

ITEM NO.301 Court No.1 (Video Conferencing) SECTION XIV

S U P R E M E C O U R T O F I N D I A
R E C O R D O F P R O C E E D I N G S

IA No.107899/2020 in Petition(s) for Special Leave to Appeal (C)
No(s).28434/2018

(Arising out of impugned final judgment and order dated 30-05-2018
in FA00S No. 67/2017 passed by the High Court Of Delhi At New
Delhi)

DEVAS MULTIMEDIA PRIVATE LIMITED Petitioner(s)

VERSUS

ANTRIX CORPORATION LIMITED Respondent(s)

(For IA No. 107899/2020 - CLARIFICATION/DIRECTION)

Date : 04-11-2020 This application was called on for hearing today.

CORAM :

HON'BLE THE CHIEF JUSTICE
HON'BLE MR. JUSTICE L. NAGESWARA RAO
HON'BLE MS. JUSTICE INDU MALHOTRA

For Petitioner(s) Mr. Mukul Rohatgi, Sr. Adv.
 Mr. KV Vishwanathan, Sr. Adv.
 Mr. Sajan Poovayya, Sr. Adv.
 Mr. Rajiv Nayar, Sr. Adv.
 Mr. Omar Ahmad, Adv.
 Mr. Ishan Gaur, Adv.
 Mr. Vikram Shah, Adv.
 Mr. Amol Gupta, Adv.
 Ms. Simran Khorana, Adv.
 Mr. Sumit Attri, AOR
 For M/s Cyril Amarchand Mangaldas, AOR

For Respondent(s) Mr. K.K. Venugopal, Ld. AG
 Mr. Tushar Mehta, Ld. SG
 Mr. Arjun Krishnan, AOR
 Mr. Ankur Talwar, Adv.
 Mr. Ankur Singh, Adv.
 Mr. Shourya Bari, Adv.
 Mr. Chinmoy Roy, Jr. Legal Officer

Mr. Tushar Mehta, Ld. SG
Mr. Venkatraman, ASG
Mr. Rajat Nair, Adv.
Mr. K. R. Sasiprabhu, AOR

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

IA No. 107899/2020 - FOR DIRECTIONS

We have heard all the parties before us in the instant interlocutory application for direction filed on behalf of the respondent - Antrix Corporation Limited. The respondent have suffered an award in the sum of \$ 562.5 million with interest. The total liability under the Award appears to be in the region of US \$ 1.2 billion.

The matter before us has arisen in the following way:

The respondent - Antrix Corporation Limited preferred an application under section 9 of the Arbitration and Conciliation Act, 1996 (for short, 'the Act') before the City Civil Court, Bangalore.

On the other hand, the SLP petitioner viz., Devas Multimedia Private Limited, filed an application under section 9 of the Act for securing the sum in the Award before the Delhi High Court on 25.09.2015.

The respondent - Antrix Corporation Limited amended the application under section 9 of the Act pending before the City City Court, Bangalore to restrain the SLP petitioner viz., Devas Multimedia Private Limited, from implementing or enforcing the award. They also filed objections under section 34 of the Act before the City Civil Court, Bangalore. This was done on the basis that the respondent - Antrix Corporation Limited had earlier filed an application on 05.12.2011 under section 9 of the Act before the City Civil Court, Bangalore. It therefore contended that it was

entitled to file objections under section 34 of the Act before the City Civil Court, Bangalore because the earlier application had been filed under section 9 before the City Civil Court, Bangalore.

On 28.02.2017, a learned Single Judge of the Delhi High Court held that the application under section 9 of the Act filed by SLP petitioner before the Delhi High Court was maintainable. However, the Division Bench of the High Court set aside the judgment of the learned Single Judge on 30.05.2018 with the result that the proceedings before the City Civil Court, Bangalore would proceed. Thereafter, the petitioner - Devas Multimedia Private Limited, filed the present Special Leave Petition and on 19.11.2018, this Court stayed the proceedings under section 9 and 34 of the Act filed by the respondent - Antrix Corporation Limited before the City Civil Court, Bangalore. The instant interlocutory application for direction has been filed thereafter.

Having given our anxious consideration to the matter before us, we find that the issue pending before us in the present SLP is primarily whether the application under section 34 of the Act should be heard by the court at Delhi or the court at Bangalore.

In other words, the issue before us is not whether the award can be allowed to be executed without hearing the application under section 34. We consider it highly iniquitous to permit the party to execute an award without the objections under section 34 of the Act to the Award itself being heard. The execution proceedings were filed in various parts of the world including the United States. We understand that the US Court stayed the execution proceedings before it for a period of about one year to enable the parties to

settle the matter. We are informed that it has lifted the stay on 17.09.2020 and has confirmed the award dated 14.09.2015 in favour of the petitioner - Devas Multimedia Private Limited for the full amount of \$562.5 million together with pre-award and post-award and post-judgment interest.

We might note at this stage that we suggested to the parties to see if the mediation is possible to settle the dispute between them.

Mr. K. K. Venugopal, learned Attorney General for India, has specifically denied the possibility of mediation on the ground that the Union of India has discovered a serious fraud in the entire series of transactions leading up to the disputes including the arbitration agreement.

Mr. Mukul Rohatgi, learned Senior Counsel appearing for the petitioner, strongly denies the allegations.

The point is that the mediation does not seem to be possible at this stage.

Having regard to the overall circumstances of the case, we are of the view that pending decision in the present special leave petition, it would be highly iniquitous to permit the petitioner - Devas Multimedia Private Limited to obtain the fruits of the Award by execution under any law or convention after obtaining a stay from this Court restraining the respondent - Antrix Corporation Limited from pursuing its objections under section 34 of the Act against the Award.

The application filed by the respondent under Section 34 of the Act stands transferred to the Delhi High Court. The final

award dated 14.09.2015 bearing case No. 18051/CYK titled as Devas Multimedia Pvt. Ltd. Vs. Antrix Corporation Ltd., shall be kept in abeyance till the Delhi High Court decides the application for stay in the Application under Section 34. The application for stay shall be decided on its own merits in accordance with law.

The petitioner - Devas Multimedia Private Limited will be entitled to seek a deposit of the sum awarded or a part thereof before the Delhi High Court.

Ordered accordingly.

The instant interlocutory application for direction is allowed.

List the main special leave petition on 25.11.2020 for final disposal.

(SANJAY KUMAR-II)
ASTT. REGISTRAR-cum-PS

(INDU KUMARI POKHRIYAL)
ASSISTANT REGISTRAR