROJECTS PVT. LTD..Decree Holder
Through: Mr. Vadlamani Seshagiri, Mr. Ankit Bhushan and Ms. Ananya Kukreti, Advs.

versus

DELHI METRO RAIL CORPORATION LTD .....Judgment Debtor
Through: Mr. Tarun Johri and Mr. Vishwajeet Tyagi, Advs.

CORAM:
HON'BLE MR. JUSTICE C. HARI SHANKAR

JUDGMENT (ORAL)
% **26.07.2024**

OMP (ENF.) (COMM.) 246/2022

1. This petition seeks enforcement of an arbitral award, the operative part of which reads as under:

> "**32.0 TRIBUNAL AWARD**
>
> 32.1 The Tribunal Awards a total amount of Rs. 5,51,95,198/- (Rupees Five Crores, Forty Nine Lacs, Thirty Three Thousand, Two hundred and Eight Only) to the Claimant against the various claims filed by them before the Tribunal.
>
> 32.2 The Tribunal Awards a total amount of Rs 2,62,93,252/- (Rupees Two Crores, Sixty Two Lacs, Ninety Three Thousand, Two hundred and Fifty Two Only) to the Respondent against the various Counter Claims filed by them before the Tribunal.
>
> 32.3 To settle the Tribunal Award in respect of Claims and Counter Claims filed before the Tribunal, the Respondent shall pay net amount of Rs 2,89,01,946/- (Rupees Two Crores, Eighty Six Lacs, Thirty Nine Thousand, Nine hundred and Fifty Six

Only) to the Claimant.

32.4 The Tribunal Award that the Respondent which had made a recovery of Rs 6,26,91,900/- (Rupees Six Crores, Twenty Six Lacs, Ninety One Thousand, Nine hundred Only) from another Contract No. BC-7 of the Claimant (M/s IDEB-SUCG JV) to recover the amount alleged for certain Items due to the Respondent against this Contract BC-34 should be reversed and payment of this recovered amount be arranged to the Claimant."

2. There is no dispute about the fact the respondent has paid, to the petitioner, an amount of ₹ 2,89,01,946/- after deducting TDS, and ₹ 6,26,91,900 /- along with interest.

3. Mr. Seshagiri, learned Counsel for the petitioner, has two submissions to make.

4. The first is that the respondent could not have deducted the amount ₹ 2,62,93,252/- awarded to the respondent against the counter claims preferred by it before the Arbitral Tribunal from the amount of ₹ 5,51,95,198/- awarded to the petitioner, as the respondent is in liquidation following initiation of proceedings under the Insolvency and Bankruptcy Code, 2016[1].

5. As such, Mr. Seshagiri would contend that the liability of the respondent to the petitioner, under paras 32.1, 32.2 and 32.3 of the arbitral award, would be of ₹ 5,51,95,198/- and not ₹ 2,89,01,946/-.

6. This argument, in my opinion, is not available to the petitioner, as the Arbitral Tribunal has itself, in the impugned award, set off the amount of ₹ 2,62,93,252/- against the amount of ₹ 5,51,95,198/- and has arrived at a difference of ₹ 2,89,01,946/-.

7. What Mr. Seshagiri would seek to contend is essentially that the adjustment of the awarded amount to the respondent against the counter claims preferred by it, from the amount awarded to the petitioner, is impermissible. That, however, would require the petitioner to challenge the award, which has not been done till date.

8. This submission is, therefore, rejected.

9. The second submission of Mr. Seshagiri is that the respondent could not have deducted TDS from the amount of ₹ 2,89,01,946/-.

10. On the last date of hearing, Mr. Seshagiri, learned Counsel for the decree holder submitted that he would be relying on judgment to support his contention that the TDS could not have been deducted by the respondent from the amount of ₹ 9,15,93,846/-, payable to the decree holder under the arbitral award.

11. Deduction of TDS by the respondent from the amount payable to the decree holder, has admittedly been effected in terms of Section 194C(1)[2] of the Income Tax Act, 1961.

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[1] "the IBC" hereinafter

[2] **194-C. Payments to contractors**. –

(1) Any person responsible for paying any sum to any resident (hereafter in this section referred to as the contractor) for carrying out any work (including supply of labour for carrying out any work) in pursuance of a contract between the contractor and a specified person shall, at the time of credit of such sum to the account of the contractor or at the time of payment thereof in cash or by issue of a cheque or draft or by any other mode, whichever is earlier, deduct an amount equal to—

(i) one per cent where the payment is being made or credit is being given to an individual or a Hindu undivided family;

(ii) two per cent where the payment is being made or credit is being given to a person other than an individual or a Hindu undivided family, of such sum as income tax on income comprised therein.

12. Plainly read, as the petitioner was working as a contractor for the respondent, and the money payable to the petitioner under the arbitral award were in the petitioner's capacity as such contractor, the deduction of TDS by the respondent from the petitioner would appear to be in sync with Section 194C(1) of the Income Tax Act, 1961.

13. The issue in controversy, however, stands settled by the judgment of the Supreme Court in ***All India Reporter Ltd v. Ramchandra D. Datar***[3], which has been followed by this Court in ***Voith Hydro Ltd v. NTPC Ltd***[4] and ***Glencore International AG v. Dalmia Cement (Bharat) Ltd***[5]. These decisions hold that an amount payable to a decree holder in terms of a decree constitutes a judgment debt and loses its original character, which it otherwise had under the Income Tax Act. In the absence of any provision which permits deduction of TDS from judgment debts, this Court has held, following the judgment of the Supreme Court, that no TDS can be deducted therefrom.

14. I may observe here that the Supreme Court, in ***All India Reporter***, clarified that it was not examining the aspect of chargeability of the said amount in the hands of the decree holder to tax under the Income Tax Act. The opening sentence of para 3 of ***All India Reporter***, reads thus:

> "We are not concerned to decide in this appeal whether in the hands of the respondent the amount due to him under the decree,

[3] **(1961) 41 ITR 446**
[4] **2021 SCC OnLine Del 1325**
[5] **2019 SCC OnLine Del 9634**

when paid, will be liable to tax; that question does not fall to be determined in this appeal."

15. I have, today, in ***Joginder Singh Nijjar v. Omaxe Ltd***[6], followed the aforesaid decisions and held that the amount awarded to the successful claimant in the arbitral proceedings has to be paid without deduction of any TDS thereon.

16. Following the said decision as well as the earlier precedents of this Court in ***Voith Hydro Ltd*** and ***Glencore International***, it is held that the respondent could not have deducted TDS from the amount of ₹ 9,15,93,846/- payable to the petitioner.

17. It is informed that TDS already stands paid by the petitioner to the Income Tax Authorities as well as the Competent Authority under the Building and Other Construction Workers' Welfare Cess Act, 1996.

18. Where the amount already stands credited to the account of the Income Tax Authorities by the judgment debtor, this Court, in ***Voith Hydro Ltd***, has permitted the decree holder to apply to the Income Tax Authorities for being paid the said amount.

19. Accordingly, it shall be open to the petitioner to apply to the Income Tax Authorities and the competent authority under the Authorities under the Building and Other Construction Workers' Welfare Cess Act, 1996 for being refunded the amount of ₹

[6] Order dated 26 July 2024 in **OMP (ENF.) (COMM.) 65/2021**

14,45,831/-.

20. On the application being made, the said authorities shall credit the TDS deposited by the respondent into the account of the petitioner.

21. This petition stands disposed of in the aforesaid terms.

C.HARI SHANKAR, J

JULY 26, 2024
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Click here to check corrigendum, if any