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Order QR

IN THE HIGH COURT OF JUDICATURE AT MADRAS

ORDERS RESERVED ON: 28-09-2026

ORDERS RESERVED ON:18-11-2026

CORAM

THE HON'BLE MR.JUSTICE D.BHARATHA CHAKRAVARTHY

WP No. 6905 of 2026
WMP.Nos.7526, 7529, 7531 & 7534 of 2026
CNR: {HCMA010229432026}

Case QR

Marine Electricals (India) Limited
Represented by its Authorized Representative
Having its registered Address B-1,
Udyog Sadan-3, MIDC, Andheri (East),
Mumbai – 400093.

..Petitioner(s)

Vs

NLC India Limited (NLCIL),
Represented by its Chairman
and Managing Director,
Having its registered office at No. 135,
EVR Periyar High Road, Kilpauk,
Chennai, Tamilandu, 600010.

..Respondent(s)

PRAYER: Writ Petition is filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus, to call for the records on the file of the first respondent relating to the impugned order dated 11.11.2025 passed by the 2nd respondent and quash the same as arbitrary and illegal and consequently, direct respondent to forthwith release the entire outstanding final 5 percent retention money due to the petitioner, along with pendente lite and future interest at a rate deemed just and proper by this Court.

For Petitioner(s): Mr.N.L.Rajah, Senior Counsel,
for Ms.V.Kamala Kumar

For Respondent(s): Mr.K.Harishankar

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ORDER

The prayer in the Writ Petition is for a Certiorarified Mandamus calling for the records on file of the respondent relating to the impugned order dated 11.11.2025, to quash the same, and to direct the respondents to forthwith release the entire outstanding 5% retention money due to the petitioner, along with further interest.

2. The petitioner is a company incorporated under the provisions of the Companies Act, 1956, and is engaged in the business of engineering, procurement and construction contracts, executing marine electrical projects across India.

3. The respondent herein – the Neyveli Lignite Corporation (NLC) India Limited – is a public sector undertaking engaged *inter alia* in energy generation, with its corporate office at Neyveli, Tamil Nadu. In this regard, it invited bids for setting up a 15 MW (AC) grid-interactive solar power plant at Ettankulam Village, Tamil Nadu. Upon the petitioner being successful in the tender, the respondent issued a letter of award dated 28.02.2017, pursuant to which the contract was executed on 08.06.2017.

4. It is the petitioner's contention that they diligently executed the project, and a provisional acceptance certificate was issued by the respondent, certifying

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that grid connectivity was achieved on 04.03.2019 and that successful completion of commissioning was achieved on 28.04.2021. If only the contractor fails to commence the PG test, liquidated damages are leviable. Having completed commissioning on 28.04.2021, the petitioner promptly sought permission to commence the PG test vide its communication dated 16.06.2021. The respondent granted its consent on 30.06.2021, and the PG test was duly commenced on 01.07.2021. Thus, within 63 days from the certified date of completion of commissioning, the PG test was commenced. Following the successful PG test, the respondent also issued a final acceptance certificate on 19.07.2025, thereby bringing the project execution to a contractual close.

5. Under Clauses 6.7.4, 6.9.3, and 6.10.3 of the contract, 5 % of the contract amount is held as retention money, which becomes due and payable upon successful completion of the PG test and the issuance of the final acceptance certificate. Both these conditions having been fulfilled, the petitioner became eligible for payment of money with effect from 19.07.2025 onwards. When the petitioner followed up on the issue, the respondent sent a communication on 04.11.2025, stating that the release of the retention money was in process. However, the respondent took a U-turn and passed the impugned order dated 11.11.2025, taking a completely different stand and proposing to levy liquidated damages by wrongfully invoking Clause 10.22.2.8. The impugned order states that the respondent reserves the right to set off the 5

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% retention money and threatens to invoke the performance bank guarantee submitted by the petitioner. Under these circumstances, the petitioner is before this Court.

6. The Writ Petition is resisted by the respondent by filing a counter affidavit. Their preliminary objection is that, when the communication seeks only clarification, a Writ Petition cannot be maintained against it. Their case is that the petitioner delayed carrying out the operation, the targets fixed as per the work order were not achieved, and there was a shortfall. There is also a failure to commission the plant in time. As per the contract, the respondent is entitled to levy liquidated damages and encash the bank guarantee. A tabular column containing the description of the time schedule and the delay is also provided.

7. It is contended that, as per the contract between the parties, any dispute has to be settled through arbitration and, thus, the Writ Petition is not maintainable.

8. *Mr.N.L.Rajah,* the learned Senior Counsel appearing on behalf of the petitioner, would submit that from the beginning until the completion of the project, no whisper of any fault on the part of the petitioner was made, and only because the petitioner followed up with the respondent regarding the 5% retention money, the respondent suddenly turned hostile and is now claiming

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liquidated damages and making allegations of delay. Even though the matter is within the realm of contract, if the authority acts arbitrarily and unfairly, this Court can interfere. This is a fit case for interference by the Court. Throughout the subsistence of the contract, when everything was proceeding smoothly, even in the final communication, the respondents had merely stated that the 5% retention money was being processed. However, all of a sudden, the impugned order was passed. Therefore, he would submit that this is a case for this Court to interfere. The learned Senior Counsel would also rely upon the following Judgments,

(i) ***Mohinder Singh Gill Vs. Chief Election Commissioner*** (1978) 1 SCC 405;

(ii) ***Kumari Shrilekha Vidyarthi Vs. State of UP*** (1991) 1 SCC 212;

(iii) ***ABL International Ltd., and Another Vs. Export Credit Guarantee Corporation of India Ltd. And Others*** (2004) 3 SCC 553;

(iv) ***Unitech Limited & Others Vs. Telangana State Industrial Infrastructure Corporation (TSHC) & Others*** (2021) 16 SCC 35;

(v) ***Subodh Kumar Singh Rathour Vs. Chief Executive Officer and Others*** (2024) 15 SCC 461.

9. *Per contra, Mr.K.Harishankar,* the learned counsel appearing for the respondent, would submit, by pointing out Clause 10.44.2, that the issues can be settled through arbitration and, therefore, the Writ Petition is not maintainable.

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The facts as contained in the affidavit filed in support of the Writ Petition are disputed, and there are violations of the timeline and other terms and conditions, both with reference to preliminary operation, initial operation, and shortfall during the operations, etc., entitling the respondent to withhold the retention amount and to invoke the bank guarantee towards the claim of liquidated damages.

10. During the course of arguments, when NLC Limited contended that the disputes were required to be resolved only through arbitration in terms of the contract, this Court expressed its view as to whether the parties were willing to invoke the arbitration mechanism or, alternatively, sit across the table and explore the possibility of an amicable resolution of the disputes.

11. At that juncture, the learned counsel appearing on either side requested this Court to reserve orders, stating that the parties would first attempt to negotiate and arrive at an amicable settlement. They further submitted that, if a final settlement is arrived at, the same would be reported to this Court. Alternatively, if the parties arrive at any arrangement regarding the manner of resolution of the disputes or any interim arrangement pending such resolution, the same would also be placed before this Court by way of a written memo. Accordingly, they requested this Court to await the filing of such a memo before pronouncing orders.

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12. Accordingly, after the orders were reserved, learned counsel for both sides mentioned the matter before this Court and filed a joint memo.

13. It is seen that the parties could not settle the issue in *toto*. The parties are *at one and the same* that the Hon'ble Mr. Justice E. Padmanaban (Retd) be appointed as sole Arbitrator to adjudicate the disputes between them, subject to the refund of the retention amount. The joint memo filed by the parties is verbatim reproduced hereunder:-

> "The petitioner and the Respondent respectively submit as follows:
>
> Pursuant to the proposal made by this Honourable Court for resolving the disputes between the parties, the petitioner and the respondent have expressed their mutual consent to the appointment of Hon'ble Mr.Justice E.Padmanabhan as the Sole Arbitrator to adjudicate the disputes between them, subject to the refund of retention amount.
>
> The parties pray that this Joint memo may be taken on record in the interest of justice.
>
> Dated at Chennai on this 30th day of October 2026."

14. It is seen that the petitioner has submitted bank guarantees which are alive as on date. It is also mutually agreed that the bank guarantees will be kept alive, pending the arbitral proceedings.

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15. In view thereof, this Writ Petition is disposed of on the following terms,

(i) The joint memo filed by the parties is recorded, and the terms of the joint memorandum shall form part of the order. Accordingly, Hon'ble Mr. Justice E. Padmanabhan (Retd), High Court of Madras, is appointed as the sole Arbitrator to adjudicate the disputes between the parties.

(ii) The Arbitrator shall enter the reference and decide the disputes. The fee payable to the Arbitrator shall be as per Schedule IV of the Arbitration and Conciliation Act, 1996, and shall be borne equally by the parties.

(iii) The entire retention amount due to the petitioner be refunded within four weeks from the date of receipt of the website-uploaded copy of this order;

(iv) The petitioner shall keep the bank guarantees alive until the disposal of the arbitration proceedings;

(v) Consequently, the connected miscellaneous petitions are closed.

18-11-2026

Neutral Citation: Yes/No
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To
The Chairman and Managing Director,
NLC India Limited (NLCIL),
Having its registered office at No. 135,
EVR Periyar High Road, Kilpauk,
Chennai, Tamilandu, 600010.

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D.BHARATHA CHAKRAVARTHY, J.

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Pre-Delivery Order made in
WP No. 6905 of 2026

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