

IN THE SUPREME COURT OF INDIA  
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 3632 OF 2012

JAI PRAKASH ASSOCIATES LTD.

...APPELLANT(S)

VERSUS

M.P.POORV KSHETRA VIDY.VIT.CO.LTD.& ORS.

...RESPONDENT(S)

O R D E R

1. In terms of the order of this Court dated 19.03.2015, a former judge of this Court Shri Justice A.K. Patnaik who was requested to act as a Mediator has gone into the matter and submitted a report. We have perused the same.

2. We have heard Mr. Dushyant A. Dave, learned senior counsel appearing on behalf of the appellant.

3. None appears on behalf of the respondents.

4. However, in view of the fact that we propose to rely on the report of the Court appointed Mediator, we do not consider any further postponement of the matter to be necessary.

5. The relevant part of the Report of the Court appointed Mediator may be extracted below:

In my view, the appellant should pay to the Respondent the aforesaid minimum charges of Rs.34,78,75,696.00 for the period 01.10.2006 to 31.07.2008.

I was told by the parties that the surcharge for non-payment of aforesaid minimum charges of Rs.34,78,75,696.00 works out to Rs.4,06,68,102.00 appropriately. The appellant did not pay the minimum charges as its case all through was that it was not liable to pay any electricity charges after 01.10.2006. It is for the Court to decide whether in view of the facts and circumstances of this case, the Appellant should be burdened with the surcharge of Rs.4,06,68,102.00 on the minimum charges for the period from 01.10.2006 to 31.7.2008. In appropriate cases, the Supreme Court has restrained the Electricity Boards from levying delayed payment surcharge or has reduced the rate of delayed payment surcharge payable by an industry. (Kindly see Assam State Electricity Board Vs. Bramhaputra Steels Pvt. Ltd. (1996) 8 SCC 73 and Kanoria Chemicals and Industries Ltd. Vs. U.P. State Electricity Board (1997) 5 SCC

772).

In accordance with the Order dated 24.10.2008 passed by the Division Bench of the High Court in W.A. No. 1166 of 2008, the Appellant deposited Rs.10 crores which was kept in interest bearing Fixed Deposit in the name of the Registrar General of the High Court and thereafter on 26.10.2009 the Hon'ble Supreme Court passed an interim Order in SLP(C)No. 14795/2009 (now the present Civil Appeal) directing that the amount of Rs.10 crores deposited as Fixed Deposit along with interest be given to the Respondent subject to final decision of the Court and accordingly the Fixed Deposit along with interest amounting to Rs.10,38,48,163.00 has been paid to the Respondent. This amount of Rs. 10,38,48,163.00 may be adjusted against the minimum charges of Rs. 34,78,75,696.00 for the period 01.10.2006 to 31.07.2008.

The statement furnished by the Respondent shows that at the end of September, 2006 arrears of Rs.10,22,52,935.00 was outstanding against the appellant. This outstanding amount at the end of September 2006 is not the subject matter of dispute between the parties because the case of the Appellant in the Civil Appeal is that the agreement dated 26.11.84 should have been terminated and

power supply disconnected to plant at Rewa after September 2006. The Appellant has sent an E-mail to me on 01.4.2015 saying that this outstanding amount of Rs.10,22,52,935.00 relates to difference of 36 MVA and 18 MVA billing for earlier period. I was told by the parties that the surcharge on this amount of Rs.10,22,52,935.00 would approximately work out to Rs.2,31,46,012/-.

The Appellant has claimed that Rs.8,14,15,458/- is lying with the Respondent as Security Deposit and the appellant has claimed that the respondent has to refund the security deposit along with Rs.3,33,80,338/- which is the interest on the Security Deposit for the period from June 2011 to March, 2015. The Respondent has sent an E-mail dated 03.04.2015 to me that the amount of interest on the Security Deposit till March 2015 computed in accordance with the M P State Electricity Regulator Commission Security Deposit Regulations works out to Rs.2,30,81,282/- and not Rs.3,33,80,338/- as claimed by the Appellant. Security Deposit along with interest may be adjusted first against outstanding dues, if any, as at the end of September, 2006 and surcharge thereon and the surplus, if any, be adjusted against the minimum charges of

Rs.34,78,75,696 for the period 01.10.2006 to 31.7.2008.

As the parties did not readily agree for a settlement presumably because of the high stakes involved and instead requested me to submit my views to the Court, I am submitting my views for consideration of the Court. Copies of my orders dated 20.03.2015, 23.03.2015, 29.03.2015 and 01.04.2015, the statement furnished by the Respondent pursuant to my order dated 29.03.2015 and the E-mail dated 01.04.2015 together with the attachments sent to me by the Appellant and two E-mails dated 03.04.2015 sent to me by the Respondent are also submitted along with this Report. Both the parties have paid their respective shares of my remuneration as fixed in my Order dated 29.03.2015. I have sent copies of this Report to the Advocates of the Appellant and the Respondent by E-mail today.

6. After hearing Mr. Dushyant A. Dave, learned senior counsel for the appellant; taking into account the findings of the Court appointed Mediator and the suggestions offered and the totality of the facts and circumstances of the case, we are of the view that the liability of the appellant should be decided in the following manner:

(i) The appellant shall pay minimum charges of Rs.34,78,75,696.00 for the period 01.10.2006 to 31.07.2008 along with surcharge of Rs.4,06,68,102.00.

(ii) In addition, the appellant shall pay arrears of Rs.10,22,52,935.00 for the period ending September, 2006. However, no surcharge on the aforesaid amount would be payable by the appellant as during the said period, no electricity was consumed. From the aforesaid two amounts, the amount already lying in deposit with the respondent along with interest amounting to Rs. 10,38,48,163/- will be deductible and accordingly deducted.

(iii) Furthermore, an amount of Rs.8,14,15,458/- lying with the Respondent as Security Deposit and interest thereon which according to the M P State Electricity Regulator Commission Security Deposit Regulations is Rs. 2,30,81,292/- and shall also be deducted.

7. On proper calculation, the amount payable to the respondent on the basis of the liability and the adjustments mentioned above works out to Rs. 28,24,51,820/- (Rupees twenty eight crores, twenty

four lakhs, fifty one thousand, eight hundred and twenty). The said amount will be paid by the appellant to the respondent within a period of two months from today.

8. In view of the above order, the civil appeal is disposed of and the appeal pending before the High Court i.e. M.A. No. 2554 of 2003 shall also stand disposed of.

.....J.  
[RANJAN GOGOI]

NEW DELHI  
23RD APRIL, 2015

.....J.  
[N.V. RAMANA]

ITEM NO.108

COURT NO.8

SECTION IV

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). 3632/2012

JAI PRAKASH ASSOCIATES LTD.

Appellant(s)

VERSUS

M.P.POORV KSHETRA VIDY.VIT.CO.LTD.& ORS.

Respondent(s)

Date : 23/04/2015 This appeal was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE RANJAN GOGOI

HON'BLE MR. JUSTICE N.V. RAMANA

For Appellant(s) Mr. Dushyant Dave, Sr. Adv.  
Mr. Pawan Upadhyay, Adv.  
Mr. Sarvjit Pratap Singh, Adv.  
Ms. Sharmila Upadhyay, Adv.

For Respondent(s) Mr. Amalpushp Shroti, Adv. (NP)

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

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

(MADHU BALA)  
COURT MASTER

(ASHA SONI)  
COURT MASTER

(Signed order is placed on the file)