

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION
CIVIL APPEAL No.6618 OF 2009

ELSAMEX-TWS-SNC JOINT VENTURE THROUGH DIRECTOR
PROJECTS SRI B. SUNIL SHETTY

... APPELLANT

Versus

NATIONAL HIGHWAYS AUTHORITY OF INDIA THROUGH GENERAL
MANAGER (C.K.II)

... RESPONDENT

O R D E R

Today, when the matter came up before us for hearing, it is brought to our notice by Ms.Kiran Suri, learned senior counsel for the appellant that after filing of the instant appeal, certain developments have taken place and hence only a limited order is required i.e., directing the appellant that the bank guarantees at Serial Nos.2 to 5 be continued subject to the said bank guarantees being kept alive and renewed till the the disposal of OMP(Comm)No.48/2019 by the High Court, and till such time, the respondent shall not encash the said bank guarantees.

On 04.08.2008, this Court passed the following order:

"By order dated 25.10.2007 passed by the Arbitral Tribunal under Section 17 of the Arbitration and Conciliation Act, the Arbitral Tribunal directed the respondent not to encash the Bank Guarantees till the award was passed. As a consequence, though the respondent invoked 24 bank guarantees (set out in paragraph 11 of the order of the High Court), it has not been able to realise the monies due under the said Bank Guarantees.

The respondent challenged the said order in an appeal and the High Court of Delhi by order dated 28.4.2008 quashed the order of the Tribunal. The appellant has filed this SLP being aggrieved by the order of the High Court.

On 16.5.2008, while issuing notice we had stayed the encashment of the Bank Guarantees. Out of the 24 Bank Guarantees, guarantee at sl.no.1 is a performance security guarantee. Guarantees at sl. no. 10 to 24 are guarantees in regard to discretionary advances. The guarantees at sl.no.2 to 5 relate to mobilisation/equipment advance. The guarantees at sl.no. 6 to 9 are in regard to price escalation.

Heard the counsel on both sides at length. The interim order granted is modified as follows:

(I) The interim order of stay relating to the performance security guarantee at sl.no.1 and the discretionary advance guarantees at sl.no.10 to 24 is vacated.

(ii) In regard to the Bank Guarantees relating to price escalation (at sl.no. 6 to 9) and mobilisation/equipment advances (at sl.no. 2 to 5), the interim order of stay is continued subject to the said guarantees being kept alive and renewed till further orders.

Both the parties submit that they will cooperate with the Arbitrator for early completion of the arbitration proceedings.

List this matter for final disposal after three months."

It appears that after filing of the instant appeal, the matter was referred to the Arbitrator and on 29.09.2018, an award was passed by the Arbitrator. According to the learned senior counsel for the appellant, the appellant got relief in the award so far as Item No.5 is concerned. So far as Item Nos.6-9 are concerned, the award is in favour of the appellant which was subsequently challenged before this Court in SLP(C)No.21055 of

2014, which was dismissed by this Court on 17.11.2015. Learned senior counsel further submits that price escalation is awarded in favour of the appellant and accordingly the respondent has paid that amount also to her client.

So far as Item Nos.2 to 5 are concerned, the award is subject to the disposal of OMP(Comm)No.48/2019 by the High Court.

Learned counsel for both the sides are agreed that the instant appeal can be disposed of with the direction that till the disposal of the matter pending adjudication before the High Court, the interim protection granted by this Court vide order dated 04.08.2008 is continued subject to the condition that the bank guarantees be kept alive and renewed. So far as Item Nos.1, 10 to 24 are concerned, the bank guarantees are already encashed subsequent to order dated 04.08.2008 passed by this Court. Ordered accordingly.

The appeal stands disposed of in the above terms.

.....J.
(N.V.RAMANA)

.....J.
(MOHAN M.SHANTANAGOUDAR)

.....J.
(AJAY RASTOGI)

NEW DELHI;
AUGUST 07, 2019.

ITEM NO.104

COURT NO.3

SECTION XIV-A

S U P R E M E C O U R T O F I N D I A
R E C O R D O F P R O C E E D I N G S

Civil Appeal No(s).6618/2009

ELSAMEX-TWS-SNC JOINT VENTURE THROUGH DIRECTOR
PROJECTS SRI B. SUNIL SHETTY

Appellant(s)

VERSUS

NATIONAL HIGHWAYS AUTHORITY OF INDIA THROUGH GENERAL
MANAGER (C.K.II)

Respondent(s)

Date : 07-08-2019 This appeal was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE N.V. RAMANA
HON'BLE MR. JUSTICE MOHAN M. SHANTANAGOUDAR
HON'BLE MR. JUSTICE AJAY RASTOGI

For Appellant(s) Ms.Kiran Suri, Sr.Adv.
Mr.S.J.Amith, Adv.
Ms.Aishwarya Kumar, Adv.
Dr.(Mrs.) Vipin Gupta, AOR

For Respondent(s) Ms.Neetika Sharma, Adv.
For M/S. M.V. Kini & Associates, AOR

UPON hearing the counsel the Court made the following
O R D E R

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

(SATISH KUMAR YADAV)
AR-CUM-PS

(RAJ RANI NEGI)
ASSISTANT REGISTRAR

(Signed order is placed on the file)