

ITEM NO.33

COURT NO.8

SECTION XIV

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

Petition for Special Leave to Appeal (C) No. 20976/2013
(Arising out of impugned final judgment and order dated 24/08/2012
in AP No. 397/2009 passed by the High Court Of Delhi at New Delhi)

RANI-ERA JV

Petitioner(s)

VERSUS

RAIL VIKAS NIGAM LTD. & ANR.

Respondent(s)

(With prayer for interim relief and office report)

Date : 08/01/2015 This petition was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE FAKKIR MOHAMED IBRAHIM KALIFULLA
HON'BLE MR. JUSTICE ABHAY MANOHAR SAPRE

For Petitioner(s) Mr. Bhagabati Prasad Padhy, A.O.R.

For Respondent(s)
Mr. Prem Prakash, A.O.R.

For RR No. 1 Mr. Anil Seth, Adv.
Mr. S. K. Dhingra, A.O.R.

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

Leave granted.

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

[KALYANI GUPTA]
COURT MASTER

[SHARDA KAPOOR]
COURT MASTER

[SIGNED ORDER IS PLACED ON THE FILE.]

3. It will be worthwhile to refer to Clause 13 of the Memorandum of Understanding dated 28th September, 2005, as between the appellant and the second respondent which reads as under:-

"13. ARBITRATION

Any dispute, controversy or claim arising out of or relating to this agreement shall be settled in the first instance amicably between the parties. If an amicable settlement cannot be reached as above, it will be settled by arbitration in accordance with the Indian Arbitration and Conciliation Act, 1996 or any amendments thereof. The venue of the arbitration shall be Delhi."

4. One other relevant clause that requires to be noted is Clause 9 in the Memorandum of Understanding dated 21st February, 2008 which is to the following effect:

"9. All claims arising out of the contract for the work done by M/s. RCPL shall be dealt in the normal course by M/s. RCPL till the same are adjudicated/finalised by M/s. RVNL and shall be to the account of M/s. RCPL. Any claims arising out of the contract in future shall be dealt with in terms of the contract and shall be for the benefit/account of M/s. EIEL."

5. When we read Clause 13 of the Memorandum of Understanding as between the appellant and the second respondent, we find that any dispute with reference to the said agreed terms as between the appellant and the first respondent can be settled by way of arbitration

in accordance with the provisions of the Indian Arbitration and Conciliation Act, 1996 with the venue at Delhi. Further, first part of Clause 9 of the Memorandum of Understanding 21st February, 2008, reflects that all claims arising out of the contract for the work done by the appellant by the Joint Venture till the same are adjudicated/finalised by the first respondent shall be to the account of the Joint Venture, while any claims arising out of the contract in future namely on and after 22nd November, 2007 onwards to be dealt with in terms of the contract to enure to the benefit of the second respondent.

6. Therefore, reading Clause 13 of the Memorandum of Understanding dated 20th September, 2005 and the subsequent Memorandum of Understanding dated 21st February, 2008 there is every right in the appellant to work out its remedy as against the second respondent in respect of the work carried out by the joint venture by referring to the contract entered into with the first respondent by way of arbitration invoking the provisions of the Arbitration and Conciliation Act, 1996.

7. It is stated that the appellant has already invoked Clause 13 of the Memorandum of Understanding dated 28th September, 2005 and Arbitration has already commenced.

In such circumstances with regard to the present claim of the appellant, it is needless to state that appellant can work out its remedy before the very same Arbitral Tribunal as against second respondent pertaining to whatever claim relating to the execution of the contract with the first respondent by the Joint Venture for any period prior to 22nd November, 2006.

8. With the above said clarification, the appeal stands disposed of.

.....J
[FAKKIR MOHAMED IBRAHIM KALIFULLA]

.....J
[ABHAY MANOHAR SAPRE]

NEW DELHI
JANUARY 08, 2015.