VERDICTUM.IN

2026:DHC:10103

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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% ***Date of Decision: November 5th, 2026***

CNR No. DLHC010507912026

\+ **W.P.(C) 15607/2024**

MAYTAS SUBHASH .....Petitioner

Through: Mr. Kirtiman Singh, Sr. Adv. with Mr. Siddhant Jaiswal & Mr. Ritwik, Adv.

versus

IRCON INTERNATIONAL LIMITED & ANR. .....Respondents

Through: Mr. Abhay Kr. Tayal, Adv. for R-2/NOIDA.
Counsel through VC, appearance not given for R-1.

CORAM:
HON'BLE MR. JUSTICE AMIT MAHAJAN

AMIT MAHAJAN, J. *(Oral)*

1. By the present petition, the petitioner essentially seeks issuance of a direction to Respondent No. 1 to settle the claim of the petitioner in accordance with the Vivad se Vishwas II (Contractual Disputes) Scheme dated 29.05.2023 in respect of the arbitral award dated 06.06.2016.

2. Briefly stated, a tender was floated by Respondent No. 1 on behalf of Noida/Respondent No. 2 for construction of all road works for the expressway between Noida and Greater Noida (excluding the Asphalt works package from KM 15+000 to 17+500). The contract was awarded to the petitioner pursuant to the letter of acceptance

VERDICTUM.IN

dated 11.01.2001. Further, on 31.05.2001, an agreement was executed between the petitioner and Respondent No. 1 on behalf of Respondent No. 2 for the said construction.

3. Thereafter, disputes arose between the parties and Respondent No. 2 *vide* office order dated 03.05.2013 appointed the Sole Arbitrator. Thereafter, by award dated 06.06.2016, the learned Arbitrator directed Respondent No. 1 to pay a sum of ₹9,44,09,629/- to the petitioner with interest @12% per annum from the date of award until the date of payment. All counterclaims of Respondent No. 1 were rejected. The respondents challenged the award under Section 34 of the Arbitration and Conciliation Act, 1996 before the Competent Court at Gautam Budh Nagar, Uttar Pradesh. The said challenge under Section 34 of the Arbitration and Conciliation Act, 1996 was however returned by the Court for lack of jurisdiction.

4. The petitioner, on the other hand, instituted execution proceedings before this Court *vide* OMP (ENF) COMM 37/2021 and this Court *vide* order dated 12.05.2021 directed Respondent No. 1 to deposit a sum of ₹15,37,55,780/- with the Registrar General of this Court. The said amount was duly deposited.

5. By order dated 07.08.2024, this Court permitted the release of the deposited amount to the petitioner subject to the petitioner furnishing an irrevocable and unconditional bank guarantee for the amount deposited. Since the petitioner failed to provide the security, *vide* order dated 24.10.2024, the execution proceedings were closed with liberty to the petitioner to revive the same after the petition under Section 34 of the Arbitration and Conciliation Act, 1996 was decided.

VERDICTUM.IN

6. In the meantime, the Ministry of Finance issued an Office Memorandum dated 29.05.2023 introducing the *Vivad se Vishwas II (Contractual Disputes)* Scheme as a one-time settlement mechanism for pending contractual disputes. The Petitioner, on 27.10.2023, uploaded its claim for settlement at ₹8,21,15,653.75, that is, 65% of the net amount payable under the award. The record reflects that Respondent No. 1, *vide* multiple communications addressed to Respondent No. 2, acknowledged its obligation to accept the claim, however, *vide,* communication dated 23.08.2024, Respondent No. 1 rejected the claim of the petitioner observing the following :

> "*You will appreciate that the VSV-II Scheme is applicable to a central government entity and under Para 22 of the OM No. F.1/7/2022-PPD Dated 29.05.2023 (VSV-II Scheme), fund for the settlement of disputes was to be provided by the Public Authority, in your case Noida Authority. Although the Scheme has authorized the Procuring Entity (in your case IRCON) to accept the settlement proposal of a contractor, but since the Noida Authority is an entity of state government, we cannot proceed to accept your proposal until and unless the Noida Authority accords its permission to settle your dispute under the Scheme*."

7. Aggrieved by the same, the petitioner has preferred the present petition.

8. The learned Senior counsel for the petitioner submits that the Scheme is applicable to all Central Public Sector Enterprises as "procuring entities" and Respondent No. 1 being a procuring entity was liable to accept the claim of the petitioner. He submits that all the requisite criteria stipulated under the Scheme are met by the petitioner. He submits that in accordance with paragraph 18 of the scheme, in all cases where the claim amount is less than ₹500 crores, the procuring entity is liable to accept the claim if the claim is

VERDICTUM.IN

otherwise in compliance with the guidelines.

9. He submits that in terms of paragraph 22 of the Scheme, only the procuring authority is competent to accept the settlement where a public authority used a procuring entity to make procurement on its behalf. He submits that paragraph 22 of the Scheme does not otherwise vest any veto on the public authority to not accept the settlement.

10. He submits that the reason given by Respondent No. 1 to reject the petitioner's claim is erroneous since the scheme does not contemplate that only when the procuring entity as well as the public authority are central government organisations would the scheme be applicable. He submits that paragraph 4 of the Scheme only looks at whether the procuring entity is covered or not and paragraph 22 of the scheme employs the phrase "public authority" without limiting it to Central Bodies. He consequently submits that Respondent No. 1 was bound to accept the petitioner's claim.

11. On the other hand, the learned counsel for Respondent No. 1 submits that in terms of Clause 22 of the Scheme, the fund for settlement of the disputes is to be provided by Respondent No. 2 being the Public Authority and in the absence of permission by Respondent No.2, Respondent No.1 cannot proceed to accept the proposal.

12. In this regard, the learned counsel for Respondent No. 2 submits that as per paragraph 4, the scheme applies strictly to contractual disputes where one of the parties is the Government of India, its ministries/Departments, autonomous bodies of the government of India, Public Sector Banks, Central Public Sector

VERDICTUM.IN

Enterprises, or Union Territories without legislature. He submits that Respondent No. 2 is an instrumentality of State Government of Uttar Pradesh, and not the Central Government. It is argued that since the Noida authority is admittedly an organisation under the State of Uttar Pradesh, the Central Scheme is fundamentally inapplicable. He submits that even otherwise, the arbitral award has been challenged under Section 34 of the Arbitration and Conciliation Act, 1996 and the same is pending consideration before the Hon'ble High Court of Allahabad. He consequently submits that no relief can be granted to the petitioner.

13. Having taken note of the rival contentions of the parties and minutely traversed the record, this Court is of the opinion that the stance taken by the respondents cannot be countenanced. Before this Court adverts to pen down its reasons, it is firstly expedient to understand the rationale behind the scheme and sift the relevant provisions of the Scheme.

14. Firstly, it bears relevance to note that the *Vivad se Vishwas II* (Contractual Disputes) Scheme was introduced as a one-time settlement scheme to effectively settle pending disputes. While the scheme was introduced, it was noted that statistically, in cases where the arbitration award was challenged, a large majority of those were decided in the favour of the contractor. It was noted that in such cases, the amount became payable with interest at a rate far higher than the government's cost of funds. Consequently, considering the financial losses that the challenge to the award entailed, the scheme was introduced as a one-time settlement measure to settle the disputes

VERDICTUM.IN

involving government undertakings and other organizations to clear that backlog of pending litigations arising out of the said disputes provided that the claimant is prepared to accept an amount lesser than the amount awarded in terms of the scheme.

15. In that respect, paragraph 4 of the Scheme expressly provides that the scheme would be applicable to contractual disputes where one of the parties is either the Government of India and/or certain other authorities. Paragraph 4 reads as under:

> *a) to all Autonomous Bodies of the Government of India;*
> *b) to public sector banks and public sector financial institutions;*
> *c) to all Central Public Sector Enterprises;*
> *d) to Union Territories without legislature and all agencies/ undertakings thereof; and*
> *e) to all organisations, like Metro Rail Corporations, where Government of India has shareholding of 50% ;however, these organisations can opt out of the scheme at their discretion, with approval of the Board of Directors.*
> *The above mentioned organisations shall hereinafter be referred to as "procuring entities." The other party in dispute with the procuring entity shall be referred to as contractor(s) hereinafter.*

16. In the present case, Respondent No. 1 undisputedly falls within the category of Central Public Sector Enterprise and is a procuring entity.

17. Paragraph 7 of the Scheme further enumerates that the Scheme would be applicable only to those contractors who wish to participate in the scheme. The petitioner being a contractor, and opting to participate in the scheme, the Scheme would be applicable to the petitioner.

18. The eligibility condition is further stipulated under Clause 10(b) of the Scheme which provides as follows:

VERDICTUM.IN

(b)	Arbitral Award passed on or before 31.01.2023. Notes: i. Case may or may not be under challenge/ appeal before a Court. ii. Arbitral Award passed by the Micro and Small Enterprises Facilitation Council (MSEFC) or Arbitral Tribunal appointed on reference by MSEFC under the provisions of the Micro, Small and Medium Enterprises Development Act, 2006, shall also be included under this scheme. iii. However, Interim Orders of the Arbitral Tribunal under any provision of the Indian Arbitration and Conciliation Act, 1996, shall not be considered as an award eligible for settlement under this scheme.	65% of the net amount awarded/ upheld by the court or 65% of the claim amount lodged by the contractor under this scheme, whichever is lower.

19. In the present case, the arbitral award was passed on 06.06.2016 which is prior to the cut-off date prescribed as 31.01.2023. As specified in paragraph 5 of the Scheme, the award is only for monetary value. Further, as designated in paragraph 8 of the Scheme, the case is one of domestic arbitration. In that regard, paragraphs 5 and 8 of the scheme stipulate as under:

> *"5. Disputes where the award by court/ Arbitral Tribunal (AT) is only for monetary value will be eligible for settlement under this scheme. In case the award stipulates specific performance of contract (either fully or partially); such awards will not be eligible for settlement through this scheme.*
>
> *xxx*
>
> *8. The scheme shall apply only for cases involving domestic arbitration and cases under international arbitration are not eligible to be settled under this scheme."*

20. Consequently, considering the willingness expressed by the petitioner, the scheme is applicable on the petitioner as a contractor.

21. Much emphasis has been laid by the respondents to contend that no relief can be granted to the petitioner considering that the scheme is inapplicable on Respondent No. 2. It has been emphasised that the scheme is central in nature, and Respondent No. 2 being an

VERDICTUM.IN

instrumentality of State Government of Uttar Pradesh, and not the Central Government, the scheme is inapplicable on Respondent No.2. It has further been emphasised by Respondent No. 1 that in the absence of permission by Respondent No.2, Respondent No.1 cannot proceed to accept the proposal. The principal controversy that thus persists revolves around the interpretation and applicability of the Scheme on Respondent No. 2.

22. In that regard, reference may be had to Paragraph 22 of the Scheme which provides as follows:

> *"22. It may be possible that a Public Authority may have used a procuring entity to make procurement on their behalf. For example, a University (public authority in this case) gets a project executed through Central Public Works Department (procuring entity in this case). In such a case:*
> *i. The procuring entity shall be the competent authority to accept the settlement under the scheme including the cases where the award amount is more than Rs. 500 cr (refer paras 18 to 20 above)*
> *ii. Budget for meeting the settlement agreement **shall** be provided by the public authority which got the project executed through procuring entity.*
> *iii. The public authority and the procuring entity may also be the same in some cases."*

23. *Firstly*, insofar as the contention of Respondent No. 1 that in the dearth of consent from Respondent No.2, Respondent No. 1 cannot proceed to accept the proposal is concerned, the same, in the opinion of this Court stems from a fundamental misreading of paragraph 22 of the Scheme. A plain reading of the paragraph 22 (i) of the Scheme as quoted *supra*, reveals that the procuring entity *shall* be the competent authority to accept the settlement under the Scheme. The language employed in the paragraph is mandatory and the same does not contemplate the procuring authority sharing its decision-making

VERDICTUM.IN

power with the public authority. The mandatory language thus employed in paragraph 22(i) leaves no room for doubt that the procuring entity would be the competent authority to accept settlement, and it cannot abdicate the obligation entrusted to it under paragraph 22(i) by referring the ultimate decision to Respondent No. 2. Paragraph 18 of the Scheme further provides that in cases where the claim amount is ₹500 crore or less, procuring entities *will* have to accept the claim. In the present case thus, the claim being below ₹500 crore, Respondent No. 1 as a procuring entity was bound to accept the claim, and no consent as sought by Respondent No. 1 was mandated.

24. *Secondly*, a plain reading of paragraph 22 reveals that the government, while formulating the scheme, consciously recognised that the procurement undertaken by the government or a public authority need not invariably be undertaken directly by that authority. However, in such case where the procurement is undertaken by a procuring authority on behalf of the public authority, then in accordance with paragraph 22(ii) of the Scheme, the budget for meeting the settlement agreement *shall be provided* by the public authority. Here again, the use of the term "*shall*" assumes heightened significance. In the present case as well, Respondent No. 2 being the authority on whose behalf the procurement was made by Respondent No.1, Respondent No. 2 being the public authority was bound to provide the budget for the settlement.

25. Insofar as the contention of Respondent No. 2 that it was an instrumentality of State Government of Uttar Pradesh, and not the Central Government, and consequently the scheme is inapplicable on

VERDICTUM.IN

Respondent No.2 is concerned, the same, in the opinion of this Court, holds no water. As is apparent, paragraph 4 of the scheme identifies the organisations which fall within the category of "procuring entities" for the purposes of the scheme which includes Central Public Sector Enterprises. The scheme making authority has thus identified the class of organisations whose contractual disputes are brought within the scheme. Paragraph 22, on the other hand, does not make a qualification as to who the public authority may be. The terminology of paragraph 22 of the Scheme does not restrict the expression "public authority" to a Central Government department or a Central Government organisation. Had the intention been to restrict the operation of paragraph 22 only to cases where both entities are Central Government organisations, an express qualification to that effect would have been incorporated which is absent in the scheme.

26. The distinction is sought to be made on the ground that Respondent No. 2 is a statutory public authority and falls under the instrumentality of the State Government of Uttar Pradesh and not Central Government. It is not in dispute that Respondent No. 2 *is* in fact a public authority. In the opinion of this Court, once a procurement is done by *any* public authority (which may not be an instrumentality of the Central Government) through a Central Public Sector Enterprise as enumerated in paragraph 4 of the Scheme, then the scheme *in effect* is made applicable to such public authority.

27. The reason for this is plain. Respondent No. 2, even though an instrumentality of the State Government, consciously elected to undertake the procurement for the project through Respondent No. 1,

VERDICTUM.IN

undisputedly a Central Public Sector Enterprise expressly recognised under paragraph 4 of the Scheme. Having voluntarily adopted such an arrangement and availed the services of a Central procuring entity, Respondent No. 2 cannot selectively disassociate itself from the policy framework and instructions governing Respondent No. 1 in its capacity as the procuring entity, especially when the very dispute in question has arisen out of the procurement so undertaken. By choosing to route the procurement through a Central Government agency, Respondent No. 2 necessarily subjected the arrangement in respect of matters governed by the applicable policy to the framework prescribed for such procurement.

28. Consequently, once Respondent No. 2 (though not an instrumentality of the Central Government) elected to route the procurement through a Central Government agency, it also inherited rather registered itself to the circulars and schemes that may be applicable in respect of such procurement. Respondent No. 2 thus cannot approbate and reprobate by availing the institutional and administrative arrangement with Respondent No.1 on the one hand, while repudiating the consequences of the scheme specifically contemplated under Clause 22 on the other hand. Having availed the benefit of the procurement through a Central Public Sector Enterprise, Respondent No. 2 cannot now contend that the settlement mechanism governing that procuring entity is wholly inapplicable merely because Respondent No. 2 itself is a State statutory authority. To countenance the contention raised by Respondent No. 2 would render the whole purpose of Clause 22 of the scheme as otiose.

VERDICTUM.IN

29. In the considered opinion of this Court thus, since the present contract was executed by Respondent No. 1 (procuring entity as per paragraph 4 of the Scheme) on behalf of Respondent No. 2 (undisputedly, a public authority), the scheme is applicable on Respondent No. 2 who shall provide the budget for meeting the settlement in terms of paragraph 22(ii) of the scheme.

30. Furthermore, though emphasised, even the pendency of a challenge under Section 34 of the Arbitration and Conciliation Act, 1996 cannot act as an embargo for the implementation of the scheme as paragraph 10(b) of the Scheme specifically provides that the case may or may not be under challenge/appeal before a Court and provides the settlement amount in such cases.

31. In the light of the aforesaid discussion, the rejection of the claim made by Respondent No. 1 is unsustainable and is hereby set aside.

32. Consequently, Respondent No. 1 is directed to execute the settlement in terms of the scheme dated 29.05.2023.

33. The present petition stands allowed in the aforesaid terms.

AMIT MAHAJAN, J

NOVEMBER 5, 2026
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