

(2000) 02 SC CK 0104

In the Supreme Court Of India

Case No : Civil Appeal No. 1450 of 2000 (arising out of S.L.P. (C) No. 11658 of 1999)

T.L. Geotechnics Pvt. Ltd.

APPELLANT

Vs

Dolphin Offshore Enterprises (India) Ltd.

RESPONDENT

Date of Decision : 11-02-2000

Acts Referred:

Citation : AIR 2000 SC 3730 : (2000) AIRSCW 4171 : (2000) 7 JT 317

Hon'ble Judges : M. Jagannadha Rao, J;A. P. Misra, J

Bench : Division Bench

Final Decision : Allowed

Judgement

M. Jagannadha Rao, J.—Leave granted.

2. The Appellant company filed a Winding Up Petition being Company Petition No. 918 of 1997 before the Company Court of the High Court of Bombay against the Respondent Company, for default in paying the amounts due to the Appellant Company. After hearing counsel for the Appellant and the Respondent, the learned Company Judge in his order dated 9.12.98 observed that even on the basis of the contention of the Respondent Company, a sum of 1,62,000/- in US\$ would at least be due to the Appellant Company. The learned Company Judge passed an order in the following terms:

(1) The Company is directed to deposit a sum of Rs. 70,00,000/- (this amount has been arrived at by converting US dollars 1,62,000/- at the present exchange rate in rupees) with the Prothonotary and Senior Master of this Court within 10 weeks from today.

(2) Upon deposit of the said amount by the Company within time, the Company Petition shall stand dismissed. The petitioner is permitted to withdraw the said amount.

(3) It would be open to the petitioner to either file a separate suit for recovery of

the balance amount as per its claim or to file a counter claim in the suit already filed by the Company against the petitioner.

(4) The amount of Rs. 6,50,000/- already deposited by the Company may be adjusted against the deposit of Rs. 70,00,000/- as ordered in Clause 1 of this order.

(5) The present order will not preclude the Respondent Company in taking appropriate proceedings in the pending suit against the petitioner.

(6) If the amount is not deposited by the Respondent Company within the time aforesaid, the Company Petition shall stand admitted with liberty to the petitioner to apply for advertisement of the Company Petition and for further directions.

3. It will be noticed that the above order was passed by the learned Company Judge on the basis of the admission of the Respondent Company that it may be permitted to deposit the said amount of Rs. 70,00,000/- i.e 1,62,000/- in US \$.

4. But when the said Respondent Company filed a Company Appeal before the Division Bench of the Bombay High Court, the Division Bench initially passed an order on 11.2.99 granting four more week's time to the respondent Company to deposit Rs. 70 lakhs as directed in para (1) of the order of the learned Company Judge. It is also stated that upon deposit of the said amount by the Company, the Company Petition would stand dismissed. But it also stated that the Appellant could be permitted to withdraw the aforesaid amount only on furnishing security to the satisfaction of the Prothonotary and Senior Master of the Court.

5. The appeal came up for final disposal on 26.4.99 to the Division Bench of the High Court. The Division Bench directed that in case the deposit is made, the same could be withdrawn by the Appellant on furnishing security. In other words, the Division Bench maintained the direction with regard to the security in its final order.

6. Aggrieved by the direction of the Division Bench directing the Appellant to furnish security for withdrawal of Rs. 70 lakhs being the amount with regard to which there was no dispute, this appeal has been preferred before us.

7. We have heard learned senior Counsel for the Appellant and the learned Counsel for the Respondent. We are of the view that the condition imposed upon the Appellant that security should be furnished for withdrawal of Rs. 70 lakhs was not warranted particularly because of the fact that the amount represents the admitted amount as stated by the Respondent's Counsel before the learned Company Judge.

8. In the circumstances, the direction of the Division Bench that the Appellant should furnish security in the sum of Rs. 70/- lakhs before the withdrawal of said amount is hereby set aside and the order of the Company Judge dated 9.12.98 is restored. If the amount is lying in a fixed deposit for any particular term, it will be open to the Appellant to move the Prothonotary for breaking up the fixed

deposit and for withdrawal of the said amount in favour of the Appellant.

9. The appeal is allowed as stated above. No costs.