HIGH COURT OF ANDHRA PRADESH

* * * *

I.A. No. 2 of 2025
in
COM.CA. No.19 of 2025

Between:
Oil and Natural Gas Corporation Ltd (ONGC)
New Delhi, rep. by its authorized signatory
Shri Vairpraakasam K, GM (Instrumentation)

.....PETITIONER

AND
Deep Industries Ltd.
Gujarat and 3 others

.....RESPONDENTS

DATE OF JUDGMENT RESERVED : 29.04.2026
DATE OF JUDGMENT PRONOUNCED : 07.05.2026
DATE OF JUDGMENT UPLOADED : 07.05.2026

SUBMITTED FOR APPROVAL:

THE HON'BLE SRI JUSTICE RAVI NATH TILHARI
&
THE HON'BLE SRI JUSTICE BALAJI MEDAMALLI

1. Whether Reporters of Local newspapers may be allowed to see the Judgments? Yes/No
2. Whether the copies of judgment may be marked to Law Reporters/Journals Yes/No
3. Whether Your Lordships wish to see the fair copy of the Judgment? Yes/No

RAVI NATH TILHARI, J

BALAJI MEDAMALLI, J

*** THE HON'BLE SRI JUSTICE RAVI NATH TILHARI**
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! Counsel for the Petitioner : Sri Tushar Mehta, Solicitor General of India
For D.S.Sivadarshan

Counsel for the Respondent No.1 : Sri S. Sriram, Senior Advocate
Assisted by Sri A. Akash
For Sri Vivek Chandrasekhar

< Gist :

> Head Note:

? Cases Referred:

1. (2015) 5 SCC 267

THE HON'BLE SRI JUSTICE RAVI NATH TILHARI
&
THE HON'BLE SRI JUSTICE BALAJI MEDAMALLI

I.A. No. 2 of 2025
in
COM.CA. No.19 of 2025

JUDGMENT: (per Hon'ble Sri Justice Ravi Nath Tilhari)

Heard Sri Tushar Mehta, learned Solicitor General of India, appearing through virtual mode, for Sri D. S. Sivadarshan, learned counsel for the appellant/petitioner and Sri S. Sriram, learned senior Advocate, assisted by Sri A. Akash, learned counsel, , for Sri Vivek Chandrasekhar, learned counsel appearing for the 1st respondent in I.A.No.2 of 2025.

2. The present appeal has been filed under Section 37 (1) (c) of the Arbitration and Conciliation Act, 1996 (in short 'Act 1996') read with Section 13 of the Commercial Courts Act, 2015 (in short 'CC Act').

3. The 1st respondent - M/s. Deep Industries Limited (in short 'DIL') is the claimant, in whose favour the Arbitral Tribunal (Panel of Arbitrators) passed the Award dated 19.05.2022, allowing Claims A, B, C & D and dismissing the Claims E, F and G with a direction that the parties shall bear their own costs under Claim-H. The award is against the appellant – ONGC.

4. ONGC filed application for setting aside the arbitral award. The Special Court for Trial and Disposal of Commercial Dispute, Visakhapatnam (in short 'the Special Court') in CAOP.No.18 of 2022 dismissed the application of

ONGC by Order dated 30.12.2024 and thereby refusing to set aside the arbitral award under Section 34 of the Act 1996.

5. The Coordinate Bench of this Court on consideration of the submissions advanced, by a detailed Order dated 18.07.2025 granted interim order and provided that subject to the appellant furnishing security for the remaining amount under the Award i.e., 25% within a period of three weeks from that date to the satisfaction of the learned Special Court, Visakhapatnam, the further proceedings for execution of the Award/Decree dated 19.05.2022 shall remain stayed until further orders of the Court.

6. Paragraphs 13 and 14 of the Order dated 18.07.2025 are reproduced as under:

> "34. In our view, case for grant of interim relief is made out.
>
> 35. Keeping in view the principles under Order 41 Rule 5 (3) CPC, the judgment of the Hon'ble Apex Court in ***International Seaport Dredging Pvt.Ltd.*** (supra) and that the appellant has already deposited 75% of the awarded amount, which has also been withdrawn by the respondent-DIL, to meet the ends of justice, as an interim measure, it is provided that subject to the appellant furnishing security for the remaining amount under the award, i.e., 25% within a period of three weeks from today to the satisfaction of the learned Special Court, Visakhapatnam, the further proceedings for execution of the award/decree dated 19.05.2022 shall remain stayed, until further orders of the Court."

7. In the proceedings under Section 34 of the Arbitration and Conciliation Act the appellant had already deposited 75% of the awarded amount which had also been withdrawn by the respondent-DIL and the said fact was also taken due consideration in passing the interim order dated 18.07.2025.

8. The appellant/petitioner complied with the interim order and on that aspect there is no dispute. Memo of compliance was also filed.

9. I.A.No.2 of 2025 has been filed by the appellant-ONGC with prayer to direct the 1st respondent-DIL to either deposit Rs.39,64,64,936/- along with interest at market rate or furnish security in the form of bank guarantee equivalent to Rs.39,64,64,936/- plus interest at market rate pending the final disposal of the appeal. To the said application, DIL has filed counter and the appellant/petitioner-ONGC has also filed rejoinder affidavit.

10. In the proceedings under Section 34, CAOP No.18 of 2022, ONGC (present appellant/petitioner) filed an application for stay of the execution of the arbitral award being I.A.No.213 of 2022 which was disposed of by the Court of the Special Judge for Trial and Disposal of Commercial Dispute, Visakhapatnam on 30.09.2022. The petition was allowed and stay was granted for execution of award dated 19.05.2022 subject to the condition that the petitioner shall deposit 75% of the awarded amount by the arbitral tribunal within the specified time. Para-12 of the said Order is reproduced as under:

> "12. In the result, this petition is allowed and stay is granted for execution of award, dated 19.05.2022, subject to condition of the petitioner shall deposit 75% of the awarded amount by the three arbitrators granted within six weeks. But be sans costs."

11. The Order dated 30.09.2022 was complied and the appellant/petitioner deposited the said amount in the Special Court after extension of time by Order dated 18.04.2023.

12. The DIL filed I.A.No.201 of 2023 in CAOP No.18 of 2022 requesting the Special Court to order payment of a sum of Rs.39,64,64,936-43 ps to DIL by way of online transfer to its account.

13. To I.A.No.201 of 2023 ONGC filed counter dated 08.05.2023. It submitted in para-3 that ONGC had no objection for DIL, the claimant, to withdraw the amount. It was also stated that DIL had given an undertaking in the Cheque Petition (I.A.No.201/2023) promising to re-deposit the amount in future as and when so directed by the said Court. ONGC further stated that the claimant-DIL was still working as contractor with ONGC doing works worth of crores of rupees, hence ONGC had no objection to allow the claimant-DIL for withdrawal of the amount. Para-3 of the counter dated 08.05.2023 is as under:

> "3. The allegations in Para No.6 are true and this Respondent has no objection for the Petitioner-Claimant to withdraw the amount, as the same was deposited by this Respondent-Owner, as per the orders of this Honourable Court. Further, I submit that the Petitioner-Claimant was given permission by the Honourable Court, in I.A.No.175/2023, for withdrawing the amount deposited by this Respondent, in the above matter and the Petitioner-Claimant has also given an undertaking, in the cheque petition, as per law, promising to re-deposit the same, in future, as and when the Honourable Court so directs. Further, this Respondent-Owner submits that, the Petitioner-Claimant, is still working as Contractor with this Respondent-O.N.G.C.Ltd. doing work worth Crores of Rupees. Hence, this Respondent-Owner has "NO OBJECTION", to allow the Petitioner-Claimant, for withdrawing the amount from the Honourable Court, in the above matter."

14. The learned Special Judge, on consideration, also the aforesaid, allowed I.A.No.201 of 2023 and permitted DIL to withdraw the deposited

amount of Rs.39,64,64,936.43ps by way of online transfer into its account, by Order dated 08.05.2023, which reads as under:

> "Counter filed by Respondent. Heard Sri MRD and Sri CSSR. Sri CSSR submitted that Respondent **ONGC has no objection for the petitioner withdrawing the entire amount deposited by ONGC without furnishing any security**. He submitted that the reasons for ONGC reporting no objection are stated in counter. Petitioner has already given undertaking to redeposit the amount as and when directed by the court and that the petitioner is still working as a contractor with ONGC doing work worth crores of rupees and hence ONGC has no objection for the petitioner withdrawal the amount. Learned counsel for ONGC has submitted the same reasons as stated in the counter and reported to the court that **ONGC has no objection for the petitioner to withdraw the entire amount deposited by ONGC without furnishing any security**.
>
> In the above circumstances, the entire deposited amount i.e., Rs.39,64,64,936.43 ps (Rupees Thirty Nine Crores Sixty Four Lakhs Sixty Four Thousand Nine Hundred and Thirty Six rupees and Forty Three paise only) shall be paid to the petitioner-M/s.Deep Industries Limited by way of online transfer directly to its account bearing no.921030003077930 i.e., the Axis Bank, CBB Ahmadabad. IFSC Code UTI8000150.
>
> Petition is accordingly allowed. No costs."

15. Thus, the amount of 75% as aforesaid deposited by ONGC in proceedings under Section 34 pursuant to the interim order dated 30.09.2022 was withdrawn by DIL under the Order of the Special Judge, dated 08.05.2023 in its bank account by transfer.

16. Sri Tushar Mehta, learned Solicitor General of India, appearing for the appellant/petitioner, submitted that the deponent of the counter affidavit, filed on behalf of ONGC in I.A.No.201 of 2023 in proceedings under Section 34

of the Act, was not duly authorized to represent ONGC or to make any statement conceding the withdrawal of the amount by the DIL without security. The statement was made without proper authorization. The ONGC cannot be bound by that statement. Appropriate disciplinary action is also being initiated against that concerned Officer. The DIL cannot derive any advantage from an authorized act of the Officer without authority. He submitted that the 'no objection' as recorded in the Order and also in the counter in I.A.No.201 of 2023 was in a limited sense which did not grant consent for unconditional withdrawal without furnishing security. He submitted that the counter did not state that the respondent may withdraw the amount without security. He referred to para-11 of the rejoinder affidavit filed in this Court in I.A.No.2 of 2025.

17. Sri Tushar Mehta, learned Solicitor General of India submitted that the withdrawal of the amount without furnishing security during pendency of the proceedings under Section 34 of the Act 1996 was contrary to the settled principles of law. While granting stay under Section 36 (2) and (3) of the Act 1996 regard must be had to the provisions of the Code of Civil Procedure relating to the stay on the money decree. He submitted that permitting an award holder to withdraw the deposited money without furnishing any security is prejudicial to ONGC and in case of success of ONGC in appeal, it may not be able to easily realize the said amount from DIL.

18. Sri Tushar Mehta, learned Solicitor General of India further submitted that as per financial statements of DIL, its profit after tax for the financial year

2023-24 was Rs.125 crores whereas for the statement of financial year 2024-25 the company suffered a loss of Rs.78-76 crores and therefore the DIL is facing severe financial stress from its core business operations and therefore, the ONGC has to ensure that the amount withdrawn by DIL is adequately safeguarded by directing the DIL either to re-deposit the amount or to furnish the security for the amount withdrawn as prayed in the application I.A.No.2 of 2026.

19. Sri S. Sriram, learned senior counsel for DIL submitted that the withdrawal of the amount by online transfer to the account of DIL of the amount, 75% of the award, deposited by ONGC pursuant to the interim order dated 30.09.2022 passed by the learned Special Judge in I.A.No.213 of 2022 in CAOP.No.18 of 2022 was under the Order of the Special Court dated 08.05.2023. On the petition filed by the DIL, the ONGC in clear words consented to such withdrawal for which the counter was filed making such a clear stand. He submitted that the order also recorded such consent and 'no objection' on behalf of ONGC. The Order dated 08.05.2023 was passed almost 3 years back and during the said period any objection to the withdrawal was not raised. Any further counter or application, etc., was not filed before the Special Judge disputing the consent or 'no objection' given by the authorized officer of the ONGC who filed counter. No such stand was taken by ONGC which is being taken for the first time in the appeal and that too only by way of the rejoinder affidavit in I.A.No.2 of 2025, that the Officer of the ONGC was not authorized to give 'no objection'. He submitted that even while filing the appeal

in this Court, there was no such stand taken neither in the memo of appeal nor any affidavit or application filed along with the appeal. Even in I.A.No.2 of 2025, referring to para-5 thereof, learned Senior Advocate submitted that the stand taken was "*it was erroneously recorded that ONGC had 'No Objection' to such withdrawal without security*". Learned senior Advocate submitted that what has been stated in para-5, is that the Court of Special Judge erroneously recorded. It was not the stand even in the I.A that there was no authorization of the Officer who filed counter and gave 'no objection' for withdrawal before the Special Judge. Such a stand is being taken for the first time in the reply affidavit, which in his submission, is an afterthought.

20. Sri S. Sriram, learned senior Advocate, further submitted that the Order dated 08.05.2023 was never challenged. It attained finality.

21. He further submitted that after CAOP.No.18 of 2022 filed by ONGC was dismissed and the Special Judge did not find the award to be set aside, the order permitting the withdrawal without furnishing security, also came to an end. So, he submitted further that the undertaking which was given by DIL that DIL shall re-deposit the amount as and when directed by the Court also came to an end. The said undertaking was in the Court of the Special Judge and on conclusion of the proceedings before the Special Judge, it cannot be said that the undertaking to re-deposit the amount, continues in appeal. He however submitted that the DIL shall be bound by the ultimate decision taken, in the present appeal, subject of course to the further remedies available to the aggrieved parties.

22. With respect to the financial status of DIL and the argument of the learned Solicitor General of India for the appellant, about precarious financial situation of DIL, he submitted that the same is not correct referring to the stand taken in various paragraphs of the counter affidavit of DIL. He submitted that the DIL is a listed company with a longstanding reputation and deep rooted business operations in the oil and gas sectors. It continues to be a going concern with significant liquidity and operational capability. Referring to para-9 also, Sri S. Sriram, learned senior counsel for the respondent, explained with particulars about the assets; the active contracts between ONGC and DIL exceeding Rs.1,000 crores. He submitted referring to para-10 that the ONGC for every one of its contract with DIL is already holding substantial bank guarantee towards Performance Security and processes monthly running bills to the DIL, substantially.

23. We have considered the aforesaid submissions and perused the material on record.

24. What is not in dispute is that 75% of the amount under award was deposited in Special Court in proceedings under Section 34 of the Act 1996 under Order 18.04.2023 granting stay of the execution of the Award. The same was deposited by the appellant within the extended time. The same was also permitted to be withdrawn by DIL vide Order dated 08.05.2023. The Order dated 08.05.2023 was passed considering the 'no objection' raised by ONGC for which counter was filed clearly stating that ONGC had no objection to withdrawal of the amount deposited. The Order also recorded that the DIL had

undertaken to re-deposit the amount if the Court passes such an order and the same was also clearly stated in the affidavit in support of the application seeking withdrawal of the amount vide I.A.No.201/2023. The Order of the learned Special Judge dated 08.05.2023 granting permission to withdraw the deposited amount without furnishing any security in the circumstances of the case mentioned in the said order was not challenged by ONGC on any ground neither before the higher Court nor before the same Court of Special Judge. The proceedings under Section 34 in CAOP No.18 of 2022 were decided on 30.12.2024 i.e., almost after two years and in the meantime any application or affidavit raising objection to what was stated in the counter of ONGC that the DIL may withdraw and ONGC had 'no objection', was not disputed nor controverted. In spite of such observation and recording thereof in the Order 08.05.2023 that, was also not disputed before the learned Special Judge.

25. From the aforesaid, we observe that it cannot be said that the said 'no objection' to withdraw the deposited amount by DIL was not in the knowledge of the ONGC, as the same is reflected from the counter affidavit as also the very Order dated 08.05.2023. The present appeal was filed on 16.04.2025 and it could not be pointed out from the record of the appeal with its application and affidavit filed that the grant of 'no objection' before the learned Special Judge by filing the counter by the ONGC was disputed in any manner, either that no such 'no objection' was given or that the person filing the counter on behalf of ONGC had no such authorization. Even in the application I.A.No.2 of 2025 filed for direction to DIL either to re-deposit the

amount withdrawn by furnishing security thereof any such stand was not taken. As rightly pointed out by the learned senior counsel for DIL, in the affidavit in support of the application, what was sought to be urged was the illegality committed by the learned Special Judge in its Order permitting withdrawal to be erroneous for not directing to furnish security. It is for the first time after filing the counter in I.A.No.2 of 2025 that the stand has been taken in the rejoinder affidavit that, the deponent of the counter, official of ONGC had not been instructed to give 'no objection' to withdraw the amount by DIL. Under the circumstances, the plea taken appears to us to be well afterthought to get over the 'no objection' made before the learned Special Judge by way of writing in the counter to permit withdrawal to DIL.

26. The submission of Sri Tushar Mehta, learned Solicitor General of India that in such cases where the amount is permitted to be withdrawn, the person so permitted should be imposed condition for furnishing security/bank guarantee. He referred to ***Kanpur Jal Sansthan v. Bapu Constructions***[1]. May it be correct that in appropriate cases, the person may be asked to furnish security to the amount permitted to be withdrawn. But when, as in the present case, the ONGC had itself given 'no objection' to the withdrawal to the Court, in writing in the counter affidavit, there could have been no occasion for the Court to impose condition while permitting withdrawal of the amount to furnish the security. In ***Kanpur Jal Sansthan*** (supra) the Order of the High Court permitting withdrawal of 50% without furnishing security, was under challenge.

[1] (2015) 5 SCC 267

Here there is no challenge ever made to the Order dated 08.05.2023, may be for the reason that the 'No Objection' was given by the ONGC. That order is not under challenge and is not the subject matter of the present appeal.

27. Sri Tushar Mehta, learned Solicitor General of India, submitted that ONGC in its counter affidavit submitted only 'no objection' to withdrawal of the amount to DIL but not that it should be without furnishing security. The learned Special Judge in its Order erroneously recorded that ONGC had 'no objection' to the withdrawal of the amount by DIL without furnishing any security.

28. In this respect, on perusal of the application filed by DIL, I.A.No.201 of 2023, it is evident that the DIL prayed for withdrawal of the amount and also gave an undertaking to the Special Court to re-deposit the amount as and when directed. In I.A.No.201 of 2023 the permission sought by DIL was for withdrawal and furnishing undertaking to re-deposit, but DIL did not say withdrawal on furnishing of the security by DIL. In the counter affidavit filed by ONGC to IA No.201 of 2023, the ONGC submitted 'no objection' to such withdrawal by DIL. The ONGC did not oppose for withdrawal by submitting in the counter affidavit that the Court should impose condition of furnishing security. So, the prayer of the DIL for withdrawal of the amount vide its application had 'no objection' from the ONGC, on the terms for withdrawal i.e., undertaking as requested by DIL. If the ONGC had any objection to the unconditional withdrawal and only on undertaking of DIL, it ought to have clearly raised such an objection in its counter, i.e., to impose certain conditions

or to grant withdrawal subject to furnishing the security. The prayer as made by the DIL in its application had written 'no objection' by ONGC in the counter affidavit.

29. Perusal of the Order of the learned Special Judge, dated 08.05.2023, as reproduced above, shows that the counsel for ONGC submitted before the Special Court "*that respondent ONGC has no objection for the petitioner withdrawing the entire amount deposited by ONGC without furnishing any security*." He also submitted as quoted in the Order that "…….*the reasons for ONGC reporting no objection are stated in counter. Petitioner has already given undertaking to redeposit the amount as and when directed by the court and that the petitioner is still working as a contractor with ONGC doing work worth crores of rupees……*". So, the learned counsel for ONGC had also stated to the Special Court that the ONGC had no objection for withdrawal and that was being given in view of the undertaking furnished by DIL and also that the DIL was still the contractor with ONGC. So, it is clear that the ONGC neither in its counter asked for furnishing the security, and had given the no objection as the DIL had given the undertaking, nor during arguments ONGC's counsel asked for furnishing of security by DIL as a condition of withdrawal but stated 'no objection' by ONGC for the undertaking given by it. It has not been contended before us, nor is the stand taken in the application that the counsel of ONGC had no such instructions or that he did not make that statement.

30. It is a settled principle of law that if any statement in any Order of the Court is disputed as not being correct and recorded wrongly by the Court,

the appropriate course open to such a party is to approach the same Court. The ONGC did not approach the same Court of Special Judge nor ever challenged the Order dated 08.05.2023.

31. Thus, from the affidavit, counter affidavit and the Order, it is evident that the ONGC did not ask for furnishing the security for the prayer of DIL to withdraw the amount of 75%. Rather it was satisfied with the undertaking given by the DIL and for that reason 'no objection' was given. If the ONGC felt aggrieved by permission granted without furnishing security or from any of the contents of the Order dated 08.05.2023, it certainly would have approached immediately against the said Order in appropriate proceedings, may be before the same Court during the pendency of the petition under Section 34 of the Act 1996 or by challenging the said Order in the higher Forum. Such an inaction on the part of ONGC for more than 3 years also shows that it had 'no objection' to withdrawal of the amount by DIL without furnishing any security.

32. Sri Tushar Mehta, learned Solicitor General of India, further submitted that independent of the Order dated 08.06.2023 and the contents thereof i.e., undertaking or without furnishing security, the present application may be considered for direction to the DIL to furnish the security for the amount withdrawn or to re-deposit the amount. We are of the view that some sanctity is to be attached to the Court proceedings, and its Orders to the Order dated 08.05.2023, which was passed almost three years back, recording thereunder what could not be proved to be incorrect. The finality is also to be given to the Court's order which should not be reopened on unfounded

averments and that too, without any challenge to the said order. We are of the further view that no doubt, the Court may pass the Order, as prayed and may also considering the undertaking given by DIL to the Special Court pass such order but there must be some justifiable reasons to pass that order as prayed in I.A.No.2 of 2025 i.e., either showing the illegality in the Order dated 08.05.2023 or the change in the circumstance so as to persuade the Court, under changed circumstances the necessity to pass orders either directing the DIL to re-deposit the entire amount or part thereof or to furnish the security for the said amount or any part thereof.

33. The changed circumstance, according to ONGC, as stated in the application is that the DIL has suffered a loss of Rs.78.76 crores in the financial year 2024-25 whereas in the financial year 2023-24 there was profit. Such an averment has been made in para-11 of the affidavit, which was referred to and which is reproduced as under:

> "I respectfully submit that as per the financial statements of Deep Industries, its profit after tax for the financial year 2023-24 was Rs.125 crores, whereas for the subsequent financial year 2024-25, the company suffered a loss of Rs.78.76 crores. Therefore, it is evident that Deep Industries is presently facing severe financial stress from its core business operations. In view of this precarious financial situation, it is imperative for ONGC to ensure that the amount withdrawn by Deep Industries is adequately safeguarded."

34. Contrary to the aforesaid, the case of the DIL is of denial. In para-7 of the counter, DIL has submitted that the loss in the financial year 2024-25 is primarily due to an exceptional item which is purely non-cash accounting loss

and has absolutely no impact on the liquidity or operational solvency of the DIL. In paras-8 and 9 also the DIL has mentioned that it continues to be a going concern with significant liquidity and operational capability. Paragraphs 7 to 10 of the counter which were referred by the learned senior counsel for DIL read as under:

> "7. It is further respectfully submitted that the "loss" of Rs.78.76 Crores appearing in the Consolidated Financial Results for FY 2024-25 is primarily due to an "Exceptional Item" of Rs.251.05 Crores for the quarter and year ended 31st March 2025. This amount represents a one-time, non-cash loss incurred due to the cleaning up exercise post-acquisition of Kandla Energy and Chemicals Ltd (from liquidation) and Dolphin Offshore Shipping Limited (under CIRP). This exceptional item is purely a non-cash accounting loss and has absolutely no impact on the liquidity or operational solvency of the Answering Respondent Group. Therefore, the premise of the Petitioner's application – that the Answering Respondent is in financial distress – is wholly baseless.
>
> 8. Furthermore, the Petitioner had conveniently ignored the massive asset base, the reserves, and most importantly, the robust order book of the Answering Respondent. The Answering Respondent is a listed company with a longstanding reputation and deep-rooted business operations in the oil and gas sector. A temporary fluctuation in profitability in one financial year does not equate to insolvency or an inability to repay. The Answering Respondent continues to be a going concern with significant liquidity and operational capability.
>
> 9. It is respectfully submitted that the most vital aspect that renders the Petitioner's demand for security redundant is the substantial volume of ongoing business the Answering Respondent conducts with the Petitioner (ONGC) itself. As admitted by the Petitioner at Paragraph No.3 in its Counter filed in IA No.200 of 2023 in C.A.O.P.No.17 of 2022 on the file of the Hon'ble Commercial Court, the Answering Respondent is executing works worth crores

of rupees. Currently, the Answering Respondent is executing multiple high-value contracts for ONGC across various assets including Rajahmundry, Ahmedabad, Tripura, and Bokaro. The total value of these live contracts runs into hundreds of crores. For instance, the Answering Respondent is executing the "Hiring of Gas Compression Services at Balol GGS I" with a contract value of approximately Rs.135 Crores, and the "Charter Hiring of Compressor of 6.0 LSCMD HP for a period of 3 years" valued at over Rs.107 Crores. Furthermore, the Answering Respondent have recently been awarded the contract for "Charter Hiring of 01 number 100 MT Work Over Rig for production test for PEL/ML Area of Mehsana Asset for a period of 03 Years against e-tender No.BN6RC23002, Cat III" valued at approximately Rs.27.35 Crores. In total, the cumulative value of the active contracts between the Petitioner and the Answering Respondent exceeds Rs.1,000/- Crores. A copy of the details of the active contracts between the Petitioner and the Answering Respondent as on date are filed herewith as Annexure R/1-2.

10. It is submitted that for every one of these contracts, the Petitioner (ONGC) is already holding substantial Bank Guarantees towards Performance Security and processes monthly running bills payable to the Answering Respondent. The monthly average payments disbursed by the Petitioner to the Answering Respondent for the "Hiring of Gas Compression Services at Balol GGS I" alone is approximately Rs.1.83 Crores. Similarly, for the contract at Linch GGS, the monthly disbursement is over Rs.2.34 Crores. The Answering Respondent receives steady, substantial cash flows from the Petitioner month on month. In the unlikely event that the Petitioner succeeds in the present appeal and the Answering Respondent fails to redeposit the amount, the Petitioner has ample recourse to recover the said amount from the running bills and retention monies available with them under these numerous contracts. Therefore, the Petitioner is already fully secured by virtue of being the Answering Respondent's largest debtor."

35. So, on the aspect of the alleged precarious financial condition of DIL, as mentioned in the affidavit filed in support of the application, there is

counter affidavit denying and disputing the same and also an affirmative assertion that there is no such condition of the DIL so as to direct to furnish security. Those questions of fact cannot be finally adjudicated with respect to precarious financial capacity of DIL or otherwise, by this Court in the exercise of the present jurisdiction. For an order directing to re-deposit the entire amount or to furnish the bank guarantee it will have to be shown a very strong case by ONGC against the DIL, especially, for the reason that 75% amount was directed to be deposited by ONGC while granting stay by the Special Court and the same was permitted to be withdrawn as aforesaid by DIL without furnishing security on the 'no objection' given by ONGC and for the further reason that the petition for setting aside the award, CAOP No.17 of 2022 filed by ONGC, has finally been dismissed, finding no ground to interfere with the award by the Arbitral Tribunal. In the present appeal also taking into account that circumstance of deposit of 75% already made in the Special Court and its withdrawal by the DIL, the interim order dated 18.07.2025 was passed in favour of the appellant, for direction to furnish security, of the rest of the 25% by the ONGC. Additionally, we are of the view that imposing the condition of furnishing the security for withdrawal of the amount at the initial stage while granting the permission to withdraw, stand on a different footing than in a case where the withdrawal has been made with the consent or 'no objection' and application is filed later on for direction either to re-deposit the amount or to furnish the bank guarantee for the amount already withdrawn.

36. For the aforesaid, the stand of the ONGC with respect to the financial status of DIL of an alleged precarious financial status cannot be accepted by us nor determined in the exercise of the present jurisdiction. On the said ground, in our view, no case is made out to direct the DIL either to re-deposit the amount withdrawn by it or to furnish the security for the same, particularly, when the Section 34 petition filed by ONGC against the award has been dismissed. No case for grant of prayer as in I.A.No.2 of 2025 has been made out at least at this stage on the ground taken and the submissions advanced.

37. Sri S. Sriram, learned Senior Advocate, submitted that on termination of the proceedings under Section 34 by rejecting the challenge to the award against the ONGC and in favour of DIL maintaining the arbitral award, the undertaking given by the DIL before the learned Special Judge also comes to an end. We are not convinced and are not in agreement with the submission. The reason is that, firstly, there is no denial that the undertaking was given by DIL that it shall re-deposit the amount as and when directed by the Court. Secondly, when such undertaking was given and subject to which, the amount was withdrawn, though there was also 'no objection' from ONGC, it cannot be said in the present appeal that, DIL shall not be bound by such undertaking and that has come to an end on dismissal of CAOP.No.17 of 2022 under Section 34. In our view, the DIL shall still be bound by its undertaking to deposit the amount withdrawn by it if so directed by the Court. Appeal it is well settled is continuation of the original proceedings, though may not be for all the purposes, but when the order itself, passed under Section 34 is under challenge

in the present appeal filed under Section 37, if and when this Court directs to re-deposit the amount, or consequent upon the result of this appeal the DIL comes under liability to repay either wholly or partly the amount withdrawn by DIL, it cannot say 'not bound by undertaking'. The DIL in such circumstances will have to follow either on its undertaking or even otherwise under the directions/orders of the Court, the directions if issued in that regard.

38. However, for any such direction as prayed by the ONGC, we are of the view that no case is made out, for the aforesaid reasons.

39. Thus considered. We are of the view that I.A.No.2 of 2025 deserves rejection.

40. I.A.No.2 of 2025 is accordingly rejected.

Pending miscellaneous petitions, if any, shall stand closed in consequence.

RAVI NATH TILHARI, J

BALAJI MEDAMALLI, J

Date: .05.2026
Dsr

Note:
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