



2025:DHC:2801-DB



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IN THE HIGH COURT OF DELHI AT NEW DELHI

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LPA 253/2025 & CM APPL. 22252/2025

ROADWINGS INTERNATIONAL PRIVATE LIMITED

.....Appellant

Through: Mr. P. Chidambaram, Sr. Adv. with
Mr. Abhishek Swarup and Mr.
Chetan Sharma, Advs.

versus

**CONTAINER CORPORATION OF INDIA LTD. THROUGH ITS
CHAIRMAN AND MANAGING DIRECTOR & ORS**

.....Respondents

Through: Mr. Tushar Mehta, Solicitor General
with Mr. Sanjay Jain, Sr. Adv. with
Ms. Lalit Mohini Bhat, Ms. Hetu
Arora Sethi, Mr. R. K. Joshi, Ms.
Saumya Tandon, Mr. Sidharth
Agarwal, Mr. O. Joshi, Advs. for
respondents
Mr. Vasuchit Anand, GP with Mr.
Vineet Dhadha, Adv.

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Date of Decision: 17.04.2025

CORAM:

HON'BLE THE CHIEF JUSTICE

HON'BLE MR. JUSTICE TUSHAR RAO GEDELA

J U D G E M E N T

TUSHAR RAO GEDELA, J: (ORAL)

1. Present Letters Patent Appeal has been preferred against the order dated 24.02.2025 passed by the learned Single Judge in W.P.(C) 1136/2025 titled "*Roadwings International Private Limited vs. Container Corporation of India Ltd. Thr its Chairman and Managing Director & Ors.*", whereby

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the learned Single Judge has dismissed the writ petition filed by the appellant on the ground that any challenge to the terms of the settlement agreement must be within the framework and confines of section 73(2) and section 74 of the Arbitration and Conciliation Act, 1996.

2. The appellant's case is that respondent no. 1 is liable to pay additional amounts under clause 10(b) of the Vivad Se Vishwas-II (Contractual Dispute) Scheme (hereinafter referred to as "*the Scheme*") pursuant to a settlement agreement dated 03.07.2024. This agreement was executed following an Arbitral Award dated 01.06.2022 passed in the appellant's favour, arising out of a contract dated 18.03.2010 between the parties.

3. Since the award was under challenge by respondent no.1 under Section 34 of the Arbitration and Conciliation Act, 1996, (hereinafter referred to as "*the Act*") and the execution was pending adjudication, the appellant submitted a settlement claim of Rs.67,24,23,278.80/- under the Scheme on 31.08.2023 *via* the Indian Railways E-Procurement System. In response, respondent no.1 offered a settlement amount of Rs.38,48,42,291.85/- on 06.05.2024.

4. The appellant alleges that despite seeking clarification on the calculation of the offered amount, respondent no.1 failed to respond. Consequently, the appellant filed W.P.(C) 7105/2024 on 14.05.2024 seeking revision of the offered amount. However, since the parties were engaged in pursuing an inter-se settlement, the appellant withdrew the petition, which was disposed of by this Court *vide* the order dated 14.06.2024 observing that the matter stood amicably resolved under the Scheme.



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5. A settlement agreement was thereafter signed on 03.07.2024, which the appellant claims was accepted under duress and was not in accordance with the Scheme. It is further stated that the amount offered was accepted under protest, as reflected in protest letters dated 12.11.2024 and 21.12.2024. Since the respondent no.1 did not respond to the grievances of the appellant, the appellant filed the underlying writ petition seeking payment of the difference of the amount payable under the Scheme and the actual amount paid. But the learned Single Judge *vide* order dated 24.02.2025, dismissed the writ petition on the ground that any challenge to the terms of the settlement agreement must be within the framework and confines of section 73(2) and section 74 of the Act. Aggrieved by the same, the appellant filed the present appeal.

6. Mr P Chidambaram, learned senior counsel appears for the appellant and at the outset submits that the primary challenge in the present appeal is with respect to the fundamental issue regarding how the respondent no.1 flouted and violated clause 10(b) of the Scheme and that this flaw has, *ipso facto*, rendered the Settlement Agreement void *ab initio*, resulting in subsequent proceedings liable for being declared *non est* in law.

7. Learned senior counsel emphasised that the learned Single Judge has proceeded on the basis that the Settlement Agreement is a legally valid document. According to him, this view is erroneous, inasmuch as the Scheme itself provided that if the Settlement Agreement is entered into by the interested parties, that too, post an arbitral award, the compensation/settlement amount would be 65% of net amount awarded/upheld by the tribunal or 65% of the claim amount lodged by the contractor under this Scheme, whichever is lower. He states that contrary to its own mandatory covenant, the respondent no.1 has offered



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Rs.38,48,42,291.85/- instead of Rs.67,24,23,278.80/-, as correctly calculated by the appellant. He laid much emphasis on the fact that the Scheme itself was conspicuous by the absence of any clause or condition which would permit the respondent no.1 to offer any amount not borne out of the stipulations mentioned in clause 10(d) of the scheme. In other words, learned senior counsel stoutly contends that as per the provisions and framework of the Scheme, there is no room for any of the parties to manoeuvre or negotiate the percentage of the compensation to be paid. The percentage was fixed and could not be changed or varied at the behest of any of the parties. That having been done, the Settlement Agreement is extraneous to the terms of the Scheme and thus falls foul of the mandate rendering the agreement itself void *ab initio* and *non est* in law.

8. Learned senior counsel fairly admits that the appellant did accept the offer of the respondent no.1, but under protest, which was registered as early as the day of offer, i.e., 06.05.2024. He emphasised that *vide* representation dated 06.05.2024, the appellant raised doubts about the amount offered by the respondent no.1. Subsequent thereto, the appellant had also sent two protest letters dated 12.11.2024 and 21.12.2024 seeking clarification as to the basis on which the calculations have been made to arrive at the figure of Rs.38,48,42,291.85/-, though this was after the execution of the settlement agreement and acceptance of the settlement amount. However, the respondent no.1 never responded at all till date. In such a situation, the appellant had no way of ascertaining whether the offer is in terms of the Scheme or on the lower side. Thus, the appellant was compelled to accept the lower offer under protest and as a fallout, the underlying writ petition was filed to vindicate its rights.

9. Learned senior counsel draws attention of this Court to clauses 14



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and 18 of the Scheme in support of the aforesaid contentions. He also emphasises on a number of judgements for the proposition that where law prescribes a thing to be done in a particular manner following a particular procedure, it shall be done in the same manner following the provision of law. According to him, the impugned judgement, though notes the judgements, yet does not deal with it. Clause 10(d) of the Scheme specifically prescribed and mandated payment of 65% of the claim amount awarded by the arbitral tribunal and thus, no deviation was permissible at all. That having been violated, the settlement agreement is void and cannot preclude the appellant from seeking the remaining balance out of the 65%.

10. Mr Chidambaram, invites our attention to the judgement dated 10.05.2024 passed by the learned Single Judge of this Court in ***Roadwings International Private Limited vs. Container Corporation of India Limited & Ors.; 2024:DHC:3917***, preferred by the appellant herein seeking a direction to the respondents to settle its claim in accordance with the Scheme. In particular, he emphasises that para 18, 19 and 21 are of relevance to the present *lis*. According to learned senior counsel, once there is a direction to the respondent to act in accordance with the Scheme and give its offer, it is obvious that the offer has to be “*in accordance with*” provisions of the Scheme and not *de hors* the Scheme. He forcefully urges that the Settlement Agreement not having been executed in terms of the order dated 10.05.2024 and contrary to clause 10(d) of the Scheme, it would be invalid, void *ab initio* and *non est* in law. The paragraphs 18 and 19 of the judgement ***Roadwings International Private Limited (supra)*** is extracted hereunder:-

“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.”

11. *Per contra*, Mr. Tushar Mehta, learned Solicitor General for India (hereinafter referred to as “SG”) stoutly refutes the submissions of the appellant and supports the reasoning in the impugned judgement. According to Mr. Mehta, the aforesaid argument of the appellant is contrary to the conduct of the appellant, which is manifestly borne out from the records of the case as also the correspondence exchanged between the parties. At the first instance learned SG invites attention to order dated 01.06.2024 passed by this Court in LPA No.482/2024 filed by the respondent no.1 against the order dated 10.05.2024 passed by the learned single Judge in W.P.(C) 13824/2023. He states that it was at the instance of the counsel for the appellant herein that the appeal was disposed of as



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infructuous on the statement that the counter offer given by the respondent no.1 herein has been accepted by the appellant. There was no whisper about acceptance of the counter offer under protest.

12. That apart, Mr. Mehta, learned SG also refers to the email dated 19.07.2024 sent by the appellant to indicate its willingness to sign and execute the Settlement Agreement. He also refers to the application filed by the appellant in Company Appeal AT(INS) 887/2023 seeking withdrawal of the appeal pending before the NCLAT premised on the settlement arrived at between the parties. He lays great emphasis on the fact that there is not even a single averment regarding acceptance under protest. According to him, a party cannot be permitted to address submissions contrary to the record and undeniable facts.

13. Learned SG then referred to para 11 of the impugned judgement where the submissions on behalf of the respondent no.1 have been recorded by the learned single Judge. He copiously referred to other relevant paragraphs, extracted portions of the affidavit dated 24.06.2024 and the extract of the averments of CM.APPL.35394/2024 in W.P.(C) 7105/2024, wherein the appellant has unequivocally admitted to the acceptance of the Settlement Agreement, without a demur. That apart, Mr. Mehta also emphasises that under the Scheme, once an offer is accepted and the Settlement Agreement arrived at is signed, executed and consequently acted upon, no party can be permitted to challenge the same. Moreover, he states that learned Single Judge has also noted the interplay of provisions of the Act which the appellant has been unable to satisfactorily explain before this Court. As a last leg in the argument, he states that the appellant has approached this Court without explaining the delay of 5 to 6 months and the appeal itself appears to be motivated. In these circumstances, learned



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SG prays that the present appeal be dismissed with exemplary costs.

14. From the submissions of the learned senior counsel for the parties and after perusing the records, the issue that needs consideration by this Court is whether a party which has participated in the Scheme, applied for settlement in terms thereof, accepted the offer and in furtherance whereof, withdrew pending litigations; signed and executed the Settlement Agreement and finally accepted the compensation thereunder, can now be permitted to resile or question the legality and validity of the said Settlement Agreement premised on violation of the conditions of the Scheme. The answer would be an emphatic no for the following reasons.

15. The Vivaad se Vishwas II Scheme appears to have been floated to end pending litigations quickly and for ease of doing business with entities with whom litigations may have arisen. The Scheme as floated provides for entities like the appellant to take advantage of settlement of disputes and claims arising therein in accordance with the terms thereof. The applicants can voluntarily submit their claims in terms of the Scheme and after processing the same, the respondent no.1 gives an offer which the applicant may accept. Once accepted, the parties sign and execute the Settlement Agreement. Consequent whereunto, the payment in terms of the Scheme is made to the applicant by the respondent no.1. In the entire Scheme, there is no provision for an applicant to resile from the terms of the agreement, that too after accepting the claim amount/compensation as offered. In fact the Scheme provides that the Settlement Agreement shall have the same status and effect as if it is an arbitral award on agreed terms upon the substance of the dispute in accordance with Section 74 of the Act and shall be capable of execution as such. In other words, if any person is aggrieved with the Settlement Agreement in any manner, appropriate recourse for legal



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remedy has been provided for in the Scheme itself. The procedure to challenge the validity of the said agreement has been clearly stipulated.

16. We have also perused the records of the appeal and find that, contrary to the submissions made, apart from doubts about the calculations communicated by the appellant on 06.05.2024, no protest muchless any protest regarding the veracity or correctness of the amount offered and settled emanates from any contemporaneous document. Infact, the protest letters were sent after a delay of 4 months on 12.11.2024 and 21.12.2024 whereas the Settlement Agreement was signed and executed on 03.07.2024 and the claim/compensation amount was tendered by respondent no.1 on 30.07.2024. No document worth its name has at all been placed on record to show any protest and the appellant appears to have accepted the final amount as per the Settlement Agreement without a demur. In our considered view, the submission of the appellant agreeing to the amount specified in the offer and execution of the Settlement Agreement under “pressure” and registration of a “protest” is a bogey raised as an afterthought and is unmerited.

17. Learned senior counsel for the appellant laid great emphasis on the contention that if in law a particular thing is to be done in a particular manner, it has to be done in that manner alone by following the procedure prescribed by that law alone and in no other manner. Learned senior counsel wanted us believe that the offer not being in accordance with the procedure and framework prescribed in the Scheme, the subsequent execution of the Settlement Agreement coupled with acceptance of the claim amount by the appellant, would not, disentitle it from challenging the said agreement as void *ab initio* and *non est* in law.



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18. The argument appears to be attractive at the first blush, however, on a closer scrutiny, it is found unmerited. Apart from oral submissions nothing has been placed on record to demonstrate that the appellant had lodged its strong protest and was under any kind of pressure or duress. It has to be borne in mind that the representation dated 06.05.2024 heavily relied upon by the learned senior counsel only raised doubts about the calculations involved in arriving at the figure offered by the respondent no.1. Other than that there is no subsequent document to demonstrate as to what transpired or what steps were taken by the appellant to alleviate its grievance. Even its conduct of signing the Settlement Agreement on 03.07.2024 followed by acceptance of the claim/compensation deposited on 30.07.2024 by the respondent no.1 without any protest or demur, does not inspire any confidence *qua* such submission. That apart, there is nothing on record to establish, even *prima facie*, what steps were taken or remedies availed of by the appellant, subsequent to the acceptance of the settled amount. No doubt, the appellant had filed W.P.(C) 7105/2024 before this Court on 14.05.2024 seeking a revision of the offered settlement amount in terms of the VSV-II Scheme on the basis that respondent no.1 had not responded to the representation dated 06.05.2024, yet, the said writ petition was withdrawn on 14.06.2024 by the appellant itself by filing applications averring that the matter has been amicably settled in Vivaad se Vishwas II Scheme. In view thereof, the writ petition was disposed of. In such circumstances, it is well nigh impossible to accede to the submissions of the appellant as the same are unmerited and untenable.

19. It would be relevant and of great significance to note that Step 4 of clause 14 ensures that once a settlement is reached and the agreement is signed, both parties are obligated to withdraw any ongoing legal



proceedings related to the dispute. It reads thus:

“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.”

From the aforesaid, it is clear that the agreement is executed willingly between the appellant and the respondent no.1 with full understanding of its implications, thereby precluding any future claims or challenges before any Court of law regarding the settled matter.

20. We find from a perusal of the impugned judgement that the learned single Judge has examined the issue threadbare and has exhaustively extracted relevant portions of the Scheme etc as also rightly appreciated the impact of sections 73(2) and 74 of the Act. In fact, liberty also has been granted to the appellant to avail of the remedies available under the aforesaid sections, which we too concur, with a caveat if such remedy is still available. We do not find any reason to interfere with the well reasoned judgement passed by the learned Single Judge.

21. In view of the above analysis, we find the appeal unmerited and dismiss the same alongwith pending applications, though without any order as to costs.

TUSHAR RAO GEDELA, J

DEVENDRA KUMAR UPADHYAYA, CJ

APRIL 17, 2025/rl