



2025:DHC:1180



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* IN THE HIGH COURT OF DELHI AT NEW DELHI

% Judgment pronounced on : 24.02.2025+ W.P.(C) 1136/2025 and CM APPL.5598/2025

ROADWINGS INTERNATIONAL PRIVATE LIMITED

.....Petitioner

Through: Mr. P. Chidambaram, Sr. Adv., Mr.
Abhishek Swarup, Ms. Samriddhy
Jindal 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
(through VC), Mr. Sanjay Jain, Sr.
Adv., Mr. Lalit Mohini Bhat, Ms.
Hetu Arora Sethi, Mr. R.K. Joshi, Ms.
Soumya Tandon, Mr. Siddharth
Aggarwal, Mr. Nirmal Prasad, Mr.
Anirdh Bhat and Mr. Ojusya Joshi,
Advs. for R-1.
Mr. Vineet Dhanda, CGSC, Mr.
Haridas Medha and Ms. Shweta
Shandilya, Advs. for R-2 and 3.

CORAM:
HON'BLE MR. JUSTICE SACHIN DATTA

JUDGMENT

1. The present petition seeks issuance of a writ in the nature of mandamus to direct the respondent no.1 to pay certain additional amount/s pursuant to a settlement agreement in accordance with clause 10(b) of the Vivad Se Vishwas-II (Contractual Dispute) Scheme (hereinafter referred as



‘VSV-II Scheme’).

2. The said settlement agreement dated 03.07.2024 has been executed between the petitioner and respondent no.1 in the background of an Arbitral Award dated 01.06.2022, passed by a three-member Arbitral Tribunal in favour of the petitioner while adjudicating a dispute arising out of Contract No. CONT/T/RST/2009 dated 18.03.2010 entered between aforesaid parties.

The operative portion of the Award reads as under:

“1. The claimant is entitled to recover from the respondents a total amount of Rs.58,53,60,449/- (Rupees Fifty-Eight Crores Fifty-Three Lakhs Sixty Thousand Four Hundred and Forty-Nine only) towards its claims.

2. The claimant is also entitled to recover from the respondents the interest of Rs. 22,38,95,232/- (Rupees Twenty-Two Crores Thirty-Eight Lakhs Ninety-Five Thousand Two Hundred and Thirty-Two only) at the simple rate of 10% per annum on the principal amount (excluding the amount allowed in Claim No. 2) amounting to Rs. 53,97,73,844/- (Rupees Fifty-Three Crores Ninety-Seven Lakhs Seventy-Three Thousand Eight Hundred and Forty-Four only) from the date of submission of claim petition i.e. 08.04.2018 till the date of the present award i.e. 31.05.2022.

3. The Claimant is entitled to recover their share of cost from the respondents i.e. 50% of the total cost of arbitration and administrative expenses of SCOPE already incurred by the claimant amounting to Rs. 32,17,500/- (Rupees Thirty-Two Lakhs Seventeen Thousand and Five Hundred Only).

4. The claimant is entitled to recover from the respondents Rs.12,00,000/- (Rupees Twelve Lakhs only) as cost towards legal fees and expenses.

5. The claimant is entitled to recover from the respondents the post award interest at the simple rate of 10% per annum on the aforesaid awarded amounts of Rs 81,36,73,181/- (Rupees Eighty One Crores Thirty Six Lakhs Seventy Three Thousand One Hundred and Eighty One only) along with applicable tax from the date of award i.e. 01.06.2022 until the realization thereof, in case the same is not paid to the Claimant in 45 days' time from the date of this Award, i.e., 01.06.2022.....”

3. Since the Arbitral Award was challenged by the respondent no. 1 under Section 34 of the Arbitration and Conciliation Act, 1996 (hereinafter



referred as '*the A&C Act*') and the execution of the said Award was pending adjudication, the petitioner, for one time settlement of the disputes between the parties, submitted a claim of Rs. 67,24,23,278.80/- (hereinafter '*claimed amount*') under the VSV-II Scheme on 31.08.2023 through the Indian Railways E-Procurement System. On 06.05.2024, the respondent no.1, in response to the aforesaid claim, offered a settlement amount of Rs. 38,48,42,291.85/- (hereinafter '*offered settlement amount*') to the petitioner.

4. Upon receipt of the offered settlement amount, the petitioner *vide* letter dated 06.05.2024, sent a representation to respondent no.1, requesting to provide the petitioner with the calculations arriving for the offered settlement amount, as well as to reconsider the offered settlement amount on the premise that the computation of the said amount was not in conformity with the VSV-II Scheme. The respondent no.1, however, failed to respond to the aforesaid representation.

5. Consequently, seeking a revision of the offered settlement amount in terms of the VSV-II Scheme, WP(C) 7105/2024 dated 14.05.2024 came to be filed before this Court by the petitioner seeking the following reliefs:

“a. Issue a writ of mandamus or any appropriate writ directing Respondent No. 1 to offer correct amount i.e. Rs.73,25,75,936/- to the Petitioner under the 'Vivad Se Vishwas-II (Contractual Disputes Scheme) issued by the Respondent No.2, taking into account the correct Awarded amount of Rs.81,36,73,181/-, applicable taxes and interest of 9% over and above the net amount payable under the scheme.

b. Issue a writ of mandamus or any appropriate writ directing Respondent No. 2 to ensure that correct Settlement Offer is given by the Respondent No.1 to the Petitioner by revising the same 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 ensure that correct Settlement Offer is given by the



Respondent No.1 to the Petitioner by revising the same and take necessary steps/actions in order to facilitate settlement of the Petitioner's Claim in accordance with the provisions of the Scheme;

d. A fresh period of 30 days be given to the Petitioner accept/reject the Settlement Offer as and when a revised Settlement Offer is given by the Respondent No. 1 whether or not in compliance of this Hon'ble Court's order;

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

6. However, since the parties were pro-actively engaged in pursuing an inter-se settlement, the petitioner filed CM APPL. 35394/2024 and EX. A. APPL. (OS) 954/2024 for withdrawal of WP(C) 7105/2024 and OMP(ENF.) (COMM.) 193/2022 respectively. This Court *vide* order dated 14.06.2024 allowed the aforesaid applications by observing that the matter has been amicably resolved under the VSV-II Scheme. The relevant portion of the said order reads as under :-

"1. The above two applications have been filed on behalf of the petitioner seeking withdrawal of their petitions on the ground that the matter has been amicably settled in "Vivad se VishwasTak-II" Scheme.

2. Learned counsel for the respondent submits that he has no objection to the withdrawal of the petitions.

3. In view of the submissions made, the above two petitions are permitted to be withdrawn.

4. The next date of 05.08.2024 before the Roster Bench stands cancelled."

7. Subsequently, a settlement agreement dated 03.07.2024 was executed between the parties under the VSV-II Scheme. The settlement arrived between the parties, *inter alia*, reads as under:

"1. It is agreed between the parties to this Settlement Agreement that



PROCURING ENTITY shall pay Rs. 38,04,84,291.85 (Rupees Thirty-Eight Crores Four Lakhs Eighty-Four Thousand Two Hundred and Ninety-One and Eighty-Five Paise Only) inclusive of taxes, if any, to the CONTRACTOR as per full and final settlement of all the disputes (past, present and future) mentioned in Para A(i) arising out of the abovementioned contract.

Thus, a total amount of Rs. 38,04,84,291.85 (Rupees Thirty-Eight Crores Four Lakhs Eighty-Four Thousand Two Hundred and Ninety-One and Eighty-Five Paise Only) will be payable by PROCURING ENTITY to the Contractor within one month from the date of execution of this Settlement Agreement by the Parties towards full and final settlement of the claims (past, present and future) and disputes set out herein above in reference to the said contract.

2. That both parties hereby agree that all differences arisen out of the said disputes mentioned herein above now stand resolved and fully settled on the payment of the sum stipulated in para no. 1 above, and no dispute of any nature (past, present and future) whatsoever shall survive. Accordingly, subject to aforesaid both PROCURING ENTITY and CONTRACTOR agree that they shall neither raise any dispute nor they shall initiate any proceedings, legal or otherwise against each other with reference to the aforesaid dispute and Contract No. CON/T/RST/2009.

3. That this Settlement Agreement shall continue perpetually and shall be binding upon the parties, their successors and assignees.

4. The Settlement Agreement constitutes the entire agreement and supersedes all prior understandings and writings between PROCURING ENTITY and CONTRACTOR hereto concerning the disputes and/or subject matter of this Settlement Agreement.

5. PROCURING ENTITY and CONTRACTOR hereby agree that this Settlement Agreement under Section-73(2) of the Arbitration and Conciliation Act, 1996 shall have same status and effect as that of an Arbitral Award on agreed terms upon the substance of the dispute in accordance with Section 74 of the Arbitration and Conciliation Act, 1996 and shall be capable of execution as such.

6. PROCURING ENTITY and CONTRACTOR hereby agree and undertake that in terms of Section 75 of the Arbitration and Conciliation Act, 1996, they shall keep confidential all matters relating to the conciliation proceedings. They also agree that the confidentiality shall extend also to the Settlement Agreement, except where its disclosures is necessary for purposes of implementation and enforcement.



7. The two identical counterparts of the Settlement Agreement are hereby executed by and between PROCURING ENTITY and CONTRACTOR through their authorized signatories and with understanding that each shall be deemed original for all purposes.

8. The parties agree and understand that even though the dispute is finally settled the Settlement Agreement does not decide on any issue, either of law or of fact, under dispute and does not amount to admission of liability/ guilt on part of either of the parties. This is a Settlement Agreement under the one-time dispute settlement scheme of the Government of India, without consideration of the factual or legal issues at stake.

9. The parties agree and understand that as a process of settlement of the disputes, parties shall withdraw all litigation /arbitral proceedings/conciliation proceedings pending on the matters, willingly, without duress and after fully understanding the consequences.

10. Each of the persons signing this Settlement Agreement is fully authorized to do so, has fully understood the contents of the same and is signing on the same out of complete free and consent, without any pressure and undue influence.”

8. It is averred in the petition that the petitioner accepted the settlement agreement under ‘immense pressure exerted by the respondents’. The said averments are reproduced hereunder:-

“24. That since the time limit to accept the settlement offer was only 30 days which were expiring on 05.06.2024, the Petitioner, under immense pressure exerted by the Respondent No. 1, accepted the settlement offer on 29th day i.e. 04.06.2024 as the time to accept the offer is only 30 days and not beyond that. The Respondent No.1 threatened the Petitioner that either you accept the offer after getting the writ petition withdrawn, otherwise being government organization they will contest the entire claim which may take several years. Further, they assured that if there is some discrepancy in the calculation of the settlement amount, it will be taken care of and will be revised in accordance with the Scheme.

25. That in the circumstances, on Petitioner’s request, the Hon’ble High Court vide its order dated 14.06.2024 permitted the Petitioner to withdraw W.P. (C) No. 7105/2024 along with execution petition i.e. OMP (Enf.) (Comm.) No. 193/2022.

26. That the Petitioner after that received a draft Settlement Agreement



from the Respondent No.1. From the draft of the Agreement, it appeared that again the Respondent mentioned the settlement amount as Rs.38,04,84,291.85/-, which was much less than what was payable under the Scheme. The Petitioner again pointed out the difference, however the Respondent No.1 explained that clause 8 of the Scheme takes care of any grievance that the Petitioner may have, but the draft of the Agreement cannot be changed since it has passed through all the relevant officers of the Respondent No.1 Corporation.

27. That in the totality of the circumstances, the Petitioner was left with no other option but to sign the agreement, which was signed on 03.07.2024. It is reiterated that the Petitioner entered into the above said Settlement Agreement under immense pressure and without having sufficient time to consider the effect of the Agreement and the amount offered, even if it is not in accordance with the Scheme of the Government.”

9. Learned senior counsel on behalf of the petitioner submits that the respondent no.1 arbitrarily calculated the settlement offer by taking into account only a portion of the total awarded amount (i.e., Rs. 58,53,60,449/-, awarded against the claim of petitioner) instead of the net payable amount (i.e. Rs.103,44,97,352/-). Thus, the amount paid by the respondent no.1 under the garb of settlement agreement is in contravention of the clause 10(b) of the VSV-II Scheme which stipulates that in case of an Arbitral Award passed on or before 31.01.2023, 65% of the net amount awarded or 65% of the claim amount lodged by the contractor under the scheme, whichever is lower, is to be offered by the procuring entity as settlement.

10. The learned senior counsel on behalf of the petitioner by relying upon the judgments rendered by the Supreme Court in **Dharmin Bai Kashyap v. Babli Sahu & Ors.**, Civil Appeal No. 2517/2023; **Cherukuri Mani v. The Chief Secretary, Government of Andhra Pradesh and Ors.**, Criminal Appeal no. 1133/2014; **Babu Verghese & Ors. v. Bar Council of Kerala & Ors.**, Civil Appeal no. 1504/1999 and **M/s Tata Chemicals Ltd. v.**



Commissioner of Customs (Preventive) Jamnagar, Civil Appeal no(s). 7439-7440/2004 highlights the principle 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 provisions of law, without deviating from prescribed procedure*’. It is contended that the settlement arrived by the parties is in nullity since the settlement agreement is primarily premised on an illegitimate offer which was offered outside the ambit and scope of provisions prescribed under the scheme.

11. Learned Solicitor General on behalf of the respondent no.1 while relying on the communications/emails communicated by the petitioner pursuant to the settlement agreement, submitted that it is for the very first time in these proceedings that an *ex-facie* untenable and opportunistic plea has been taken regarding the petitioner being subject to “pressure” by the respondent no.1. He submits that the present petition is nothing but a malicious attempt to unjustifiably claim additional amount/s, after having received the benefits under a concluded settlement agreement.

12. Having heard the respective counsel for the parties, I find no merit in the contentions raised on behalf of the petitioner. It is noticed that in the present case, a settlement agreement has duly been entered into between the parties as far back on 03.07.2024. The said settlement agreement clearly refers to the award amount as also settlement amount. This Court finds no justification or rationale in re-opening/re-writing the terms of the duly executed settlement agreement in these proceedings under Article 226 of the Constitution of India.

13. The contention of the learned senior counsel for the petitioner that the petitioner accepted the offered settlement amount under “pressure” and/or



“coercion/duress” is *ex-facie* lacking in credibility, and is not borne out from the conduct of the petitioner in the immediate aftermath of the execution of the settlement agreement. As pointed out by Learned Solicitor General, in an affidavit dated 24.06.2024 filed by the petitioner in Company Appeal [AT][INS.] No.887/2023 and the CM APPL. 35394/2024 in WP(C) 7105/2024, the petitioner admitted to accepting the offered settlement amount and there is no contemporaneous reference to any “pressure” and/or “coercion/duress” being exerted on the petitioner.

Relevant portion of affidavit dated 24.06.2024 is reproduced as under:

“8. That the Respondent No.1 has settled all its disputes and claims (past, present and future) with the Appellant arising out of the arbitral award dated 01.06.2022 and the contract entered into between the parties i.e., Contract No.CON/T/RST/2009 dated 18.03.2010 under the Vivad se Vishwas.

9. That upon receiving the amount of Rs. 38,04,84,291.85, from the Appellant, the Respondent No.1 shall have no claims left (past, present and future) arising out of the arbitral award dated 01.06.2022 and the contract entered into between the parties i.e., Contract No. CONT/T/RST/2009 dated 18.03.2010.

10. That the Respondent No.1 has read the contents of the accompanying application and state that the Respondent No.1 have no objection to the prayers sought by the Appellant that the present appeal be allowed to be withdrawn and the impugned judgment in the above captioned appeal be set aside in its entirety.

11. That by entering into the settlement agreement, the Respondent No. 1 undertakes to abide by the terms of the settlement agreement and adhere to the timelines specified in the scheme.”

Relevant portion of CM APPL. 35394/2024 in WP(C) 7105/2024 is reproduced as under:

“3. That it is submitted that under the Vivaad Se Vishwas – II Scheme the Respondent has given the Settlement Offer to the Petitioner on 06.05.2024 allowing 30 days time to the Petitioner to accept the offer i.e.



till 05.06.2024.

4. That the Petitioner has now accepted the Respondent no.1's Settlement Offer on 04.10.2024. As such, in terms of Step-4 provided in para 14 of the Scheme, the petitioner is withdrawing the present Writ Petition. The further steps to be taken for settlement by the parties are subject to the withdrawal of this Writ Petition."

The above, *prima facie*, negate the allegation/s regarding any "pressure" and/or "coercion/duress" being exerted on the petitioner. In any event, it is not within the remit of these proceedings to embark upon an intricate factual enquiry in this regard.

14. A perusal of the concerned scheme reveals that the same contemplates various steps and timelines. These are enumerated in Article 14 of the Scheme as under:-

"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 IREPS (www.ireps.gov.in). The information regarding contracts for which claim is to be lodged on IREPS 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 10(a) and 10(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.”

15. It is seen that the various steps outlined in the aforesaid provisions of the scheme culminated into the settlement agreement dated 03.07.2024. The concerned procuring entity has also paid the amount payable under the settlement agreement. Once the settlement agreement has been executed and consummated, it is no longer permissible to re-visit the process leading up to the execution of the said settlement agreement and/or seek to re-work the amount payable, except in the manner as contemplated in the scheme and in the settlement agreement.

16. In this regard, it is notable that the scheme itself contemplates that “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”.

17. The settlement agreement itself contains the following stipulation :

“5. PROCURING ENTITY and CONTRACTOR hereby agree that this Settlement Agreement under Section-73(2) of the Arbitration and Conciliation Act, 1996 shall have same status and effect as that of an Arbitral Award on agreed terms upon the substance of the dispute in accordance with Section 74 of the Arbitration and Conciliation Act, 1996 and shall be capable of execution as such.

6. POCURING ENTITY and CONTRACTOR hereby agree and undertake that in terms of Section 75 of the Arbitration and Conciliation Act, 1996, they shall keep confidential all matters relating to the conciliation proceedings. They also agree that the confidentiality shall extend also to the Settlement Agreement, except where its disclosures is necessary for purposes of implementation and enforcement.”

18. Thus, 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 & Conciliation Act, 1996.

19. Needless to say, it is open to the petitioner to take recourse to the said provisions to assail the terms of settlement agreement. However, in the facts and circumstances of the case, in these proceedings, this Court does not find it plausible to reopen the terms of a concluded settlement agreement between the parties.

20. Consequently, no merit is found in the present petition; the same is accordingly dismissed. Pending application also stands disposed of.

SACHIN DATTA, J

FEBRUARY 24, 2025/sl