

SUPREME COURT OF INDIA  
RECORD OF PROCEEDINGS

Petition(s) for Special Leave to Appeal (Civil) No(s).12765/2008

(From the judgement and order dated 28/04/2008 in FAO No. 400/2007 of the HIGH COURT OF DELHI AT N. DELHI)

ELSAMEX-TWS-SNC JOINT VENTURE

Petitioner(s)

VERSUS

NATIONAL HIGHWAYS AUTHORITY OF INDIA

Respondent(s)

(With appln(s) for PERMISSION TO FILE LENGTHY LIST OF DATES and prayer for interim relief)

Date: 04/08/2008 This Petition was called on for hearing today.

CORAM : HON'BLE MR. JUSTICE R.V. RAVEENDRAN  
HON'BLE MR. JUSTICE LOKESHWAR SINGH PANTA

For Petitioner(s) Dr. A.M. Singhvi, Sr. Adv.  
Ms. Kiran Suri, Adv.  
Mr. S.J. Amith, Adv.  
Ms. Aparna Bhat, Adv.

For Respondent(s) Mr. Mukul Rohtagi, Sr. Adv.  
Mr. Ranjit Kumar, Sr. Adv.  
Mr. V.B. Joshi, Adv.  
Mr. Kailash Pandey, Adv.  
Mohd. Yasir Abbasi, Adv.

UPON hearing counsel the Court made 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.

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ITEM NO.61 COURT NO.11 DATED 04/08/2008 ....contd.

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.

( Ravi P. Verma )  
Court Master

( Anand Singh )  
Court Master