



**IN THE HIGH COURT OF ANDHRA PRADESH
AT AMARAVATI
(Special Original Jurisdiction)**

[3524]

**FRIDAY, THE EIGHTEENTH DAY OF JULY
TWO THOUSAND AND TWENTY FIVE**

**PRESENT
THE HONOURABLE SRI JUSTICE RAVI NATH TILHARI
THE HONOURABLE SRI JUSTICE MAHESWARA RAO KUNCHEAM**

COMMERCIAL COURT APPEAL NO: 18/2025

Between:

Oil And Natural Gas Corporation Ltd., (ongc)

...APPELLANT

AND

M/s Deep Industries Ltd and Others

...RESPONDENT(S)

Counsel for the Appellant:

1.D S SIVADARSHAN

Counsel for the Respondent(S):

1.VIVEK CHANDRA SEKHAR S

The Court made the following:

**THE HON'BLE SRI JUSTICE RAVI NATH TILHARI
&
THE HON'BL SRI JUSTICE MAHESWARA RAO KUNCHEAM**

COMMERCIAL COURT APPEAL No. 18 of 2025

ORDER: (per Hon'ble Sri Justice Ravi Nath Tilhari)

Heard Sri Dammalapati Srinivas, learned Advocate General, assisted by Sri D. S. Sivadarshan, learned counsel for the appellant- Oil and Natural Gas Corporation Limited (in short 'ONGC') and Sri S. Sriram, learned Senior Advocate, representing Sri S. Vivek Chandrasekhar, learned counsel for the 1st respondent/claimant.

2. The present appeal has been filed under Section 37 (1) (c) of the Arbitration and Conciliation Act, 1996 (in short 'Act 1996') read with Section 13 of the Commercial Courts Act, 2015 (in short 'CC Act').

3. The 1st respondent - M/s. Deep Industries Limited (in short 'DIL') is the claimant, in whose favour the Arbitral Tribunal (Panel of Arbitrators) passed the Award dated 19.05.2022, allowing Claims A, B, C & D and dismissing the Claims E, F and G with a direction that the parties shall bear their own costs under Claim-H. The award is against the appellant – ONGC.

4. ONGC filed application for setting aside the arbitral award. The Special Court for Trial and Disposal of Commercial Dispute, Visakhapatnam (in short 'the Special Court') in CAOP.No.17 of 2022 dismissed the application of ONGC by Order dated 30.12.2024 and thereby refusing to set aside the arbitral award under Section 34 of the Act 1996.

5. Briefly stated, M/s. DIL is a Company incorporated under the Companies Act, 1956 (referred to as 'the claimant') and is 'One Stop Solution' provider in the energy section in every need in Oil and Gas field operations like providing Air and Gas Compression Services, Drilling and Work over Services, Gas Dehydration Services etc. The ONGC is a Central Government Public Section Undertaking involved in exploration and exploitation of Hydrocarbon and Natural Gas, a Maharatna Company incorporated under the Companies Act, 1956 and having one of its branch Rajahmundry, Asset spread over East Godavari, West Godavari and Krishna Districts of Andhra Pradesh and other parts of the country as well as abroad. Phase-I & Phase-II contracts were awarded to the claimant - DIL by the ONGC for installation of 4 Gas Dehydration Units (GDUs). The scope of the Phase-II contract was to dehydrate the natural gas at the inlet of the Gas Dehydration Unit (GDU) and deliver the dehydrated natural gas at the specified point. Total engineering, supply, transportation, installation, construction, commissioning, operation and maintenance of suitable GDU were also within the scope of the work.

6. The Bidders Experience Criteria (BEC) contained in Clause 2.1 provided the criteria that the bidders "having minimum two years experience in the last 5 years for hired natural gas compression services of the capacity of 1 LSCMD" shall be eligible. But the bidders who did not have that experience shall also be considered provided they satisfy the experience criteria on the basis of their technical collaborator who had such experience. Since DIL did not have the required experience of two years, they relied on the experience of their technical collaborator M/s. Craft Production Systems (CPS) and submitted the

documents in respect of the experience of their technical collaborator and submitted the Memorandum of Understanding dated 08.06.2015 between DIL and CPC, the Master Lease and servicing agreement dated 01.01.2013 between CPS and M/s. Eagle Ford Midstream (EFM) along with the certificate dated 04.02.2015 issued by EFM as a testimonial of satisfactory performance by CPS, and Master Lease and servicing agreement dated 14.01.2011 between CPS and M/s. General Minerals Corporation (GMC), in support of the experience of the CPS.

7. The ONGC awarded the contract on 16.06.2016 which was valid for 5 years, however, condition No.18 of the contract provided for termination of the contract during its validity period.

8. On a complaint by one M/s. Ascorp Global Limited, New Delhi (AGL), ONGC sought certain clarifications from DIL on the ground that their collaborator CPS did meet the eligibility criteria and it required DIL to furnish an undertaking. DIL furnished undertaking on 16.03.2016.

9. ONGC issued a show cause notice dated 28.04.2017 as to why the undertaking should not be invoked and the contract be not terminated. DIL by a letter dated 15.05.2017 requested the ONGC to furnish certain documents which were referred to in the show cause notice. ONGC furnished certain documents by their letter dated 05.07.2017. DIL gave reply on 17.07.2017, but ONGC terminated the Phase-II contract by letter dated 31.07.2017 with effect from 07.06.2018 (as the claimant was allowed to perform till 06.06.2018). DIL therefore invoked the arbitration clause before the Arbitral Tribunal for the claims A to H.

10. As stated above, the claims of the DIL for A to D were allowed and for the rest E to H claims, it was disallowed. The Award dated 19.05.2022 was passed as under:

“140. For the reasons stated above and the findings recorded on each of the issues, the following award is passed:

CLAIM No.	DESCRIPTION
Claim – A	The termination of the Phase-II contract vide dated 31.07.2017 is held to be illegal and also contravened the provisions of the contract agreement and is hereby set aside.
Claim – B	The Claimant is entitled for USD 2,35,469/- (Dollars two lakhs thirty five thousand four hundred and sixty nine only) towards withholding of amount payable by the Respondent to the Claimant in respect of the invoices for the months of October 2017 to June 2018 for the respective location.
Claim – C & Claim – D	The Claimant is entitled for USD 67,60,383/- (Dollars Sixty Seven lakhs sixty thousand three hundred and eighty three only) towards Standby Charges @ 50% for the balance contract period of 5 years.
Claim – E	The claim towards loss of profits is dismissed.
Claim – F	The claim towards damage to the reputation of the Claimant is dismissed.
Claim – G	The claim towards legal expenditure in various litigations is dismissed.

Claim – H	Parties shall bear their own costs.

11. The ONGC filed application for setting aside the award which has been dismissed by the Order under challenge in this appeal.

12. In this appeal, at this stage, the main contention raised by the learned Advocate General for the appellant is that the termination letter dated 31.07.2017 with effect from 06.06.2018 from which date the termination became effective, was perfectly valid, as the documents produced by the DIL were all fake experience certificates of the technical collaborator in order to secure unlawful gain by way of unjust enrichment, the DIL would not be entitled for grant of claims i.e., payment towards stand-by charges from 07.06.2018 onwards and till 31.05.2021 as awarded by the Arbitral Tribunal. He submitted that the stand-by charges were for the period during the operation period of the contract, if ONGC was not able to supply the contracted quantity of gas on account of non-availability, for dehydration and the stand-by charges to which DIL would have been entitled in such circumstance, would be 50% of the gas dehydration charges for the undehydrated quantity at the end of the month to be settled on monthly basis. He submitted that since the termination order was passed on 31.07.2017, the operation period of the contract ended on that day itself, but in view of the peculiar situation, the termination order was given effect on 06.06.2018 without any protest from DIL and hence from 07.06.2018 the question of supply of gas of the contracted quantity did not arise. He submitted that in view thereof, there would be no operation period of

contract from 07.06.2018 and consequently with effect from 07.06.2018, DIL was not entitled for any stand-by charges.

13. Learned Advocate General also referred to the pre-bid meeting held on 22.06.2015 in which the issue was discussed during the pre-bid queries, referring to para-104 of the arbitral award, to contend that as per the query by one of the bidders with respect to "stand-by charges for balance period of contract in the event of premature termination of the contract by ONGC", the reply by ONGC was that "no stand-by charges will be paid in the event of premature termination of the contract by ONGC" and consequently, he submitted that the arbitral award granting the stand-by charges was contrary to the terms of the contract and the stand of the ONGC in pre-bid meeting.

14. Learned Advocate General next submitted that even if the termination of contract was held to be illegal by the Arbitral Tribunal, DIL could still not be entitled to seek stand-by charges, since it failed to mitigate the alleged loss arising from the alleged illegal termination. He submitted that in view of Section 73 of the Indian Contract Act 1872, it was mandatory for DIL to submit proof of actual loss of profit, but DIL did not make any effort to mitigate the loss, by any document and so DIL was not entitled for stand-by charges after 06.07.2018.

15. Learned Advocate-General further submitted that the ONGC/appellant has already deposited 75% of the amount under the award before the learned Special Court which has also been withdrawn by DIL. He submitted that the learned Special Judge acted illegally and against the settled

principles in refusing to set aside the arbitral award under Section 34 of Act 1996.

16. Learned Advocate-General further submitted that the appellant/applicant is entitled for stay of execution of the Arbitration award without imposing any condition of further deposit of the amount.

17. Sri S. Sriram, learned senior counsel, assisted by Sri S. Vivek Chandrasekhar, for DIL, submitted that the arbitral Tribunal has clearly recorded that the termination of the contract by letter dated 31.07.2017 was illegal. The termination was not on any specific ground on which it could be under clauses 18.1 to 18.5 of the contract. It was outside the grounds of termination and consequently, the arbitral tribunal rightly held that the termination of the contract was illegal and not valid and binding. The arbitral tribunal also held that the termination of the contract was done by invoking the undertaking dated 16.03.2016, consequently the termination not being legal and the period of the contract not having expired, for the rest of the period from the date of termination which was effected from 06.06.2018, the ONGC was under liability under the contract to make supply and it having failed to make supplies, the DIL was entitled for the stand-by charges under the contract itself. He further submitted that Section 73 of the Indian Contract Act 1872 would not apply to such a case, as the present one. Because, the termination has been held to be illegal and invalid and so there was no broken contract. It shall be taken that during the operating period of the contract, the breach occurred at the instance of ONGC entitling the DIL for the stand-by charges,

which was not required to account for the actual losses to claim compensation/damages.

18. Sri S. Sriram, learned senior counsel, further submitted placing reliance in ***International Seaport Dredging Pvt. Ltd. v. Kamarajar Port Limited¹*** that under the scheme of the Arbitration Act, no distinction is made nor any differential treatment is to be given to the Government while considering an application for grant of stay of a money decree in proceedings under Section 34 of the Arbitration Act. He submitted that the same principle applies to appeal under Section 37. The provisions of Order 41 Rule 5 of the Code of Civil Procedure for the said purpose ought to be followed as guidance.

19. Sri S. Sriram, learned senior counsel further placing reliance in ***Patel Engg.Ltd. v. North Eastern Electric Power Corpn.Ltd.²*** submitted that for setting aside a domestic award between two Indian entities the ground of patent illegality is a ground available under the statute, i.e., if the decision of the arbitrator is found to be perverse or so irrational that no reasonable person would have arrived at the same, or the construction of the contract is such that no fair or reasonable person would take, or that the view of the arbitrator is not even a possible view. He submitted that the arbitral award does not suffer from any such infirmity and so, the Special Court was right in not interfering and in not setting aside the arbitral award under Section 34 of the Act 1996.

¹ 2024 SCC OnLine SC 3112

² (2020) 7 SCC 167

20. Sri S. Sriram, learned Senior counsel, submitted, for the aforesaid arguments that, the appellant is not entitled for grant of any stay/interim order and the application for stay deserves to be rejected.

21. We have considered the aforesaid submissions and perused the material on record.

22. Section 37 of the Arbitration and Conciliation Act 1996 provides for Appeals against the Orders of the nature as specified therein and sub-section (1) (c) provides for setting aside or refusing to set aside an arbitral award under Section 34. So, there cannot be dispute that the present appeal filed against the order of the Special Court in refusing to set aside the arbitral award is maintainable. The submission of Sri S. Sriram, learned Senior counsel, is that in the appeal, the scope is not wider than the scope under Section 34 and the learned Special Judge has clearly recorded that the arbitral award is not in conflict with the public policy of India and also that the award did not suffer from any of the grounds as contained under Section 34 of the Arbitration Act to be interfered with. We are of the view that the appeal is maintainable, but, whether the Order of the Special Judge in refusing to set aside the arbitral award is open for interference within the scope of the appellate jurisdiction under Section 37 of the Arbitration Act is a question, which requires determination on merits in due course of time. Whether the arbitral award is in conflict with public policy in Indian law or not within the meaning of this expression as in Section 34 (2) (b) (ii) of the Arbitration Act and its explanation, is also a question requiring consideration and determination, in depth.

23. In view of the submissions as advanced at this stage, it *inter alia*, also requires consideration,

- i. whether the stand-by charges would be payable by ONGC to DIL on termination of the contract by letter dated 31.07.2017 with effect from 07.06.2018 till otherwise validity period of the contract;
- ii. whether such termination was on any of the grounds under clause 18 so as to consider the 'period of operation' under the contract;
- iii. whether the stand-by charges would be payable, when there was termination of the contract and even if that be illegal being beyond Clause 18, without DIL having mitigated the arising losses for such termination of contract. In other words the applicability of Section 73 of the Indian Contract Act in the facts of the present case requires consideration;
- iv. whether the grounds permissible under law for setting aside the arbitral award under Section 34 of the Arbitration and Conciliation Act exists; and
- v. consequent upon the determination of aforesaid issues, the legality or otherwise of the Order under challenge in appeal.

24. In view of the aforesaid, the Appeal is admitted.

25. Issue notice to the 1st respondent/claimant. Since the 1st respondent is represented by the learned counsel, notice would not be sent.

26. Respondents No.2 to 4 are the arbitrators and have been impleaded in compliance to the statutory provisions of Rule 3 (i) of the Andhra Pradesh Arbitration Rules, 2000 solely for the purposes of facilitating/requisition of the records of the arbitral proceedings and being formal parties, the notice to the

respondents 2 to 4 is dispensed with, but information/requisition be sent for records.

27. I.A.No.1 of 2025 has been filed for stay of the arbitral award dated 19.05.2022 pending disposal of the appeal.

28. In ***International Seaport Dredging Pvt. Ltd.*** (supra), upon which Sri S. Sriram, learned Senior Counsel placed reliance, the facts were that the arbitral award was challenged under Section 34 of the Arbitration & Conciliation Act and an application for stay of the execution was moved. The concerned High Court granted stay on the execution of the award conditional on the respondent furnishing a bank guarantee within a specified period. The judgment was challenged in the Hon'ble Apex Court. The contention raised was that since the award operated as money decree under Section 36 of the Arbitration Act, the High Court was not justified in directing merely furnishing a bank guarantee in relation to the principal amount. The respondent therein ought to have been directed to deposit the amount awarded to it as a condition for grant of stay on the execution of the award. The Hon'ble Apex Court observed that the law *qua* arbitration proceedings cannot be any different merely because of the status of the respondent as a statutory undertaking. The Hon'ble Apex Court referred to its previous judgment in ***Pam Developments Private Limited v. State of West Bengal***³, in paras-13 and 14, which are reproduced as under:

³ (2019) 8 SCC 112

“13. In this regard, it is necessary to advert to a decision of a two-Judge Bench of this Court in *Pam Developments Private Limited v. State of West Bengal*⁴ where it was observed:

“20. In our view, in the present context, the phrase used is “having regard to” the provisions of CPC and not “in accordance with” the provisions of CPC. In the latter case, it would have been mandatory, but in the form as mentioned in Rule 36(3) of the Arbitration Act, it would only be directory or as a guiding factor. Mere reference to CPC in the said Section 36 cannot be construed in such a manner that it takes away the power conferred in the main statute (i.e. the Arbitration Act) itself. It is to be taken as a general guideline, which will not make the main provision of the Arbitration Act inapplicable. The provisions of CPC are to be followed as a guidance, whereas the provisions of the Arbitration Act are essentially to be first applied. Since, the Arbitration Act is a self-contained Act, the provisions of CPC will apply only insofar as the same are not inconsistent with the spirit and provisions of the Arbitration Act.”

14. The Court also observed:

“26. Arbitration proceedings are essentially alternate dispute redressal system meant for early/quick resolution of disputes and in case a money decree — award as passed by the arbitrator against the Government is allowed to be automatically stayed, the very purpose of quick resolution of dispute through arbitration would be defeated as the decree-holder would be fully deprived of the fruits of the award on mere filing of objection under Section 34 of the Arbitration Act. The Arbitration Act is a special Act which provides for quick resolution of disputes between the parties and **Section 18 of the Act makes it clear that the parties shall be treated with equality. Once the Act mandates so, there cannot be any special treatment given to the Government as a party. As such, under the scheme of the Arbitration Act, no distinction is made nor any differential treatment is to be given to the Government, while considering an application for grant of stay of a money decree in proceedings under Section 34 of the Arbitration Act. As we have already mentioned above, the reference to CPC in Section 36 of the Arbitration Act is only to guide the court as to what conditions can be imposed, and the same have to be consistent with the provisions of the Arbitration Act.**

...

28. Section 36 of the Arbitration Act also does not provide for any special treatment to the Government while dealing with grant of stay in an application under proceedings of Section 34 of the Arbitration Act. Keeping the aforesaid in consideration and also the provisions of Section 18 providing for equal treatment of parties, it would, in our view, make it clear that **there is no exceptional treatment to be given to the Government while considering the application for stay under Section 36 filed by the Government in proceedings under Section 34 of the Arbitration Act.**”

(emphasis supplied)”

29. The Hon’ble Apex Court in ***International Seaport Dredging Pvt. Ltd.*** (supra) observed that the Arbitration Act is a self-contained code, it does not distinguish between governmental and private entities. Hence, the decision of the Court cannot be influenced by the position of the party before it and whether it is a fly-by-night operator. Moreover, an assessment as to whether a party is reliable or trustworthy is subjective. Many private entities too may rely on the size of their undertaking, its success, public image, or other factors to argue that they are not fly-by-night operators. In the absence of any provision of law in this regard, it would be inappropriate for courts to apply this standard while adjudicating the conditions upon which a stay of an award may be granted. Similarly, the form of security required to be furnished should not depend on whether a party is a statutory or other governmental body or a private entity. Governmental entities must be treated in a similar fashion to private parties insofar as proceedings under the Arbitration Act are concerned, except where otherwise indicated by law. This is because the parties have entered into commercial transactions with full awareness of the implications of

compliance and non-compliance with the concerned contracts and the consequences which will visit them in law. The Hon'ble Apex Court found that the High Court was not correct in directing the respondent to furnish bank guarantees in relation to the amount awarded because the respondent was a statutory body.

30. The Hon'ble Apex Court in ***International Seaport Dredging Pvt. Ltd.*** (supra) further referred to its judgment in ***Toyo Engineering Corpn. v. Indian Oil Corpn. Ltd.***⁴ in which it was observed that Order 41 Rule 5 CPC principles are to be followed in these cases, and largely because public corporations are involved, discretion continues to be exercised not on principles under Order 41 Rule 5 CPC but only because large amounts exist and that Government Corporations have to pay these amounts under Arbitral Awards. The Hon'ble Apex Court observed and held that these considerations i.e., large amount, public corporation, were irrelevant.

31. So, based on the aforesaid judgments, for consideration for grant of interim relief, the principles of Order 41 Rule 5 CPC are to be followed, and no distinction can be made because large amounts are involved or that the Government corporations have to pay those amounts.

32. Order 41 Rule 5 CPC reads as under:

“Order 41, Rule 5: Stay by Appellate court;

(1) An appeal shall not operate as a stay of proceedings under a decree or order appealed from except so far as the Appellate court may order, nor shall execution of a decree be stayed by reason only of an appeal having been

⁴ 2021 SCC OnLine SC 3455

preferred from the decree, but the appellate court may for sufficient cause order stay of execution of such decree.

(Explanation : An order by the Appellate court for the stay of execution of the decree shall be effective from the date of the communication of such order to the court of first instance, but an affidavit sworn by the appellant, based on his personal knowledge, stating that an order for the stay of execution of the decree has been made by the Appellate court shall, pending the receipt from the Appellate court of the order for the stay of execution for any order to the contrary, be acted upon by the court of first instance.)

(2) Stay by Court which passed the decree : Where an application is made for stay of execution of an appealable decree before the expiration of the time allowed for appealing therefrom, the court which passed the decree may on sufficient cause being shown order the execution to be stayed.

(3) No order for stay of execution shall be made under Sub-rule (1) or Sub-rule (2) unless the court making it is satisfied :

(a) that substantial loss may result to the party applying for stay of execution unless the order is made;

(b) that the application has been made without unreasonable delay; and

(c) that security has been given by the applicant for the due performance of such decree or order as may ultimately be binding upon him.

(4) Subject to the provisions of Sub-rule (3) the court may make an ex parte order for stay of execution pending the hearing of the application.

(5) Notwithstanding anything contained in the foregoing sub-rules, where the appellant fails to make the deposit or furnish the security specified in Sub-rule (3) of Rule 1, the court shall not make an order staying the execution of the decree."

33. In ***International Seaport Dredging Pvt. Ltd.*** (supra) the Hon'ble Apex Court finally directed the respondent therein to deposit an amount quantified at 75% of the decretal amount, inclusive of interest, by specifying date and on condition of such deposit, enforcement of the award was stayed.

34. In our view, case for grant of interim relief is made out.

35. Keeping in view the principles under Order 41 Rule 5 (3) CPC, the judgment of the Hon'ble Apex Court in ***International Seaport Dredging Pvt.Ltd.*** (supra) and that the appellant has already deposited 75% of the awarded amount, which has also been withdrawn by the respondent-DIL, to meet the ends of justice, as an interim measure, it is provided that subject to the appellant furnishing security for the remaining amount under the award, i.e., 25% within a period of three weeks from today to the satisfaction of the learned Special Court, Visakhapatnam, the further proceedings for execution of the award/decreed dated 19.05.2022 shall remain stayed, until further orders of the Court.

36. List the appeal for hearing after 4 (four) weeks.

RAVI NATH TILHARI, J

MAHESWARA RAO KUNCHEAM, J

Date: .07.2025
Dsr