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

7.

+ **EX.P. 300/2014 & EX.APPL.(OS) 951/2015**

SJVN LTD

..... Decree Holder

versus

M/S JAIPRAKASH

HYUNDAI CONSORTIUM

..... Judgement Debtor

8.

+ **EX.P. 319/2015**

JAIPRAKASH HYUNDAI
CONSORTIUM (JHA)

..... Decree Holder

versus

SJVN LIMITED

..... Judgement Debtor

9.

+ **EX.P. 320/2015**

JAIPRAKASH HYUNDAI
CONSORTIUM (JHC) HOLDER

..... Decree Holder

versus

SJVN LIMITED

..... Judgement Debtor

10.

+ **EX.P. 325/2015, EX.APPL.(OS) 417/2016 & 418/2016**

JAIPRAKASH HYUNDAI
CONSORTIUM (JHC)

..... Decree Holder

versus

SJVN LIMITED

..... Judgement Debtor

11.

+ **OMP (ENF.) (COMM.) 20/2020**

JAIPRAKASH HYUNDAI



CONSORTIUM (JHC)

..... Decree Holder

versus

SJVN LIMITED

..... Judgement Debtor

12.

+ **OMP (ENF.) (COMM.) 3/2020**

SJVN LTD

..... Decree Holder

versus

JAIPRAKASH HYUNDAI
CONSORTIUM [JHC]

..... Judgement Debtor

13.

+ **OMP (ENF.) (COMM.) 4/2020**

SJVN LTD.

..... Decree Holder

versus

JAIPRAKASH HYUNDAI
CONSORTIUM [JHC]

..... Judgement Debtor

Appearance:

Mr. Lokesh Sawhney and Mr. Rohit Kumar, Advocates for JHC.

Mr. Uttam Dutt, Mr. Rajiv Singh, Mr. Sonakshi Singh, Mr. Kumar Bhaskar, Mr. Aman Sanjeev Sharma, Advocates for SJVNL.

CORAM:

HON'BLE MR. JUSTICE PRATEEK JALAN

ORDER

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07.03.2024

1. These seven petitions relate to execution of awards passed upon adjudication of disputes under the same contract dated 24.06.1993 between the parties with regard to civil work in the project of Satluj Jal



Vidyut Nigam Limited [“SJVNL”].

2. By an order dated 20.02.2024, the Court had considered the contention of the parties with regard to adjustment of the awarded amount, in terms of a letter dated 06.06.2015 from JHC to SJVNL, and observed as follows:

“8. I am of the view that partial reliance upon the aforesaid communication and the table is impermissible. If it is SJVNL’s contention, relying upon this table, that the amounts due to JHC were adjusted against the adhoc payments made and recoverable by SJVNL, the communication equally reflects that the awards in favour of SJVNL were also adjusted against payments due to JHC from it. SJVNL therefore has to take a clear position as to whether, according to it, all these six cases were adjusted in terms of this communication. If SJVNL does not wish to proceed on the basis of such adjustment, then all the six awards are required to be executed on their terms, and the parties have to be left free to make any claims against each other, dehors the purported adjustments.”

9. Mr. Sawhney states that either of these courses is acceptable to JHC. SJVNL is directed to take a decision and inform the Court on the next date of hearing. An affidavit may be filed by SJVNL by 23.02.2024.”

[Emphasis supplied.]

3. SJVNL has since filed an affidavit dated 23.02.2024. Mr. Uttam Dutt, learned counsel for SJVNL, upon instructions, persists in the submission that the three awards which were in favour of Jaiprakash Hyundai Consortium [“JHC”] stand adjusted against *ad-hoc* payments made and recoverable by SJVNL, but the awards in favour of SJVNL are not so adjusted.

4. I do not find this submission to be merited.

5. As noted in the order dated 20.02.2024, SJVNL’s contention regarding adjustment of the awards against it, are based upon a communication dated 06.06.2015 addressed by JHC to it. JHC, in the said



communication, took the position [in paragraph 10] that awards of each party against the other stood adjusted, and contested the necessity of filing execution proceedings. It placed a table [Annexure 5] alongwith the said communication, to show the adjustment, which is reproduced below:

Annexure-5

NATHPA JHAKRI HYDRO ELECTRIC PROJECT (1500 MW)

CONTRACT NO. 3 : CONSTRUCTION OF PRESSURE SHAFTS AND POWER HOUSE COMPLEX

Status of adjustment of payments, settled through claims, against Adhoc payments released by SJVNL to JHC

Sl. No.	Particulars	Date of Adhoc payment made by SJVNL	Amount of Adhoc payment	Cumulative Amount of Adhoc payment	Reference
1	2	3	4	6	7
A	Ad-hoc payment released by SJVNL against claim submitted by JHC				
1	1st Adhoc payment	03-01-1997	5,90,00,000	5,90,00,000	
	2nd Adhoc payment	30-03-1997	12,00,00,000	17,90,00,000	
	3rd Adhoc payment	22-06-1998	24,56,00,000	42,46,00,000	
	Adhoc Payment against EOT claim		13,86,00,000	56,32,00,000	
Sl. No.	Particulars	Date of Award	Principal amount as per Award admissible to JHC	Balance Adhoc Payment recoverable by SJVNL	Reference
B	Claims settled and accepted by the parties				
1	Improvement and upgradation of roads	26-06-1999	2,29,99,145	54,02,00,855	AGM(PH)-2/5-616 dt. 26.06.99
2	Recommendations of DRB for Dispute No. 3	17-09-2002	28,00,000	53,74,00,855	AGM(PH)-2/5-2127 dt. 06.11.02
3	Providing & fixing soil anchors 25 mm dia (Quantity has been reconciled & rates approved by EIC	21-10-2002	99,025	53,73,01,830	507/NJPC/Contracts(MCW)/25/2002-3019-24 dt. 21.10.2002



Sl. No.	Particulars	Date of Award	Principal amount as per Award admissible to JHC	Balance Adhoc Payment recoverable by SVNL	Reference
4	Providing & fixing hand rail with 40 mm dia M.S. Pipe (Quantity has been reconciled & rates approved by EIC)	21-10-2002	8,14,920	53,64,86,910	507/MJC/Contracts(MCW)/25/2002-3019-24 dt. 21.10.2002
5	Recommendations of DRB for Dispute No. 9	30-05-2003	5,75,955	53,59,10,955	AGM(PH)-6/1-1216 dt. 24.02.04
6	Expenses incurred on DRB meetings	04-03-2004	3,85,764	53,55,25,191	AGM(PH)-6/1-1287 dt. 14.04.04
7	Withheld from restoration Work Bill	14-05-2004	23,77,155	53,31,48,036	SM-CD-IV(PH)-6/1-1344 dt. 07.05.04
8	96th R.A. Bill	19-06-2004	3,18,87,022	50,12,61,014	SM-CD-IV(PH)-6/1-1373 dt. 19.05.04
9	A/C deposit against A/C BSI-5	19-07-2004	40,000	50,12,21,014	Sr Mgr(PH)-6/1-1418 dt. 19.07.04
10	Reimbursement of difference in Custom Duty paid to Custom Deptt. due to delay in issue of concessional Custom Duty Certificate for welding consumables.	09-02-2005	31,41,082	49,80,79,932	SVNL/EIC/PH)-6/6-477 dt. 07.02.05
11	Contract for improvement and strengthening of approach roads to MAT, T&T, BVH at Jhalol - Final Bill (Security)	07-05-2005	2,55,398	49,73,23,734	EIC-CD-IV(PH)-4/1-214 dt. 07.05.2005 SVNL/EIC/Contract No 3.0-4/1-139 dt.14.02.12
12	Arbitration award pertaining to Contract nos. PCD 194 titled M/s JEL Vs. SVNL	14-06-2005	5,67,309	49,72,56,425	NIHEP/2005/700-01 dt. 14.06.05 from Sr. Mgr Township division
13	Dispute No. 15 pertaining to refund to amount recovered in excess of tariff rate in electrical energy for residential colonies, offices and street lighting.	18-06-2005	12,33,760	49,60,22,665	As per DRB decision made on 18.06.2005

Sl. No.	Particulars	Date of Award	Principal amount as per Award admissible to JHC	Balance Adhoc Payment recoverable by SVNL	Reference
14	Reimbursement of additional expenses incurred in the import of steel liner pipes due to delay issue of concessional custom duty certificate.	22-11-2005	77,982	49,59,44,683	CDI CI (507/40)/PH/Contracts(MCW)-500-01 dt.25-11-2005
15	Dispute 21 : Additional lead for excavated material in underground works	21-01-2006		49,59,44,683	
16	Final R.A.Bill regarding improvement & strengthening of Road	20-01-2006	3,20,804	49,56,14,879	SM-(PH)-4/1-405 dt. 20.01.06
17	Reimbursement of 50% share of expenses incurred on DRB proceedings	03-09-2006	2,25,705	49,54,89,174	EIC-CD-IV(PH)-2/1-108 dt. 03.09.2006
18	Dispute No. 23 - Release of amount deducted towards the alleged saving of insurance premium and interest thereof	07-09-2007	21,09,961	48,00,21,131	As per DRB decision made on 07.09.2007
19	Dispute No. 26 - Release of amount deducted from RA Bill No. 95 towards alleged saving of insurance premium and interest thereof	07-09-2007	2,31,75,115	48,50,02,612	As per DRB decision made on 07.09.2007
20	Reimbursement of Water Cost paid to HWSOS upto Sept-03	09-03-2007	25,791	48,50,22,131	DCM(PH)-1275-840 dt. 09.03.2007
21	Reimbursement of 50% share of expenses incurred on DRB proceedings	12-04-2007	1,39,710	48,48,81,000	EIC-CD-IV(PH)-2/1-1616 dt. 12.04.2007
22	Reimbursement of 50% share of expenses incurred on DRB proceedings	05-06-2007	54,553	48,45,06,541	EIC-CD-IV(PH)-2/1-1616 dt. 06.06.2007
23	Reimbursement of Water Cost paid to HWSOS under Clause 70(c) of SCL.	17-08-2007	9,001	48,45,55,630	EIC-CD-IV(PH)-2/1-1616 dt. 17.08.2007
24	Reimbursement of 50% share of expenses incurred on DRB proceedings	29-11-2007	30,303	48,45,16,987	EIC-CD-IV(PH)-2/1-1616 dt. 29.11.2007



Sl. No.	Particulars	Date of Award	Principal amount as per Award admissible to JHC	Balance Adhoc Payment recoverable by SJVNL	Reference
25	Dispute No. 32 pertaining to refund of amount retained, towards steel scrap.	27-12-2007	36,055	45,44,80,918	SJVNL/EIC/Contract No 3/D-32/12-138 dt. 09.02.2012
26	Dispute No. 32A pertaining to refund of amount retained, towards steel scrap.	27-12-2007	32,29,541	46,12,51,377	EIC/CONTRACT No3.0/2008-192 dt. 06.07.2009
28	Dispute No. 31 pertaining to refund of amount of recovery of alleged arrears of energy.	18-12-2008	1,66,727	46,10,84,650	EIC/CONTRACT No3.0/2009-195 dt. 06.07.2009
29	Adhoc Payment adjusted by SJVNL against EOY Claim	31-03-2009	13,86,00,000	32,14,84,650	
30	Adhoc Payment adjusted by SJVNL against Productivity Loss claim	31-03-2009	28,44,00,000	3,80,84,650	
31	Dispute-24	06-08-2009	8,25,98,074	-4,45,13,424	SJVNL/EIC/Contract No 3/D-24/12-224 dt. 14.08.2012
27	Dispute No. 34 - Custom Duty	12-08-2009	-1,61,73,954	-2,83,39,470	EIC/Contract No3/2009-280 dt. 24.10.2009 and DAB recommendation dt. 20.09.2008
32	Dispute-22 Claim of account of damages due to unprecedented flood on 01.8.2000	17-04-2010	-2,63,90,357	-19,49,113	SJVNL/EIC/Contract No 3(PH)/D-34/11-36 dt. 19.04.2011
33	Final Bill	01-09-2010	1,49,87,570	-1,59,36,683	AGM/EIC-Contract No 3/2010-6/1-151 dt. 28.09.2010
34	Payment against pending court cases		23,89,48,000	-35,58,84,683	Refer Annexure-7
35	Dispute 35 - Pertaining to payment made for excavation and backfill concreting of Invert beyond payline in underground works.	02-08-2011	-3,87,47,871	-31,71,36,812	SJVNL/EIC/Contract No 3/D-35/12-196-200 dt. 29.05.2012
	Total Amount Payable to JHC (+)/SJVNL(-)			31,71,36,812	

6. Section A of the table deals with *adhoc* payments released by SJVNL against claims by JHC. The total amount of such payments is Rs.56.32 crores. There is no dispute about this. The adjustment of this amount, and other claims settled and accepted by the parties, are contained in Section B of the table. Six out of seven claims, which are the subject matters of these execution proceedings [excluding claim No.14 in OMP (ENF.) (COMM.) 21/2020] are reflected in this table, details whereof are as follows:

Case No.	Dispute No.	Serial Number in above table
EX.P. 300/2014	35	35
O.M.P.(ENF)(COMM) 3/2020	34	27
O.M.P. (ENF)(COMM) 4/2020	22	32



EX.P. 319/2015	3	2
EX.P. 320/2015	32A	26
EX.P. 325/2015	25,26	18,19

7. The letter dated 06.06.2015 ultimately records that a sum of Rs. 31,71,36,812/- was payable by SJVNL to JHS as on that date. Mr. Dutt submits, that even as on that date, Serial No. 34 of the table reflects a claim asserted by JHC of Rs. 33,89,48,000/-, on account of payment against pending court cases. Mr. Dutt submits that these claims, against cases which remain pending in court, were never adjusted, and in fact it is the case of SJVNL that none of the awards in favour of SJVNL, were adjusted against any dues to JHC. He submits that subsequent correspondence between the parties would show that adjustments reflected in JHC's communication dated 06.06.2015, were not accepted by SJVNL.

8. If that is the position, the contention of SJVNL now is that the awards which were against it, were adjusted against the *ad hoc* payments of Rs. 56.32 crores, but the awards which were in its favour were not adjusted against the amounts due to JHC. This is not the position reflected by JHC's communication dated 06.06.2015, and I have not been shown any other evidence with regard to adjustment of the awards in favour of JHC. I am of the view that this partial reliance upon JHC's communication dated 06.06.2015 is impermissible. The clear position taken in the communication of JHC is that all the awards stood adjusted and the execution proceedings filed by SJVNL were unnecessary. This position has been controverted by SJVNL. At the very least, the position which emerges is that the parties did not achieve consensus *ad-idem* as to



the mutual adjustments.

9. In this view of the matter, I am of the view that the awards under execution, are required to be executed *dehors* the purported adjustments, leaving it open to the parties to make any surviving claims against each other. As none of the awards are being adjusted against any other dues from the parties to each other, all seven awards can be executed by setting them off against each other.

10. At this stage, with regard to EX.P. 319/2015, Mr. Dutt submits that the execution proceedings are barred by limitation as the order of the Dispute Resolution Board, which is sought to be enforced, was made on 09.08.2002, whereas enforcement petition was filed on 15.07.2015, well after the limitation period of 12 years. Mr. Sawhney states that the said petition may be segregated and kept for hearing separately, along with two other petitions between the parties [OMP (ENF.) (COMM.) 199/2021 and OMP (ENF.) (COMM.) 201/2021], in which SJVNL has raised the same issue.

11. Mr. Lovkesh Sawhney, learned counsel for the JHC, has handed over a table which computes the seven awards with interest until 07.03.2024. We exclude from consideration the award in EX.P. 319/2015, which has been segregated above. Total of the three awards in favour of SJVNL has been computed at Rs. 24,75,35,452/- and the total of the awards in favour of JHC has been computed as Rs. 24,46,25,622/-. The net of these sums is an amount of Rs. 29,09,830/-, due from JHC to SJVNL. Upon payment of this sum, six enforcement proceedings would stand satisfied. Mr. Sawhney states that the said amount will be tendered to SJVNL by 12.03.2024, by way of a demand draft.



12. EX.P. 300/2014, EX.P. 320/2015, EX.P. 325/2015, OMP(ENF.)(COMM) 3/2020, OMP(ENF.)(COMM) 4/2020 & OMP(ENF.)(COMM) 20/2020, alongwith all pending applications therein, are disposed of in these terms.

13. List EX.P. 319/2015 alongwith OMP (ENF.) (COMM.) 199/2021 & OMP (ENF.) (COMM.) 201/2021, on 11.07.2024.

PRATEEK JALAN, J

MARCH 7, 2024 SS/