

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 SPETITION(S) FOR SPECIAL LEAVE TO APPEAL (C) NO(S). 4831/2019

[Arising out of impugned final judgment and order dated 04-10-2018 in OMP (ENF) (COMM) No. 165/2016 passed by the High Court of Delhi at New Delhi]

BHARAT SANCHAR NIGAM LIMITED

Petitioner(s)

VERSUS

NATIONAL TELECOM OF INDIA LTD.

Respondent(s)

Date : 20-01-2025 This petition was called on for hearing today.

CORAM : HON'BLE MR. JUSTICE ABHAY S. OKA
HON'BLE MR. JUSTICE UJJAL BHUYANFor Petitioner(s): Mr. Dinesh Agnani, Sr. Adv.
Mr. Piyush Sharma, AOR
Mr. Shivam Dubey, Adv.
Ms. Leena Tuteja, Adv.
Mr. Anuj Kumar Sharma, Adv.For Respondent(s): Mr. Shekar Naphde, Sr. Adv.
Mr. Sriram P., AOR
Mr. Pramod Singh, Adv.UPON hearing the counsel the Court made the following
O R D E R

The learned Arbitrator made an award dated 10th July, 2007.
The operative part of the award dated 10th July, 2007 reads as
under:

"In the net result this Arbitral Tribunal makes
the following Award:

"(i) That the respondent shall pay to the
petitioner/claimant a sum of Rs.1,09,00,000 /-
(Rupees One Crore Nine Lacs only) towards cost of
goods (SLC 6/15 numbering 266)
fabricated/manufactured by the petitioner/claimant
in pursuance of Advance Purchase Order dated
11.12.1996, issued by the respondent together with
simple interest @ 12% p.a. on the above amount from

01.04.1997 till actual payment;

(ii) That in addition to (i) above the respondent shall also pay to the petitioner/claimant a sum of Rs.3,46,580/- (Rupees Three Lacs Forty Six thousand five Hundred Eighty only) towards the cost of the present proceedings; and

(iii) That on receipt of the payment of the above awarded sum from the respondent, the petitioner/claimant within 15 days from the receipt of such payment shall offer delivery/return of the goods (SLC 6/ 15, numbering 266) manufactured by the petitioner/claimant in pursuance of APO dated 11.12.1996 to the respondent. In case the respondent despite receipt of such a communication, fails to take the delivery/lift the above mentioned goods in question within a period of 30 days from the date of receipt of such communication from the end of the petitioner/claimant, the petitioner/claimant in such an eventuality would be at liberty to dispose of those goods in the manner as may be deemed fit by the petitioner/claimant but after advance notice to the respondent. The proceeds of these goods so received by the petitioner/claimant, after the disposal of the goods in question, in the manner stated above, shall be paid by the petitioner/claimant to the respondent soon thereafter. This is being ordered keeping in view the equity because after the payment of the awarded amount the goods so manufactured virtually belong to the respondent.

..."

The award has attained finality after dismissal of the petition under Section 34 of the Arbitration and Conciliation Act, 1996 (for short, "the Arbitration Act"), appeal under Section 37 of the Arbitration Act and the Special Leave Petition.

An execution application was filed for execution of the award. The entire amount payable by the petitioner was deposited. Only after the amount was deposited, the respondent made an application before the executing Court that that the factory of the respondent was closed in the year 2003 and, unknowingly, the equipment, which was to be returned as per clause (iii) of the operative part of the

award, has been removed by the caretaker of the premises considering it to be a scrap.

The following conduct of the respondent stares at the face:

(a) The respondent did not bring this fact to the notice of the executing Court till the petitioner deposited the entire amount payable as per the award;

(b) The fact that the equipment has been removed was brought to the notice of the executing Court only after the amount deposited by the petitioner was withdrawn by the respondent; and

(c) The respondent did not disclose even the date on which the equipment was disposed of. Not a single document was produced to show the manner in which the equipment was disposed of.

Considering this conduct of the respondent, we direct the respondent to deposit with the High Court the entire amount received by it under the award within a period of two months from today. The said amount shall be invested in a fixed deposit with any nationalised bank and it shall be renewed from time to time.

The observations made in this order are only *prima facie* observations.

For considering the compliance and fixing a date for hearing, list the Petition 28th March, 2025.

(ASHISH KONDLE)
AR-CUM-PS

(AVGV RAMU)
COURT MASTER (NSH)