

ITEM NO.11

COURT NO.7

SECTION XIA

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(s) for Special Leave to Appeal (C) No(s). 10665/2014

(Arising out of impugned final judgment and order dated 10/01/2014 in WP No. 19248/2013 passed by the High Court Of Orissa At Cuttack)

MAHANADI COALFIELDS LTD &amp; ANR

Petitioner(s)

VERSUS

M/S SHREE BALAJEE ENGICONS PVT LTD &amp; ANR

Respondent(s)

(with interim relief and office report)

Date : 18/11/2014 This petition was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE J. CHELAMESWAR

HON'BLE MR. JUSTICE S.A. BOBDE

For Petitioner(s) Mr. V. Giri, Sr. Adv.  
Mr. T. G. Narayanan Nair, Adv.  
Mr. K.N. Madhusoodhanan, Adv.

For Respondent(s) Mr. Sanjeeb Panigrahi, Adv.  
Mr. L. Nidhiram Sharma, Adv.

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

In terms of the signed order, the appeal is allowed and the judgment under appeal is set aside. The matter is remitted back to the High Court for examination of the question raised in the writ petition in accordance with law.

No order as to costs.

[O.P. SHARMA]  
COURT MASTER

[INDU BALA KAPUR]  
COURT MASTER

(Signed order is placed on the file)

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO.10403 OF 2014  
(Arising out of SLP(C)No.10665/2014)

MAHANADI COALFIELDS LTD & ANR

APPELLANT (S)

VERSUS

M/S SHREE BALAJEE ENGICONS PVT LTD & ANR

RESPONDENT(S)

O R D E R

Leave granted. Heard learned counsel for the parties.

2. Aggrieved by the judgment dated 10.1.2014 in a Writ Petition (Civil)No.19248 of 2013, the respondent No.1 and 2 in the writ petition preferred the instant appeal. The first appellant is a Government Company. It published e-Tenders Notice dated 30.03.2013 inviting the on-line tender from the eligible bidders for repairing and strengthening of Sundergarh bye-pass coal transportation road. Further details of the contract may not be necessary for the purpose of this order.

3. The first respondent Company was one of the bidders in terms of the tender notice. The first respondent company made a deposit of earnest money by way of a Bank Guarantee for an amount of Rs.6,53,000/-. It is further recorded by the High Court that after opening of the price bid on 14.6.2013, as the petitioner was found to be L.1, a communication was made on-line to the petitioner

on 21.6.2013 to upload confirmatory documents within 30.6.2013 to 6.7.2013 as per clause-15 of NIT. Since the petitioner did not upload the confirmatory documents within the time stipulated, the EMD was forfeited.

4. Aggrieved by the said forfeiture, the first respondent filed the above mentioned writ petition. By the impugned judgment, the writ petition was disposed of. The operative portion of the judgment reads as under:

"Having hearing the learned counsel for the parties, we are of the consensus and idem that forfeiture of earnest money of such a high amount is illegal and arbitrary. True it is, there is a clause in the NOT to forfeit the earnest money, but the same is not unbridle and uncanalized power vested in the MCL authorities to act in an arbitrary manner.

In view of the same, we direct the opposite parties 1 and 2 to deduct 10% of the EMD and refund the rest amount with accrued interest thereon to the petitioner within a period of four weeks from the date of receipt of copy of this order."

5. The High Court did not record any conclusion whether the appellants herein were justified in invoking the relevant clause of the tender notice which authorise the appellants herein to forfeit the earnest money deposit, on the other hand, came to the conclusion that the power of the appellants for forfeiting the earnest money is not "unbridle and uncanalised" and therefore,

chose to direct only one-tenth of the earnest money deposit be deducted and the balance to be returned to the respondents.

6. We do not see any basis in law for such a conclusion. In matters of disputes arising out of contracts, courts do not create or invent new rights and obligations between the parties. The courts are only required to identify the rights and obligations of the parties and enforce them in an appropriate court. In the circumstances, the appeal is allowed and the judgment under appeal is set aside. The matter is remitted back to the High Court for examination of the question raised in the writ petition in accordance with law.

7. No order as to costs.

.....J.  
[ J. CHELAMESWAR ]

NEW DELHI  
NOVEMBER 18, 2014

.....J.  
[ S.A. BOBDE ]

