

S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS

Petition(s) for Special Leave to Appeal (Civil) No.867/2002
(From the judgement and order dated 11/01/2002 in APOT 1/02
of The HIGH COURT OF CALCUTTA)

DAMODAR VALLEY CORPORATION Petitioner (s)

VERSUS

CESC LTD. & ANR. Respondent (s)

(With prayer for interim relief and office report)
(With Appln(s). for directions)

Date : 18/03/2002 This Petition was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE B.N. KIRPAL
HON'BLE MR. JUSTICE ARIJIT PASAYAT
HON'BLE MR. JUSTICE BISHESHWAR PRASAD SINGH

For Petitioner (s) Mr. Mukul Rohtagi, ASG
Mr. Rana Mukherjee, Adv.
Dr. Raba Rai, Adv.
Mrs. Sumita Mukherjee, Adv.

For Respondent (s) Dr. A M Singhvi, Sr. Adv.
Mr. K V Vishwanathan, Adv.
Ms. Gauri Rasgotra, Adv.
Mr. Suman Jyoti Khaitan, Adv.

Mr. B.V. Balaram Das, Adv.(NP)

UPON hearing counsel the Court made the following
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Heard counsel for the parties from 1.00 P.M. to
1.45 P.M.

Special leave granted.

The appeal is disposed of in terms of the signed
order.

(D.P. WALIA)
COURT MASTER

(S.L. GOYAL)
COURT MASTER

(Signed Order is placed on the file)

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 2227 OF 2002@@
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[arising out of S.L.P.(C) No. 867 of 2002]

Damodar Valley Corporation Appellant(s)

Versus

CESC Ltd. & Anr. Respondent(s)

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Special leave granted.

On 10th December, 2001, a Single Judge of the Calcutta High Court passed an order, inter alia, to the effect that out of the admitted amount of rupees 11 crores a sum of rupees 8 crores be paid by the respondent herein to the appellant by 20th December, 2001.

Apart from the fact that no reason was given as to why when the admitted amount was rupees 11 crores order directing payment only of rupees 8 crores was passed, on 21st December, 2001 another order was passed by the Single Judge extending time of payment of rupees 8 crores till 24th December, 2001. It was specifically mentioned in this order that in the event of default of the payment of the aforesaid sum within the specified period, the injunction order which had been passed in favour of the respondent herein would stand automatically vacated. The injunction order referred to was ...2/-

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restraining the appellant herein from disconnecting the supply of electricity to the respondent.

It is not in dispute that the second order dated 21st December, 2001 was not complied with and an appeal was filed by the respondent before the Division Bench. On 11th January, 2002, the Division Bench recorded that a sum of rupees 5 crores had already been paid but a sum of rupees 3 crores still remained to be paid. We are informed that the amount of rupees 3 crores has since been paid on 18th January, 2002.

No effective relief can be granted to the appellant because the order dated 11th January, 2002 has been complied with, but we are of the view that the said order ought not to have been passed. By reason of the order dated 21st December, 2001, the injunction which had been granted in favour of the respondent stood automatically vacated because of non-compliance of the said order with the deposit of rupees 8 crores not having been made. That apart, neither of these orders mentioned about payment of current dues. The particulars filed on record show that after the payment on 18th January, 2002 no money was paid in February 2002. It is quite evident that uncalled for indulgence has been shown to the

respondent. The affidavit filed pursuant to this Court's order dated 25th February, 2002 also indicates that large sums are due from the respondent to the appellant.

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While passing interim orders, the Court has to be conscious of the fact that for the electricity consumed money has to be paid and it should not be a case of misplaced sympathy for the respondent company. Admittedly, as of today, an amount of rupees 11 crores, which is admitted by the respondent to be due, has not been paid. If the sum of rupees 11 crores is not paid by the respondent to the appellant by 31st March, 2002, any interim orders subsisting against the appellant shall stand automatically vacated and the appellant will be at liberty to take such further action as may be available to it in accordance with law. If this amount is paid within the time fixed, the Single Judge shall dispose of the application under Order 39, C.P.C. after hearing the parties by 31st May, 2002.

The appeal is disposed of in the aforesaid terms.

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.....J
(B.N. KIRPAL)

.....J
(ARIJIT PASAYAT)

.....J
(BISHESHWAR PRASAD SINGH)

New Delhi;
March 18, 2002.