

**IN THE HIGH COURT OF JHARKHAND AT RANCHI
(Commercial Appellate Jurisdiction)**

Commercial Appeal No. 10 of 2020

Executive Engineer, Water Ways Division No.1, Chakradharpur, Water
Resources Department, Government of Jharkhand, PO & PS Chakradharpur,
District-West Singhbhum, Jharkhand **Appellant**

Versus

M/s. Modi Project Ltd., Kanke Road, Ranchi **Respondent**

**CORAM : HON'BLE MR. JUSTICE SHREE CHANDRASHEKHAR
HON'BLE MR. JUSTICE RATNAKER BHENGRA**

For the Appellant	: Mr. Sachin Kumar, AAG-II Mr. Deepak Kr. Dubey, AC to AAG-II
For the Respondent	: Mr. Shresth Gautam, Advocate Mr. Rajarshi Singh, Advocate Mr. Yogendra Yadav, Advocate

Order No. 8 / Dated: 27th June 2023

I.A. No. 3645 of 2020

This interlocutory application has been filed under section 5 of the Limitation Act for condonation of delay of 454 days in filing the present commercial appeal.

2. In view of the Stamp Report dated 25th April 2023, the present Commercial Appeal is within time.

3. I.A. No. 3645 of 2020 is disposed of.

Commercial Appeal No. 10 of 2020

4. Heard Mr. Sachin Kumar, the learned AAG-II for the State.

5. Mr. Shresth Gautam, the learned counsel appears for the respondent.

6. The Original Suit No.9 of 2018 was instituted on an application by Executive Engineer, Water Ways Division No.1, Chakradharpur, Water Resources Department filed under section 34 of the Arbitration and Conciliation Act, 1996.

7. The challenge laid by the State of Jharkhand to the award dated

8th February 2017 by filing an application under section 34 of the Arbitration and Conciliation Act, 1996 has failed.

8. Mr. Shresth Gautam, the learned counsel for the respondent submits that before this commercial appeal is entertained, the appellant is required to deposit 100% of the decretal amount. Mr. Shresth Gautam, the learned counsel for the respondent refers to the judgments in “*Kayamuddin Shamsuddin Khan v. State Bank of India*” (1998) 8 SCC 676, “*Malwa Strips Private Limited v. Jyoti Limited*” (2009) 2 SCC 426, “*Manish v. Godawari Marathawada Irrigation Development Corporation*” [Special Leave to Appeal (C) No(s).11760-11761/2018 dated 26th September 2018] and “*Pam Developments Private Limited v. State of West Bengal*” (2019) 8 SCC 112 to press hard that in view of the judgment in Original Suit No.9 of 2018 by which the application under section 34 of the Arbitration and Conciliation Act, 1996 has been dismissed, this Court may not stay further proceedings in the Execution Case No.8 of 2018.

9. The learned Presiding Officer of the Commercial Court at East Singhbhum at Jamshedpur has referred to the judgments in “*Hindustan Copper Ltd. v. TTG Industries Ltd.*” 2018 (4) JBCJ 843 (HC), “*Bharat Aluminium Co. v. Kaiser Aluminium Technical Service, Inc.*” (2012) 9 SCC 552, *M/s Associated Construction v. Pawanhans Helicopters Pvt. Ltd.*” AIR 2008 SC 2911, “*Navodaya Mass Entertainment Limited v. J.M. Combines*” (2015) 5 SCC 698, “*Sutlej Construction Limited v. Union Territory of Chandigarh*” (2018) 1 SCC 718, “*Rastriya Ispat Nigam Limited v. Diwan Chand Ramsaran*” (2012) 5 SCC 306, “*Associate Builders v. DDA*” (2015) 3 SCC 49 and “*Ssangyong Engg. & Construction Co. Ltd. v. NHAI*” (2019) 15 SCC 131.

10. Mr. Sachin Kumar, the learned Additional Advocate General has drawn our attention to Clauses 13, 17, 20, 24 and 27 of the NIT and Clauses 11 and 14 of the Conditions of Contract to submit that award made by the sole arbitrator on various counts including compensation for idle labour, expenditure incurred onsite and offsite beyond 23rd August 2007, loss of profit @ 15% of the total work value and award of Rs.15,00,000/- are patently illegal.

11. Having regard to the contentious issue raised in the present

commercial appeal, further proceedings in Execution Case No.8 of 2018 are stayed till final disposal of this commercial appeal.

12. Post this matter on 17th July 2023 under the heading “Final Disposal”.

(Shree Chandrashekhar, J.)

(Ratnaker Bhengra, J.)

R.K.