



2024:DHC:4990



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

+ O.M.P. (COMM) 50/2023

PETRONET LNG LIMITED

.....Petitioner

Through: Mr. Diwakar Maheshwari, Mr.
Karun Mehta and Ms. Pratiksha Mishra,
Adv.

versus

AFCONS INFRASTRUCTURE LIMITED

.....Respondent

Through: Mr. Rajeev Sharma, Sr.
Advocate with Mr. Abhishek Birthray, Ms.
Shreya Sharma, Mr. Kartikeya Tripathi and
Mr. Nishant Kandpal, Adv.

CORAM:

HON'BLE MR. JUSTICE C. HARI SHANKAR

ORDER (ORAL)

04.07.2024

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I.A. 10949/2024

1. IA 2339/2023 was filed by the petitioner in the present OMP, seeking stay of operation and implementation of the arbitral award, dated 26 September 2022, under challenge. By order dated 17 February 2023, this Court had, in para 7, directed that the award dated 26 September 2022 would stand stayed subject to the petitioner depositing 70% of the awarded amount with the respondent within four weeks, against an equivalent bank guarantee to be provided by the respondent.

2. That arrangement has continued in force since then.



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3. The respondent has now moved the present application, seeking a direction to the petitioner to deposit the remaining 30% of the awarded amount subject to an equivalent bank guarantee being provided by the respondent.

4. For this purpose, the respondent has relied on the order passed by the Supreme Court in *Manish v. Godawari Marathawada Irrigation Development Corporation*¹ to contend that the Supreme Court has, in the case of money awards, uniformly held that the entertainment of a Section 34 challenge has necessarily to be subject to deposit of the entire awarded amount.

5. Mr. Diwakar Maheshwari, learned Counsel for the petitioner, submits that this aspect was in fact argued before this Court on 17 February 2023 and it was in awareness of the orders passed by the Supreme Court that the Coordinate Bench, on that date, decided to subject the grant of stay only to deposit of 70% of the awarded amount. He submits that, even thereafter, the prayer for a direction to the petitioner to deposit the remaining 30% was raised by the respondent, but has not been favourably considered by this Court. He, therefore, submits that the respondent cannot be permitted, time after time, to raise the same argument, once it was raised and not accepted by this Court.

6. The order dated 17 February 2023 does not indicate any application of mind by the court to the orders passed by the Supreme Court, or that the court has, even thereafter, taken a conscious decision



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to limit the direction for deposit to 70%. There are subsequent orders dated 8 February 2024 and 4 April 2024, which also note that the respondent required the petitioner to deposit the remaining 30% of the awarded amount. However, neither of these orders record any finding on the said prayer.

7. It cannot, therefore, be said that the respondent is foreclosed from raising this prayer today.

8. Besides, there is no order disposing of IA 2339/2023. That IA, therefore, continues to remain pending.

9. The direction for deposit of 70% as contained in the order dated 17 February 2023 is, therefore, only in the nature of an *ad interim* direction, and is always subject to the final order which would be passed in IA 2339/2023. Being in the nature of an *ad interim* direction, there can be no requirement for the respondent to seek any modification thereof. At the time of disposal of IA 2339/2023, this Court would obviously consider the law that applies.

10. In so far as the legal position is concerned, the Supreme Court has been taking a consistent view that, in the case of money awards, 100% of the awarded amount has necessarily to be directed to be deposited.

11. Among orders which had taken this view are the order in *Manish*, cited by the respondent, as well as *Toyo Engineering*

¹ 2018 SCC OnLine SC 2863



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Corporation v. IOCL². Para 3 of ***Toyo Engineering Corporation*** reads thus:

“3. This Court repeatedly having held that Order XLI Rule 5 principles are to be followed in these cases, we find that largely because public corporations are involved, discretion continues to be exercised not on principles under Order XLI Rule 5 but only because large amounts exist and that Government Corporations have to pay these amounts under Arbitral Awards. Both these considerations are irrelevant, as has been pointed out by us earlier. As a matter of fact, the very matter referred to in the order dated 09.08.2019 and 06.03.2020, namely, O.M.P. (COMM) No. 366/2017 has resulted in a dismissal of a Section 34 petition in an award that was granted out of one of 17 other contracts arising out of the same general transaction. Mr. Sharma was at pains to point out that the Section 34 petition was dismissed in that matter on completely different grounds. Be that as it may, O.M.P. (COMM) No. 366/2017 at the highest, therefore, would be irrelevant. This O.M.P. (COMM) No. 366/2017 appears to be the main plank on which an amount of Rs. 125 Crores alone was ordered to be deposited out of an awarded amount of Rs. 662 Crores. Resultantly, we set aside both the orders and require a 100% deposit of the awarded amount to be made within a period of six weeks from today. The appellants may apply to the High Court to withdraw this amount on security.”

12. It is also worthwhile to refer, in this context, to another order dated 14 September 2018 passed by the Supreme Court in ***Srei Infrastructure Finance Ltd. v. Candor Gurgaon Two Developers and Projects Pvt. Ltd***³. In that case, the Supreme Court directed 100% deposit, but modulated the direction by requiring 60% of the deposit to be made in cash and 40% to be secured by way of bank guarantee.

13. The position that emerges is that apparently that, though the Court is required, in the case of money awards, to subject grant of stay to securing of 100%, i.e. the entire awarded amount, the Court has the

² 2021 SCC OnLine SC 3455

³ *Manu/SCOR/73122/2018*



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latitude, nonetheless, to modulate the direction by allowing part of the amount to be deposited by way of bank guarantee.

14. The considerations which weigh with the court while examining a prayer for interim relief are, classically, the existence of a *prima facie* case, balance of convenience and irreparable loss.

15. In the light of the approach advocated by the Supreme Court in *Manish* and *Toyo Engineering*, a *prima facie* case for directing the petitioner to deposit the remaining 30% of the awarded amount must be found to exist.

16. The direction for 70% of the deposit has continued to remain in force now for almost a year and a half since 17 February 2023, without ever having been challenged by the respondent. In that view of the matter, keeping in mind the principles of balance of convenience and irreparable loss, I am inclined to dispose of IA 2339/2023 with a direction to the petitioner to furnish a bank guarantee for the remaining 30% of the awarded amount favouring the respondent from a nationalized bank, within a period of four weeks from today.

17. With this limited modification, IA 2339/2023 as well as the present application both stand disposed of.

C. HARI SHANKAR, J.

JULY 4, 2024

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[Click here to check corrigendum, if any](#)