IN THE HIGH COURT OF JHARKHAND AT RANCHI
(Civil Writ Jurisdiction)
W.P.(T) No. 5475 of 2023

M/s Anvil Cables Private Limited, a Private Limited Company incorporated and subsisting under the provisions of the Companies Act, 2013, having its Registered Office at 102 Krishna, 224, AJC Bose Road, P.O. & P.S.- A.J.C Bose Road, District- Kolkata-700017, through its Constituted Attorney, Mr. Shailendra Kumar Singh, aged about 50 years, son of Shri Rabindra Nath Singh, resident of Dewanji Street, Hooghly, P.O. and P.S.-Rishra, District-Hooghly, Pin Code-711228, West Bengal. .... **Petitioner**

Versus

1. The State of Jharkhand through the Principal Secretary, Department of Energy, having its office at SBI Building, Project Bhawan, Dhurwa, P.O. & P.S.- Dhurwa, District-Ranchi, Jharkhand-834004.
2. Jharkhand Bijli Vitaran Nigam Limited, a State Government Company, having its Registered Address at Engineering Building, H.E.C, Dhurwa, P.O. & P.S. Dhurwa, District-Ranchi, Jharkhand-834004.
3. Chairman-Cum-Managing Director, Jharkhand Bijli Vitaran Nigam Limited, having its office at Engineering Building, H.E.C, Dhurwa, P.O & P.S-Dhurwa, District-Ranchi, Jharkhand -834004.
4. Senior Manager (Finance & Accounts), Jharkhand Bijli Vitaran Nigam Limited, having its office at Engineering Building, H.E.C, Dhurwa, P.O & P.S- Dhurwa, District-Ranchi, Jharkhand -834004.
5. Joint Commissioner of Income Tax (TDS), having its office at Income Tax Building, M.G. Road, P.O-Railway P.O, P.S- Chutia, District-Ranchi-834001.

... **Respondents**

CORAM: HON'BLE THE ACTING CHIEF JUSTICE
HON'BLE MR. JUSTICE NAVNEET KUMAR

For the Petitioner	: Mr. M.S. Mittal, Sr. Advocate
	Mr. Rahul Lamba, Advocate
	Mr. Salona Mittal, Advocate
For the JBVNL	: Mr. Rajiv Ranjan, Advocate General
	Mr. Sachin Kumar, Sr. Standing Counsel
For Income Tax Deptt.	: Mr. Anurag Vijay, Standing Counsel
	Mr. Om Prakash, AC to Standing Counsel
	Mr. Shivam Singh, AC to Standing Counsel

8th April 2024

Per, Shree Chandrashekhar, A.C.J.

M/s. Anvil Cables Private Limited has approached this Court with the following prayers:

i. For the issuance of an appropriate writ/order/direction or a writ in the nature of mandamus directing the Respondent JBVNL to forthwith issue TDS Certificate for the amount of Rs.2,90,32,000/- deducted as Income Tax @ 2% from the bills raised by the Petitioner towards supply of materials to the Respondent JBVNL so as to enable the Petitioner to get the tax credit of the said amount under Income Tax laws; or in alternative.

ii. In the alternative to prayer (i), for the issuance of an appropriate writ/order/direction or a writ in the nature of mandamus directing the Respondent JBVNL to forthwith release the amount of Rs.2,92,32,000/- so deducted from the bills of the Petitioner towards supply of materials by the Petitioner to the Respondent JBVNL as despite various requests made by the Petitioner, the Respondent JBVNL has neither released the aforesaid amount till date nor TDS certificate under Income Tax law has been issued by the Respondent JBVNL in order to entitle the Petitioner to take TDS credit of the aforesaid amount.

iii. For the issuance of any other appropriate writ (s) or direction(s) or order(s) as this Hon'ble Court may deem fit and proper in view of the facts and circumstances of the case for doing conscionable justice to the Petitioner.

2. The petitioner-Firm is registered under the Companies Act, 1956 and engaged in the business of providing comprehensive engineering, procurement and construction services to the Core sector industries in India. It has challenged the action of the Jharkhand Bijli Vitran Nigam Limited (JBVNL) in deducting Rs. 2,90,32,000/- from the running account bills raised against the supply of materials.

3. The petitioner-Firm was selected for the rural electrification works under Deen Dayal Upadhyaya Gram Jyoti Yojna in XIIth Plan for Giridih, Bokaro and Dhanbad. Later, the JBVNL issued the Letters of Award vide (i) Letter of Award for supply of materials being, LoA No. 01/RE dated 5th February 2016, LoA No. 03/RE dated 5th February 2016 and LoA No. 05/RE dated 5th February 2016 for the projects at Giridih, Bokaro and Dhanbad and (ii) Letter of Award for erection and civil works being, LoA No. 02/RE dated 5th February 2016, LoA No. 04/RE dated 5th February 2016 and LoA No. 06/RE dated 5th February 2016 for the aforementioned districts in the State of Jharkhand. The JBVNL started deductions @ 2% from the running bills raised by the petitioner-Firm for the supply of materials and retained Rs. 2,90,32,000/- on the pretext of "Income Tax Contingency". Through several communications, the petitioner-Firm requested the JBVNL to release the amount so withheld as Income Tax contingency and also

informed the JBVNL that the amount withheld by it is not reflected in Form-26AS. Notwithstanding that, the JBVNL did not release the illegally deducted amount nor deposited the said amount with the Income Tax Department.

4. The JBVNL takes the ground that it made deductions @ 2% from the running bill of the petitioner-Firm and the amount of Rs. 2,90,32,000/- has been "kept back" to safeguard its interest. It has pleaded that the "kept back" amount shall be released or the TDS certificate will be issued depending on the outcome of the appeal preferred by the JBVNL against the demand notice dated 10th October 2017. In the counter-affidavit, the JBVNL referred to the notice under section 201 of the Income Tax Act, 1961 and the demand notice that includes the fine and a penal interest for the violation of the provisions for TDS deductions. This is stated that against the demand notice the JBVNL has filed an appeal before CIT (Appeal) on 5th December 2017 vide Form No.35; Acknowledgment No. 325620911051217.

5. The JBVNL took the following stand in its counter-affidavit:

> 5. That it is stated and submitted with regard to the statements made in the paragraph-1 to the writ petition under reply that the writ application, in which the petitioner prays for relieves in Point Nos. I. ii, iii and iv, are not acceptable in light of the following facts cited hereunder:
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> Initially JBVNL was not deduction TDS on I. Tax on payments made against Supply of Materials. On dated 10.08.17, Income Tax Department conducted a survey at JBVNL and issued a notice under section 201 of I. Tax act, 1961 vide ref no. DCIT/RAN/TDS/2017-18/177 Dt 04.09.17.
>
> In the said notice department opined that the contract is for all works including supply of materials which cannot be considered as mere supply of materials being a separate contract is there for supply portion. Rather the contractor is purchasing the materials for using it for the contract. They considered it as a composite contract. After hearing, the department issued a demand notice vide their memo no. 607 Dt 10.10.17 to deposit amount of TDS alongwith interest for Rs. 36,63,51,685.00. Later on after submission of request the said demand was revised to Rs. 9,79,04,575/- only. This amount includes fine with a penal interest for non deduction of TDS amount.
>
> Further, JBVNL filed an appeal before CIT (Appeal) against the demand raised by the department. As per provisions contained in I. Tax Act, the department has deposited 20% of demand notice i.e. Rs. 1,95,80,915/- vide two separate challans for Rs. 1,46,32,395/- and Rs. 49,48,52/-. The appeal was filed on 05.12.2017. However, the decision is still awaited in the case.
>
> In light of above, the amount of TDS and interest raised by I. Tax department in said demand notice is kept back from bills of the agency to

safeguard the interest of JBVNL. Accordingly, the amount kept back will be released to agency or TDS certificate will be issued on the basis of outcome of appeal.

Accordingly the claims made by the agency in Point 1 (i, ii, iii, iv) is not tenable on the basis of above cited facts.

6. Mr. M.S. Mittal, the learned senior counsel submits that the petitioner-Firm is not a party to the dispute between the JBVNL and the Income Tax Department, and the withholding of Rs. 2,90,32,000/- without issuing the TDS certificate is arbitrary and unlawful. It is submitted that by not releasing Rs. 2,90,32,000/- the petitioner-Firm is being punished by the JBVNL. In the counter-affidavit filed by the Income Tax Department, it is stated that the JBVNL is the assessee in default and the Department never instructed it to withhold/retain any TDS from the running bills of the petitioner-Firm. The learned counsel for the Income Tax Department refers to the provisions under the Income Tax Act in this regard.

7. The failure to deduct or pay any sum as per the provisions of the Income Tax Act follows the consequences as provided under section 201 of the Income Tax Act; one of such consequences is the levy of interest thereon. Section 203 of the Income Tax Act provides that every person deducting tax under the provisions of the Act within such period as may be prescribed from the time of credit or payment of the sum or as the case may be from the time of issue of a cheque or warrant of payment of any dividend to a shareholder furnish to the person to whose account such credit is given or to whom such payment is made or the cheque or warrant is issued, a certificate to the effect that tax has been deducted, and specifying the amount so deducted, the rate at which the tax has been deducted and such other particulars as may be prescribed. Sections 201 and 203 of the Income Tax Act provide as under:

201. Consequences of failure to deduct or pay.—(1) Where any person, including the principal officer of a company,—
(a) who is required to deduct any sum in accordance with the provisions of this Act; or
(b) referred to in sub-section (1-A) of Section 192, being an employer,
does not deduct, or does not pay, or after so deducting fails to pay, the whole or any part of the tax, as required by or under this Act, then, such person,

shall, without prejudice to any other consequences which he may incur, be deemed to be an assessee in default in respect of such tax:
Provided that any person, including the principal officer of a company, who fails to deduct the whole or any part of the tax in accordance with the provisions of this chapter on the sum paid to a resident or on the sum credited to the account of a resident shall not be deemed to be an assessee in default in respect of such tax if such resident—
(i) has furnished his return of income under Section 139;
(ii) has taken into account such sum for computing income in such return of income; and
(iii) has paid the tax due on the income declared by him in such return of income, and the person furnishes a certificate to this effect from an accountant in such form as may be prescribed:
Provided further that no penalty shall be charged under Section 221 from such person, unless the Assessing Officer is satisfied that such person, without good and sufficient reasons, has failed to deduct and pay such tax.
(1-A) Without prejudice to the provisions of sub-section (1), if any such person, principal officer or company as is referred to in that sub-section does not deduct the whole or any part of the tax or after deducting fails to pay the tax as required by or under this Act, he or it shall be liable to pay simple interest,—
(i) at one per cent for every month or part of a month on the amount of such tax from the date on which such tax was deductible to the date on which such tax is deducted; and
(ii) at one and one-half per cent for every month or part of a month on the amount of such tax from the date on which such tax was deducted to the date on which such tax is actually paid, and such interest shall be paid before furnishing the statement in accordance with the provisions of sub-section (3) of Section 200:
Provided that in case any person, including the principal officer of a company fails to deduct the whole or any part of the tax in accordance with the provisions of this chapter on the sum paid to a resident or on the sum credited to the account of a resident but is not deemed to be an assessee in default under the first proviso of sub-section (1), the interest under clause (i) shall be payable from the date on which such tax was deductible to the date of furnishing of return of income by such resident.
Provided further that where an order is made by the Assessing Officer for the default under sub-section (1), the interest shall be paid by the person in accordance with such order.
(2) Where the tax has not been paid as aforesaid after it is deducted, the amount of the tax together with the amount of simple interest thereon referred to in sub-section (1-A) shall be a charge upon all the assets of the person, or the company, as the case may be, referred to in sub-section (1).
(3) No order shall be made under sub-section (1) deeming a person to be an assessee in default for failure to deduct the whole or any part of the tax from a person resident in India, at any time after the expiry of seven years from the end of the financial year in which payment is made or credit is given.
(4) The provisions of sub-clause (ii) of sub-section (3) of Section 153 and of Explanation 1 to Section 153 shall, so far as may, apply to the time limit prescribed in sub-section (3).
Explanation.—For the purposes of this section, the expression "accountant" shall have the meaning assigned to it in the Explanations to sub-section (2) of Section 288.
"**203. Certificate for tax** - (1) Every person deducting tax in accordance with the foregoing provisions of this Chapter shall, within such period as may be

prescribed from the time of credit or payment of the sum, or, as the case may be, from the time of issue of a cheque or warrant for payment of any dividend to a shareholder, furnish to the person to whose account such credit is given or to whom such payment is made or the cheque or warrant is issued, a certificate to the effect that tax has been deducted, and specifying the amount so deducted, the rate at which the tax has been deducted and such other particulars as may be prescribed.

(2) Every person, being an employer, referred to in sub-section (1A) of section 192 shall, within such period, as may be prescribed, furnish to the person in respect of whose income such payment of tax has been made, a certificate to the effect that tax has been paid to the Central Government, and specify the amount so paid, the rate at which the tax has been paid and such other particulars as may be prescribed."

8. Under Rule 31 of the Income Tax Rule, 1962, the JBVNL is required to issue the certificate of deduction of tax at source in Form-16A within 15 days from the due date of furnishing the statement of tax deducted at source. Rule 31 of the Income Tax Rule, 1962 is reproduced below:

31. Certificate of tax deducted at source to be furnished under section 203.- (1) The certificate of deduction of tax at source by any person in accordance with Chapter XVII-B or the certificate of payment of tax by the employer on behalf of the employee under sub-section (IA) of section 192 shall be in ---

(a) Form No. 16, if the deduction or payment of tax is under section 192 (and section 194P)l; and

(b) Form No. 16A if the deduction is under any other provision of Chapter XVII-B.

(2) The certificate referred to in sub-rule (1) shall specify: -

(a) valid permanent account number (PAN) of the deductee;

(b) valid tax deduction and collection account number (TAN) of the deductor;

(c) (i) book identification number or numbers where deposit of tax deducted is without production of challan in case of an office of the Government;

(ii) challan identification number or numbers in case of payment through bank;

(d)(i) receipt number of the relevant quarterly statement of tax deducted at source which is furnished in accordance with the provisions of rule 21A;

(ii) receipt numbers of all the relevant quarterly statements in case the statement referred to in clause (i) is for tax deducted at source from income chargeable under the head "Salaries".

(3) The certificates in Forms specified in column (2) of the Table below shall be furnished to the employee or the payee, as the case may be, as per the periodicity specified in the corresponding entry in column (3) and by the time specified in the corresponding entry in column (4) of the said Table:-

TABLE

Sl. No.	Form No.	Periodicity	
(1)	(2)	(3)	

1.	16	Annual	By 15th day of June of the financial year immediately following the financial year in which the income was paid and tax deducted
2.	16A	Quarterly	Within fifteen days from the due date for furnishing the statement of tax deducted at source under rule 31A.

9. Section 271-C of the Income Tax Act provides that if any person fails to deduct the whole or any part of the tax at source, he shall be liable to pay a penalty. And, section 276-B makes punishable the failure to make payment to the credit of the Central Government the tax deducted at source. The provisions under sections 271-C and 276-B lay down as under:

> **271-C. Penalty for failure to deduct tax at source.—**(1) If any person fails to—
> (a) deduct the whole or any part of the tax as required by or under the provisions of Chapter XVII-B; or
> (b) pay or ensure payment of, the whole] or any part of the tax as required by or under,—
> (i) sub-section (2) of Section 115-O; * * *
> (ii) the * * * proviso to Section 194-B;
> (iii) the first proviso to sub-section (1) of Section 194-R; or
> (iv) the proviso to sub-section (1) of Section 194-S; or
> (v) sub-section (2) of Section 194-BA,
> then, such person shall be liable to pay, by way of penalty, a sum equal to the amount of tax which such person failed to deduct or pay or ensure payment of, as aforesaid.
> (2) Any penalty imposable under sub-section (1) shall be imposed by the Joint Commissioner.
>
> **276-B. Failure to pay tax to the credit of Central Government under Chapter XII-D or XVII-B.—** If a person fails to pay to * * *,—
> (a) pay to the credit of the Central Government, the tax deducted at source by him as required by or under the provisions of Chapter XVII-B; or
> (b) pay tax or ensure payment of tax to the credit of the Central Government, as required by or under—
> (i) sub-section (2) of Section 115-O;
> (ii) the proviso to Section 194-B;
> (iii) the first proviso to sub-section (1) of Section 194-R;
> (iv) the proviso to sub-section (1) of Section 194-S; or
> (v) sub-section (2) of Section 194-BA,
> he shall be punishable with rigorous imprisonment for a term which shall not be less than three months but which may extend to seven years and with fine.

10. More than once, the JBVNL takes a stand that it retained Rs. 2,90,32,000/- pursuant to the notice issued to it by the Income Tax Department alleging default on its part in not making the TDS deductions against the payment made to the supply of goods. In the counter-affidavit,

the JBVNL labeled the amount so withheld as “kept back” amount and that shall be released to the petitioner-Firm or the TDS certificate shall be issued after the disposal of the Appeal filed against the demand notices dated 10th October 2017 and 6th November 2017. The petitioner-Firm has made a categoric statement that it filed Income Tax Returns and paid all income tax liabilities and, that, the amount withheld by JBVNL shall be over and in excess of its tax liability. Paragraph no.20 of the writ petition is extracted below:

> “20. That it is stated that thereafter, the Petitioner wrote a letter dated 21.09.2018 vide Ref No. ACPL/JBVNL/DDUGJY/2018-19/998. Wherein the Petitioner had drawn attention of the Respondent JBVNL towards the excess TDS collected from the Petitioner.
>
> It was also stated that the Petitioner has not received any credit of the TDS so deducted/retained/withheld by the Respondent JBVNL as it was not reflected in Form 26AS of the Petitioner.
>
> Further, it is stated that the Petitioner has already filed Income Tax Return and paid all the Income Tax and therefore, requested the Respondent JBVNL to release the amount held on account of excess TDS collected.”

11. In response to the aforesaid statement made by the petitioner-Firm, the following stand has been made by JBVNL:

> “13. That it is stated and submitted that with regard to the statement made in the paragraph 20 to the writ petition under the reply that the amount as demanded by I. Tax department through demand notice raised as a result of survey was not reflecting in the 26AS of the petitioner which will be deposited with the department with proper return of TDS after outcome of the appeal morefully described in paragraph 1 of this counter affidavit.”

12. In our opinion, the demand notice issued to the JBVNL that it committed default in not making TDS deductions cannot cloak the JBVNL with any authority or even an excuse to withhold a certain amount from the running bills of the Contractor. This is quite curious that the JBVNL seeks to take a stand before the CIT (Appeal) that it was not under an obligation to deduct 2% TDS from the running bills of the Contractor raised towards the supply of materials and, on the other hand, it has retained Rs. 2,90,32,000/- towards payment of 2% TDS deductions on that count. This is also relevant that the deductions by the JBVNL starting from the financial year 2016-17 have accumulated to Rs. 2,90,32,000/- but it did not deposit the said amount with the Income Tax Department. The amount so withheld from the running

bills of the petitioner-Firm is speculative and kind of a wagering step by the JBVNL. The JBVNL has no authority in law to withhold Rs. 2,90,32,000/- as “kept back” amount for the purpose of litigation with the Income Tax Department. The action of the JBVNL in withholding Rs. 2,90,32,000/- is therefore held illegal and deprecated; cost must be imposed upon it.

13. Mr. Rajiv Ranjan, the learned Advocate General assisted by Mr. Sachin Kumar, the learned Senior Standing Counsel appearing for the JBVNL submits that in terms of Clause 10 of the General Conditions of Contract, the JBVNL has made deductions against the demand of tax by the Income Tax Department.

14. Clause 10 of the General Conditions of Contract provides as under:

> 10. Taxes and Duties
> 10.1 The Contractor shall be entirely responsible for payment of all taxes, duties, license fees and other such levies legally payable/incurred until delivery of the contracted supplies to the Employer.
> If it is statutory requirement to make deductions towards such taxes and duties or any other applicable taxes and duties, the same shall be made by the Employer and a certificate for the same shall be issued to the Contractor.
> 10.2 The Contractor shall be solely responsible for the taxes that may be levied on the Contractor's persons or on earnings of any of his employees and shall hold the Employer indemnified and harmless against any claims that may be made against the Employer. The Employer does not take any responsibility whatsoever regarding taxes under Indian Income Tax Act, for the Contractor or his personnel. If it is obligatory under the provisions of the Indian Income Tax Act, deduction of Income Tax at source shall be made by the Employer.
> 10.3 In respect of direct transaction between the Employer and the Contractor, the EXW price is exclusive of all cost as well as duties and tax (viz., custom duties & levies, duties, sales tax/VAT etc.) paid or payable on components, raw materials and any other items used for their consumption incorporated or to be incorporated in the Plant & Equipment.
> Sales tax/VAT, excise duty, local tax and other levies for the Equipment/items under ‘direct transaction’ including octroi as applicable for destination site/state are not include in the EXW price. These amounts will be payable (along with subsequent variation if any), by the Employer on the supplies made by the Contractor but limited to the tax liability on the transaction between the Employer and the Contractor.
> In respect of bought-out finished items, which shall be dispatched directly from the sub-vendor’s works to the Project site (sale-in-transit), the EXW price is inclusive of all cost as well as duties and taxes (viz., custom duties & levies, duties, sales tax/VAT etc.) paid or payable and any such taxes, duties levies additionally payable will be to Contractor’s account and no separate claim on this behalf will be entertained by the Employer. The requisite Sales Tax declaration forms shall be issued as under:

a) JBVNL for contracts in their jurisdiction shall issue the necessary form to the contractor

Further, the EXW price of (i) bought-out finished Equipments/items as 'Off the Self' items or dispatched directly from the Contractor's works are exclusive of all cost as well as duties and taxes (viz., custom duties & levies, duties sales tax/VAT etc.) paid or payable and no separate claim on this behalf will be entertained by the Employer. Employer shall, however, issue requisite sales tax declaration form. If any tax exemptions, reductions, allowances or privileges may be available to the Contractor in the Country where the site is located, the Employer shall use its best endeavors to enable the Contractor to benefit from such tax savings to the maximum allowable extent. Inclusion of CST in supplied items will attract Form-C. The road permit will be issued by JBVNL for outside State materials on recommendation of concerned Chief Engineer.

For payment/reimbursement of Sales Tax, wherever applicable, in respect of dispatches made directly from Contractor's works, invoices raised by the Contractor shall be accepted as documentary evidence and for payment/reimbursement of VAT, VATABLE invoices raised by the Contractor shall be accepted as documentary evidence. Similarly, pre-numbered invoices duly signed by authorized signatory shall be considered as evidence for payment of Excise Duty.

10.4 Octroi as applicable for destination site/state on all items of supply including bought-out finished items, which shall be dispatched directly from the sub-vendor's works to the Employer's site (sale-in-transit) are not included in the Contract price. The applicable octroi in respect of all the items of supply would be reimbursed to the Contractor separately by the Employer subject to furnishing of documentary proof.

10.5 Employer would not bear any liability on account of Service Tax. Employer shall, however, deduct such tax at source as per the rules and issue necessary Certificate to the Contractor.

10.6 Sales Tax/VAT on Works Contract, Turnover Tax or any other similar taxes under the Sales Tax/VAT Act for services to be performed in India, as applicable is included in Contract Price and Employer would not bear any liability on this account. Employer shall, however, deduct such taxes at source as per the rules and issue Tax Deduction at Source (TDS) Certificate to the Contractor.

10.7 For the purpose of the Contract, it is agreed that the Contract Price specified in Article 2(Contract Price and Terms of Payment) of the Contract Agreement is based on the taxes, duties, levies and charges prevailing at the date seven (07) days prior to the last date of bid submission (hereinafter called "Tax" in this GCC Sub-clause 10.7). If any rates of Tax are increased or decreased, a new Tax is introduced, an existing Tax is abolished, or any change in interpretation or application of any Tax occurs in the course of the performance of the Contract, which was or will be assessed on the Contractor in connection with performance of the Contract, an equitable adjustment of the Contract price shall be made to fully take into account any such change by addition to the Contract price or deduction therefrom, as the case may be, in accordance with GCC Clause 31 (Changes in Laws and Regulations) hereof. However, these adjustments would be restricted to direct transactions between the Employer and the Contractor for which the taxes and duties are reimbursable by the Employer as per the Contract. These adjustments shall not be applicable on procurement of raw materials, intermediary components etc. by the Contractor and also not applicable on the bought out items dispatched directly from sub-vendor's works to site.

> In respect of raw materials, intermediary components etc. and bought out items, neither the Employer nor the Contractor shall be entitled to any claim arising due to increase or decrease in the rate of Tax, introduction of a new Tax or abolition of an existing Tax in the course of the performance of the Contract.

15. Clause 10.1 of the GCC provides that the Contractor shall be entirely responsible for the payment of all taxes, duties, license fees and other such levies legally payable or incurred until delivery of the contracted supplies to the Employer. It further provides that where it is the statutory requirement to make deductions towards such taxes and duties or any other applicable taxes and duties, the same shall be made by the Employer and a certificate for the same shall be issued to the Contractor. Under section 201 of the Income Tax Act, it is the statutory duty of the Employer to make 2% TDS deductions. Furthermore, as per clause 10.1 of the GCC, upon making such deduction a certificate shall be issued to the Contractor. Clause 10.7 of the GCC provides that in the event of a change in law if any new tax is imposed or the rate of tax is increased or decreased in the course of the performance of the contract, an equitable adjustment of the contract price shall be made to fully take into account any such change by addition to the contract price or deduction therefrom as the case may be. The JBVNL has not followed its own stipulation under clause 10.1 of the GCC and it seeks to place a very unreasonable reliance on clause 10.7 which is not at all applicable in a situation like the present one. It is not that a new tax liability has been created for which appropriate and equitable adjustment in the contract price is required. The petitioner-Firm has specifically pleaded that it has filed Income Tax returns and already paid taxes which shall include the illegal 2% retention from its running bills.

16. This is well-settled that the explicit terms of the Contract are always the final words with regard to the intention of the parties. In *"ONGC Ltd. v. Saw Pipes Ltd." (2003) 5 SCC 705* the Hon'ble Supreme Court observed that the intention of the parties is to be gathered from the words used in the agreement. In *"Mahabir Auto Stores v. Indian Oil Corpn." (1990) 3 SCC 752* the Hon'ble Supreme Court held that the State or its

instrumentalities are ‘State’ under Article 12 of the Constitution and its actions even in commercial transactions must be reasonable, fair and just. In *“Mahabir Auto Stores”* the Hon’ble Supreme Court further indicated that the requirement of being just, fair and reasonable on the part of the State and its instrumentalities extends in cases where no formal contract has been entered.

17. Any unjust retention of money or property of another shall be against the fundamental principles of justice, equity and good conscience. The unauthorized deductions from the running bills of the petitioner-Firm are patently illegal. Such deductions caused loses to the petitioner-Firm which filed its Income Tax retuns but was deprived of Rs. 2,90,32,000/- and thereby suffered business or alteast interest losses. On the other hand, the JBVNL was unjustly enriched and need to restitute the petitioner-Firm. The refund of Rs. 2,90,32,000/- must therefore carry interest as a matter of course. In *“Indian Council for Enviro-Legal Action v. Union of India” (2011) 8 SCC 161*, the Hon’ble Supreme Court held that this is the bounden duty of the Court to neutralize unjust enrichment by imposing compound interest and punitive costs. In paragraph No.178 of the reported judgment, the Hon’ble Supreme Court held as under:

> “178. To do complete justice, prevent wrongs, remove incentive for wrongdoing or delay, and to implement in practical terms the concepts of time value of money, restitution and unjust enrichment noted above—or to simply levelise—a convenient approach is calculating interest. But here interest has to be calculated on compound basis—and not simple—for the latter leaves much uncalled for benefits in the hands of the wrongdoer.”

18. As per clause 10.7.4 of the Jharkhand State Electricity Regulatory Commission, Ranchi (Electricity Supply Code) Regulation, 2015, the interest rate to be paid on any excess amount paid by the consumer is equivalent to the interest rate paid by the consumer on delay payment surcharge. Therefore, the JBVNL shall pay interest over the withheld amount of Rs. 2,90,32,000/- as per clause 10.7.4 of the Regulation of 2015 which is extracted hereunder:

> 10.7.4 If the consumer has paid any excess amount, it shall be refunded to the consumer within 15 days or, if consumer opts, be adjusted within two

subsequent bills. The Distribution Licensee shall pay to the consumer interest charges at the rate equivalent to the delay payment surcharge as per tariff on the excess amount outstanding on account of such wrong billing from the date of payment till the date of refund or adjustment in subsequent bills.

19. Regarding the imposition of cost, we may indicate that on 14th March 2024, this Court has passed the following order:

> "Having briefly heard Mr. M.S Mittal, the learned senior counsel for the petitioner, Mr. Sachin Kumar, the learned senior standing counsel for the JBVNL and Mr. Anurag Vijay, the learned retained counsel for the Income Tax Department, this Court has formed a prima-facie opinion that retention of amount of Rs.2,90,32,000/- purportedly on account of 2% TDS deductions from the bills raised by the petitioner is without any authority in law if the said amount is not deposited with the Income Tax Department.
> 2. In the counter-affidavit, the stand taken by the JBVNL that the aforementioned amount has been retained as "Keep Back Amount" for meeting the future liability under the Income Tax Act, 1961 also seems to be unjustified. As it appears on a cursory glance at the provisions under the Income Tax Act, 1961, once an amount is deducted towards TDS liability the same should have been deposited so that the assessee shall get the benefit thereof in his income tax return.
> 3. However, on the request of Mr. Sachin Kumar, the learned senior standing counsel for the JBVNL, this matter is adjourned by one week to enable the JBVNL to take a conscious decision in the matter whether or not to deposit the amount of Rs.2,90,32,000/- deducted from the running bills of the petitioner.
> 4. For that purpose, this matter shall be posted on 21st March 2024."

20. In response thereof, a supplementary counter-affidavit has been filed stating that in terms of Clauses 10.1 and 10.7 of the General Conditions of Contract whereunder the Contractor is solely and entirely responsible for any taxes including income tax, the JBVNL is empowered to adjust such amount from the price/bills released to the Contractor. The JBVNL has further stated that in case the appeal filed by it fails it shall be required to deposit the entire amount with interest and penalties and then the TDS return shall be filed and certificate i.e. Form-16A for the same shall be generated and issued to the Contractor. In the circumstances of the case, we hold that the stand taken by the JBVNL lacks bonafide; short to saying actuated with oblique motive.

21. The imposition of cost on the party which started litigation without any just cause or took false and frivolous defences is necessary to discourage the dishonest litigant. To this end, the Court is required to impose

such cost that would make the litigant think twice before putting up any speculative claim or defence. In *"Salem Advocate Bar Assn. (II) v. Union of India" (2005) 6 SCC 344* the Hon'ble Supreme Court held as under:

> "37. Judicial notice can be taken of the fact that many unscrupulous parties take advantage of the fact that either the costs are not awarded or nominal costs are awarded against the unsuccessful party. Unfortunately, it has become a practice to direct parties to bear their own costs. In a large number of cases, such an order is passed despite Section 35(2) of the Code. Such a practice also encourages the filing of frivolous suits. It also leads to the taking up of frivolous defences. Further, wherever costs are awarded, ordinarily the same are not realistic and are nominal. When Section 35(2) provides for cost to follow the event, it is implicit that the costs have to be those which are reasonably incurred by a successful party except in those cases where the court in its discretion may direct otherwise by recording reasons therefor. The costs have to be actual reasonable costs including the cost of the time spent by the successful party, the transportation and lodging, if any, or any other incidental costs besides the payment of the court fee, lawyer's fee, typing and other costs in relation to the litigation. It is for the High Courts to examine these aspects and wherever necessary make requisite rules, regulations or practice direction so as to provide appropriate guidelines for the subordinate courts to follow."

22. The petitioner-Firm was unnecessarily dragged to the Court and, that too, knowingly and for no fault on its part. The litigation file that has been produced in the Court reveals that a decision in the context of the order dated 14th March 2024 passed by this Court has been taken at the highest level of the Managing Director of JBVNL. Therefore, we are of the definite opinion that the JBVNL must be saddled with cost of Rs.5 Lacs which shall be recovered from the Managing Director.

23. This writ petition is allowed, in the aforesaid terms.

(Shree Chandrashekhar, A.C.J.)

(Navneet Kumar, J.)

R.K./Nishant
AFR