

Urban Infrastructure Venture Capital ... vs Neelkanth Soham Developers Private ... on 30 January, 2020

Bench: Sanjay Kishan Kaul, K.M. Joseph

ITEM NO.3

COURT NO.11

SECTION IX

S U P R E M E C O U R T O F
RECORD OF PROCEEDINGS

I N D I A

Petition(s) for Special Leave to Appeal (C)

No(s). 10672/2018

(Arising out of impugned final judgment and order dated 12-02-2018
in SFJ No. 51/2014 passed by the High Court of Judicature at
Bombay)

URBAN INFRASTRUCTURE VENTURE CAPITAL LIMITED

Petitioner(s)

VERSUS

NEELKANTH SOHAM DEVELOPERS PRIVATE LIMITED & ORS.
(FOR ADMISSION and I.R.)

Respondent(s)

WITH SLP(C) No. 10876/2018
(FOR ADMISSION and I.R. and IA No.61157/2018-EXEMPTION FROM FILING
C/C OF THE IMPUGNED JUDGMENT)

SLP(C) No. 10858/2018
(FOR ADMISSION and I.R. and IA No.61026/2018-EXEMPTION FROM FILING
C/C OF THE IMPUGNED JUDGMENT)

Diary No(s). 7568/2019
(FOR ADMISSION and I.R. and IA No.40564/2019-CONDONATION OF DELAY
IN FILING and IA No.40568/2019-EXEMPTION FROM FILING C/C OF THE
IMPUGNED JUDGMENT and IA No.40566/2019-PERMISSION TO FILE
ADDITIONAL DOCUMENTS/FACTS/ANNEXURES)

SLP(C) No. 6932-6956/2019
(FOR ADMISSION and I.R. and IA No.42352/2019-PERMISSION TO FILE
ADDITIONAL DOCUMENTS/FACTS/ANNEXURES and IA No.42986/2019-
PERMISSION TO FILE ADDITIONAL DOCUMENTS/FACTS/ANNEXURES)

Date : 30-01-2020 These petitions were called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE SANJAY KISHAN KAUL
HON'BLE MR. JUSTICE K.M. JOSEPH

For Petitioner(s)

Mr. Arvind P.Datar, Sr. Adv.
Mr. Chander Uday Singh, Sr. Adv.
Mr. Pratap Venugopal, Adv.

Signature Not Verified
Digitally signed by
ANITA MALHOTRA
Date: 2020.01.31
18:04:56 IST

Ms. Mumtaz Bandukwala, Adv.
Ms. Surekha Raman, Adv.
Mr. Aditya Bapat, Adv.
Ms. Viddusshi, Adv.

Reason:

Ms. Ayushi Gaur, Adv.
Mr. Akhil Abraham Roy, Adv.
For M/S. K J John And Co, AOR

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Dr. A.M.Singhvi, Sr. Adv.
Mr. K.V.Vishwanathan, Sr. Adv.
Mr. M.Federal, Adv.
Mr. Mahesh Agarwal, Adv.
Mr. Rohan Cama, Adv.
Mr. Murtaza Federal, Adv.
Ms. Abhyankar Anuja, Adv.
Ms. Parul Shukla, Adv.
Mr. Kazaan Shroff, Adv.
Mr. Azeem Samuel, Adv.
Mr. Yojit Mehra, Adv.
Mr. Utkarsh Pratap, Adv.
Ms. Aashna Agarwal, Adv.
Mr. E. C. Agrawala, AOR

For Respondent(s) Dr. A.M.Singhvi, Sr. Adv.
Mr. K.V.Vishwanathan, Sr. Adv.
Mr. M.Federal, Adv.
Mr. Mahesh Agarwal, Adv.
Mr. Rohan Cama, Adv.
Mr. Murtaza Federal, Adv.
Ms. Abhyankar Anuja, Adv.
Ms. Parul Shukla, Adv.
Mr. Kazaan Shroff, Adv.
Mr. Azeem Samuel, Adv.
Mr. Yojit Mehra, Adv.
Mr. Utkarsh Pratap, Adv.
Ms. Aashna Agarwal, Adv.
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Mr. Aditya Bapat, Adv.
Ms. Viddusshi, Adv.
Ms. Ayushi Gaur, Adv.
Mr. Akhil Abraham Roy, Adv.

For M/S. K J John And Co, AOR

Ms. Misha Rohatgi, AOR

Mr. Gautam Narayan, AOR

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

SLP(C) No. 6932-6956/2019

1. We have heard today also learned senior counsel for the petitioners for over an hour making it two hours to persuade us on the issue before the arbitrator to rope in non-parties as parties to the arbitration decided against the petitioners and thereafter the appeal against the same having been dismissed by the High Court, both should be reversed.
2. We may note that the transactions are stated to be composite transactions and the funding was through Inter- corporate Deposits (ICDs). The winding up proceedings against the petitioners initiated would have resulted in a winding up order but for the fact that the principal amount under the ICDs was paid, albeit under protest. The orders were challenged before the appeal court and this court when it was opined that since principal amount of the ICDs has been paid, the company should not be wound up.
3. In the present proceedings, we are told that for seven days this issue has been debated by both the sides before the learned Arbitral Tribunal as to why non- signatories should be added as parties to the arbitration resulting in extremely elaborate order setting out numerous distinct reasons why the same should not be permitted. The appeal against the same was dismissed by the impugned order.
4. We would like to observe that it is not the function of the Appellate Court much less this Court to go into the interpretation of documents even at a final stage of award. Here we are concerned with the issue of roping in third parties. We are of the view that this is exactly how an arbitration should not go ahead and this is what has caused great damage to the arbitral process in our country.
5. We are of the view that a time has come that for every stage of proceedings in commercial matters actual costs should be the logical consequence and not exception. We are not thus inclined to interfere under Article 136 of the Constitution of India with the impugned orders but consider it appropriate to impose actual costs on the petitioners. This would imply that the respondents will forward bill of cost to the petitioners incurred by them for payment within a period of fifteen days from the date of the receipt thereof.
6. The special leave petitions are dismissed in view aforesaid.
7. Pending applications shall also stand disposed of. SLP(C) Nos.10672/2018, 10876/2018, 10858/2018 and SLP(Civil)Diary No.7568/2019

8. Learned senior counsel for the petitioners states that leave was granted at a stage when the appeal was pending before the Division Bench under Section 37 of the Arbitration and Conciliation Act, 1996 and that appeal has since been dismissed and the special leave petition filed against that dismissal has today been dismissed.

9. He thus seeks to withdraw these petitions with liberty to approach the learned Single Judge in accordance with whatever legal remedy is available to them in law.

Dismissed as withdrawn in terms aforesaid.

(ANITA MALHOTRA)
COURT MASTER

(ANITA RANI AHUJA)
COURT MASTER