

# Voith Hydro Ltda. & Ors vs Ntpc Limited on 7 October, 2020

**Author: Rekha Palli**

**Bench: Rekha Palli**

Via video

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\* IN THE HIGH COURT OF DELHI AT NEW DELHI  
+ OMP (ENF.) (COMM.) 64/2018  
VOITH HYDRO LTDA. & ORS. .... Decree Holders  
Through: Mr.Ciccu Mukhopadhaya, Sr. Adv.  
with Mr.Omar Ahmad, Mr.Vikram  
Shah, Mr.Amol Gupta & Ms.Simran  
Khorana, Advs.

versus

NTPC LIMITED .... Judgemen  
Through: Ms.Pinky Anand, Sr. Adv.  
Mr.Ashish Kumar, Ms.Sang  
Bharti & Ms.Saudamini, A

CORAM:  
HON'BLE MS. JUSTICE REKHA PALLI  
ORDER

% 07.10.2020

1. This is an application filed by the decree holders (DHs) seeking the following reliefs:-

"(a) Pass directions/orders cancelling/releasing and returning the Niti Aayog BGs to the Petitioners that had been deposited in this Hon'ble Court on 6 February 2020 vide diary no. 181375/2020;

(b) Pass directions/orders permitting the Petitioners to withdraw the amount of INR 56,42,71,662 that was deposited by the Respondent on 6 January 2020 (without prejudice to the Petitioners' case that the amount deposited by the Respondent on 6 January 2020 was much lesser than the amount that was actually due);

(c) Pass directions/orders that there is no requirement to further extend the Arbitration BGs deposited by the Respondent in this Hon'ble Court vide diary no. 9702/2020 and further that, the Arbitration BGs be cancelled/released and returned to the Petitioners;

(d) Direct the Respondent to forthwith pay the balance amount of INR 21,17,72,890.83 to the Petitioners in terms of the Arbitral Award;

(e) Direct the Respondent to forthwith pay the cost of INR 2,88,41,380 incurred by the Petitioners to extend the Arbitration BGs and the Niti Aayog BGs.

(f) Pass directions/orders quashing the letter dated 9 September 2020 issued by the Respondent;

(g) Pass directions/orders directing the Respondent not to take any steps in furtherance of the letter dated 9 September 2020 issued by the Respondent during the pendency of the present application."

2. Learned senior counsel for the DHs submits that the present enforcement petition was filed in April 2018, to seek enforcement of the arbitral award dated 23.08.2016, whereunder not only were the decree holders(DHs) held entitled to receive monetary compensation from the judgment debtor(JD), but a further direction was issued to the JD to return all the advance bank guarantees furnished by the DHs. He submits that since the JD had assailed the said award by way of a petition under Section 34 of the Arbitration and Conciliation Act; this Court, on 24.04.2018, while permitting the DHs to seek release of 75% of the awarded amount in terms of the Niti Aayog circular, had directed it to furnish a bank guarantee for the said amount. Consequently, upon the DHs depositing the original bank guarantee with the Registrar General of this Court, 75% of the awarded amount in accordance with the Niti Ayog Circular was released in their favour. He further submits that by a subsequent order the DHs were directed to deposit the four bank guarantees after duly extending them, which extension continued till 16.02.2020.

3. Mr. Mukhopadhaya submits that the JD's challenge to the award now stands rejected not only by the learned Single Judge but also by the Division Bench. He submits that the JD thereafter, preferred a Special leave petition before the Supreme Court wherein, once again its challenge to the award stands rejected on 22.09.2020, though the SLP has been kept pending for consideration of the question of law raised by the JD. He, therefore, contends that once the award has already attained finality, there is no reason as to why the bank guarantees furnished by the DHs or the sum of Rs.56,42,71,662 as deposited by the JD towards the awarded amount, should be retained any further with the Registrar General of this Court. He further submits that since the amount deposited by the JD is deficient, directions be issued to the JD to deposit the balance amount of Rs.21,17,72,890.83 and to also pay costs to the DHs for extending the bank guarantees for the last many years.

4. Issue notice. Mr.Ashish Kumar, Advocate accepts notice on behalf of the JD. Ms. Anand, learned senior counsel appearing on behalf of the JD opposes the release of the bank guarantees and the amount of Rs.56,42,71,662/- in favour of the DHs, and submits that since the question of law is still open before the Supreme Court, the bank guarantees and the amount of Rs.56,42,71,662/- be not released to the DHs at this stage, so as to await the final order of the Supreme Court. Her contention, thus, is that in case the Supreme Court were to decide the question of law in favour of the JD, the findings in the award are likely to be revisited.

5. Having considered the submissions of the learned senior counsel for the parties, I find absolutely no merit in the plea raised by Ms. Anand. Once the Supreme Court has categorically opined that it was not inclined to exercise its jurisdiction under Article 136 of the Constitution of India in favour of the JD to interfere with the award, it is evident that the award has attained finality and, therefore, there is no reason to deprive the DHs any further of the benefits under the award.

6. Accordingly, while granting six weeks' time to the JD to file a reply in order to respond to prayers (d) and (e) in the application, the Registry is directed to return all the bank guarantees furnished by the DHs (as detailed in paragraphs 7 and 8 of the application). The Registry is further directed to release the sum of Rs.56,42,71,662/- as deposited by the JD along with upto date accrued interest thereon in favour of the DHs. Rejoinder, if any, be filed by the DHs within two weeks of receiving the reply from the JD.

7. At request, list on 16.12.2020.

REKHA PALLI, J OCTOBER 7, 2020 gm