IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

COMMERCIAL ARBITRATION PETITION NO. 324 OF 2018

Topworth Infra Pvt. Ltd. ...Petitioner

Versus

Orient Builders ...Respondent

WITH
INTERIM APPLICATION NO. 290 OF 2021
IN

COMMERCIAL ARBITRATION PETITION NO. 324 OF 2018

Sachin Rajendra Singhvi ...Applicant

Versus

Orient Builders & Anr ...Respondents

WITH
INTERIM APPLICATION (L) NO. 9959 OF 2024
IN

COMMERCIAL ARBITRATION PETITION NO. 324 OF 2018

Orient Builders ...Applicant

Versus

Topworth Infra Pvt. Ltd. ...Respondent

Ms. Vaishali Chowdhary, *for the Applicant.*

Ms. Neeha Nagpal, *a/w Ajatshatru Singh Rawat, Mitika Agrawal, i/b AVS Legal for Respondent No.1 in IA/290/2021 & for Petitioner in CARBP/324/2018.*

CORAM : SOMASEKHAR SUNDARESAN, J.

DATE : May 8, 2026

ORDER :

1. The captioned Petition is a challenge mounted by Topworth Infra Pvt. Ltd. ("***Topworth***") under Section 34 of the Arbitration and Conciliation Act, 1996 ("***the Act***") to an arbitral award dated October 24, 2016 ("***Impugned Award***"), which ruled in favour of Orient Builders ("***Orient***").

2. By an interim order dated March 8, 2018, a Learned Single Judge of the Court was pleased to direct that 50% of the awarded amount be deposited in Court by Topworth, and 50% of the amounts so deposited be permitted to be withdrawn by Orient, with an obligation to return the said amount with interest at such rate as this Court may deem fit in the Section 34 Petition if the Topworth were to succeed. The amount towards 50% of the amount awarded in the Impugned Award as deposited in this Court is Rs. 81,10,925/- Orient has withdrawn 50% of this amount i.e. Rs. 40,55,462.50.

3. Subsequently, other events have overtaken this Petition, with Topworth being admitted to Corporate Insolvency Resolution Process ("***CIRP***"), under the Insolvency Bankruptcy Code, 2016 ("***IBC***"). A resolution plan was approved and eventually sanctioned. It is common ground that Orient did not present any claim for the debt due under the Impugned Award before the Committee of Creditors during the CIRP.

4. Topworth now having been resolved and having come under a new management, as a matter of law, it would now resume with a clean slate.

5. The question that now arises in the Interim Application No.290 of 2021 ("***IA 290***") is whether, the IA 290 having been filed during the pendency of the CIRP), the amount deposited in Court ought to have been returned to Topworth since it had formed part of the insolvency estate. Meanwhile, the CIRP has run its course and the resolution plan has even been finally approved on July 31, 2024. It is common ground that since Orient had not filed any claim with the Committee of Creditors, the resolution plan made no provision for the debt due under the Impugned Award.

6. Therefore, the question that arises today is the status of the amounts lying in Court and the amounts that have already been withdrawn by Orient pursuant to the order dated March 8, 2018. The prayers in the Interim Application are for return of the amount of Rs. ~40.55 lakhs which had been withdrawn by the Respondent pursuant to the order dated March 8, 2018 and release of the identical amount along with accruals thereon, lying with the Registry of this Court.

7. This issue is already covered by multiple judgements on the point, including a judgement by me in the case of ***Reliance Defence***[1] and a decision by a Division Bench of which I was a member, in ***Siti Networks***[2].

8. The benefits of an arbitral award, and indeed even of a decree that may have come about even at the hands of the Supreme Court would still constitute a "debt due" under the IBC, when the judgement debtor under the decree goes into CIRP. In the instant case, Topworth, the judgement debtor owed the unsecured debt under the Impugned Award to Orient. The amount payable by Topworth was a debt due and the Orient would need to stand in queue with other creditors before the Committee of Creditors for consideration of an appropriate resolution of all the debts of the corporate debtor.

9. That exercise having been undertaken, and the resolution plan also having been finally approved, it would follow that the Impugned Award has, in fact been overtaken. ***Siti Networks*** entailed near-identical facts, with the only difference being that the application for withdrawal of funds deposited by a party challenging an arbitral award was filed, heard and dealt with, when the CIRP was still underway. The following extract from the summary of the law declared, would be instructive:

1 Reliance Defence & Engineering Limited v. Afcons Infrastructure Ltd. 2025 SCC OnLine Bom 5594

2 Siti Networks Ltd. v. Rajiv Suri 2024 SCC OnLine Bom 3550

55. In the result, in view of the CIRP proceedings pending in relation to the Applicant-Appellant:-

A) We hold that __monies or any other asset deposited by a corporate debtor in court prior to commencement of CIRP by way of security (to protect against execution of any judgement or decree), would not cease to be the asset of the corporate debtor__;

B) Consequently, __the monies deposited by the Applicant-Appellant in this Court constitute assets owned by the Applicant-Appellant although they are not in possession of the Applicant-Appellant__;

C) Therefore, __we hereby permit the Applicant-Appellant to withdraw Appeal No. 597 of 2016, and indeed withdraw the amounts deposited in this Court in these proceedings, along with all earnings thereon__. Refund of Court fees shall be processed as per Rules;

D) __The amounts deposited in Court shall be released to the Applicant-Appellant within a period of two weeks from today, subject to compliance with the procedural rules of this Court, administered by the Registry__; and

E) The __substantive rights of the Respondent who is the judgement creditor under the Impugned Judgement shall be subject to the provisions of the IBC__.

__[Emphasis Supplied]__

10. In the matter in hand, IA 290 had been filed when the CIRP was underway, but by the time the IA has been finally heard, the CIRP has been completed successfully and a resolution has also been approved. The corporate debtor i.e. Topworth, in its resolved balance sheet would commence with a clean slate. The law as declared, squarely requires the monies to have

been returned to the resolution professional to conserve the assets of the insolvency estate. Now that the resolution has even been approved, Topworth's position stands on an even firmer inexorable footing. In the result, IA 290 would need to be allowed, in view of supervening subsequent events.

11. Learned Advocate for Orient submits that the only recourse to the resolution professional of Topworth ought to have been to cause Topworth to withdraw the Petition, since according to him, the award is now a nullity. She further submits that, as regards the amounts already withdrawn, a separate Suit would need to be filed for recovery of the said sums from the Respondent.

12. I am afraid that this submission does not lend itself to acceptance inasmuch as the deposit in the instant case has been made pursuant to the order passed in this very Petition, and therefore, when the deposit was made and withdrawn, it was under the oversight of the jurisdiction of Section 34. The undertaking given to Court that the monies would be brought back was given in the captioned Section 34 Petition. It is not that the Impugned Award has become final, necessitating withdrawal of the Section 34 Petition. By operation of law, the debt due under Impugned Award has been effaced and it is incapable of being executed. Therefore, when this Court granted a stay on execution by directing a deposit, and by taking an undertaking that the amount would be brought back should the challenge succeed, when now faced

with the situation of the challenge not even being necessary, this Court ought to oversee the return of the money this Court allowed to be withdrawn.

13. Therefore, it will only follow that the amounts lying in Court would need to be released to the corporate debtor (Topworth) along with all accruals and earnings thereon. The amounts withdrawn under the oversight of this Court, which would no longer belong to Orient, ought to be brought back into Court for release to Topworth.

14. It is directed that Orient bring back the amounts withdrawn and deposit the same with the Prothonotary and Senior Master of this Court within a period of four weeks from the upload of this Order on the Court's website. The Registry shall return such amount to Topworth within a week of receipt of the funds from Orient.

15. With the aforesaid directions, Interim Application No.290 of 2021 is allowed and the Section 34 Petition is ***finally disposed of***. Nothing would survive in any other Interim Application that may be attached to the captioned Section 34 Petition.

16. All actions required to be taken pursuant to this order shall be taken upon receipt of a downloaded copy as available on this Court's website.

[SOMASEKHAR SUNDARESAN, J.]