



2026:DHC:5247



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

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*Judgment reserved on: 14.05.2026*  
*Judgment pronounced on: 01.07.2026*

+ EX.P. 23/2017 & EX.APPL.(OS) 203/2018 (Objections on behalf of the judgment debtor to the execution petition filed by the decree holder)

SOUTH DELHI MUNICIPAL CORPORATION

.....Decree Holder

Through: Mr. Rakesh Mittal, Ms. Yamini Mittal and Mr. Ajay Harshana, Advocates.

versus

M/S DELHI GURGAON SUPER CONNECTIVITY LIMITED  
DGSCCL

.....Judgement Debtor

Through: Mr. Dayan Krishnan, Senior Advocate with Mr. Deepak Khurana, Mr. Vineet Tayal & Mr. Anurag Vats, Advocates.

**CORAM:**

**HON'BLE MR. JUSTICE HARISH VAIDYANATHAN SHANKAR**

## **J U D G M E N T**

**HARISH VAIDYANATHAN SHANKAR, J.**

1. The present Execution Petition, stated to have been filed under Part II of the **Code of Civil Procedure, 1908**<sup>1</sup>, seeks execution of the **Consent Order dated 15.03.2012**<sup>2</sup> passed by this Court in **O.M.P.**

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<sup>1</sup> CPC

<sup>2</sup> Consent Order



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**No. 408/2011<sup>3</sup>**, read along with the **Report dated 03.03.2014 submitted by the Board constituted pursuant thereto<sup>4</sup>**.

2. By way of this Petition, the Decree Holder seeks enforcement of the said Consent Order and the Board's Report and has, *inter alia*, prayed for attachment and sale of the movable and immovable properties of the Judgment Debtor for recovery of a sum of Rs. 15,73,95,405/-, along with *pendente lite* and future interest at the rate of 18% per annum until actual realization; grant of police assistance for effective execution of the Order; and arrest and detention of the Managing Director, Directors, employees, agents, or any other persons acting on behalf of the Judgment Debtor in the event they obstruct or interfere with the execution proceedings.

3. The Judgment Debtor has filed detailed objections to the maintainability of the present Execution Petition. It has been contended that the Petition is fundamentally misconceived, as neither the Consent Order nor the Board's Report constitutes a decree, arbitral award, or any other executable instrument recognized in law. In support of this contention, the Judgment Debtor has raised several legal as well as factual objections.

4. In light of the rival submissions, the principal question that arises for consideration at the threshold is whether the Board's Report of the Board constituted pursuant to the Consent Order passed by this Court in OMP No. 408/2011, either by itself or when read in conjunction with the said Consent Order, possesses the character of a

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<sup>3</sup> Section 9 Petition

<sup>4</sup> Board's Report



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decree, arbitral award, or any other enforceable determination capable of execution in law.

5. The answer to the aforesaid question goes to the very root of the maintainability of the present proceedings. It is only if this Court concludes that the Board's Report, either independently or read along with the Consent Order, is capable of execution in law that it would be necessary to examine the merits of the reliefs sought by the Decree Holder. Conversely, if the Board's Report is found not to possess the status of an executable award, decree, or other enforceable instrument, the present Execution Petition would fail at the threshold and be liable to dismissal without any further examination of the reliefs claimed therein.

**BRIEF FACTS:**

6. Shorn of unnecessary details, the facts germane to the institution of the present Petition are as follows:

- (a) It is stated that the Judgement Debtor entered into a **Concession Agreement dated 18.04.2002<sup>5</sup>** with the **National Highways Authority of India<sup>6</sup>**, upon the Judgement Debtor being awarded the work of conversion of **NH-8 (14.3KM to 42KM) ('Delhi-Gurgaon-Expressway')** to **six/eight lanes on a BOT basis<sup>7</sup>**.
- (b) Pursuant to the Concession Agreement, a **State Support Agreement dated 24.05.2004 and 22.02.2005<sup>8</sup>** was entered

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<sup>5</sup> Concession Agreement

<sup>6</sup> NHAI

<sup>7</sup> Project

<sup>8</sup> SSA



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into between the Judgment Debtor, **Government of National Capital Territory of Delhi**<sup>9</sup>, State of Haryana, and NHAI.

- (c) It is stated that the Rajokari Border became functional and operational on 23.01.2008, whereupon the collection of toll tax commenced, including by the Judgment Debtor.
- (d) The Judgment Debtor was collecting integrated toll taxes within its own toll collection system, i.e., the toll collected by the Judgment Debtor included the toll taxes to be collected by the Decree Holder, State of Haryana, as well as the service charges component charged by the Judgment Debtor.
- (e) It is further stated that since the Decree Holder and the Judgment Debtor could not arrive at a consensus with respect to the rate of Service Charges and in view thereof, the Decree Holder, M/s. PKSS Infrastructure Ltd. and the Judgment Debtor entered into a **Memorandum of Understanding dated 15.05.2008**<sup>10</sup> and it was agreed *inter alia*, that the MoU was valid for a period of three years, and that for the said three-year period, the rate of Service Charges would be decided by a mutually agreed Government Agency and that such recommendation shall be final and binding on all the parties.
- (f) Subsequently, the parties mutually agreed upon the appointment of M/s RITES Ltd., a Public Sector Undertaking, to determine the rate of Service Charges payable to the Judgment Debtor. M/s. RITES Ltd. *vide* its report dated 05.09.2008 fixed the Service Charges @11.28%.

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<sup>9</sup> GNCTD

<sup>10</sup> MoU



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- (g) It is stated that in the meeting dated 01.10.2008, it was agreed between the Judgment Debtor and the Decree Holder that the Service Charges shall be collected @11% for the period 16.05.2011 to 16.05.2014.
- (h) Therefore, pursuant to the MoU, the report of M/s. RITES Ltd. and the meeting dated 01.10.2008, it was agreed that the Judgment Debtor would collect the toll from commercial vehicles at Rajokari Border and remit the toll tax to PKSS after deducting the Service Charges at the agreed rate of 11%.
- (i) It is stated that meetings were held between the Decree Holder and the Judgment Debtor in 2011, to agree upon the rate of Service Charges for the period after 16.05.2011. However, the parties could not arrive at a mutually agreeable rate.
- (j) On 14.05.2011, the Judgment Debtor sent a letter to the Decree Holder, stating that the latter had not made necessary arrangements to collect toll tax, and that any newly appointed representatives of the Decree Holder doing so was likely to result in extensive traffic jams, thereby inconveniencing the public at large. It is further stated that to prevent the public nuisance, the Judgment Debtor informed the Decree Holder that it would continue to collect toll tax on behalf of the Decree Holder and levy Service Charges at the existing rate of 11%, till such other rate was decided by M/s. RITES Ltd. or any similar government agency.
- (k) The Decree Holder, to the contrary, insisted upon the Judgment Debtor to collect Service Charges only @3%.



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- (l) Since disputes had arisen between the parties, it is stated that the Judgment Debtor invoked the arbitration clause, being Clause 9.2 of the SSA *vide* letter dated 17.05.2011; however, no response to the same was given by the Decree Holder.
- (m) Subsequently, the Judgment Debtor filed a petition under Section 9 of the **Arbitration and Conciliation Act, 1996**<sup>11</sup>, being O.M.P. 408/2011 titled as '*M/S Delhi-Gurgaon Super Connectivity Limited vs. Govt of National Capital Territory of Delhi & Ors.*', seeking protection against any interference by the Decree Holder in its collection of toll tax at the Rajokari Border.
- (n) By an order dated 04.07.2011, this Court granted *ad interim* protection by directing maintenance of the *status quo* and restraining the Decree Holder from interfering with the Judgment Debtor's collection of toll tax pending further orders.
- (o) Subsequently, with the consent of the parties, this Court *vide* Order dated 25.04.2012 directed the constitution of a Board for determining the collection charges payable to the Judgment Debtor for rendering integrated toll tax collection services at the Rajokri Border. It was directed that the Board would comprise representatives not below the rank of Chief Engineer from the **National Institute of Financial Management, Faridabad**<sup>12</sup> and **Infrastructure Development Financial Corporation Limited**<sup>13</sup>, who would jointly nominate a third member. In view

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<sup>11</sup> A&C Act

<sup>12</sup> NIFM

<sup>13</sup> IDFC



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of the aforesaid arrangement, the Section 9 Petition came to be disposed of by consent.

- (p) It is stated that the Board could not be constituted in terms of the Order dated 25.04.2012. Consequently, the Decree Holder moved an application before this Court seeking modification of the said Order and reconstitution of the Board for the determination of the service charges payable in respect of the integrated toll collection operations at the Rajokri Border. Accordingly, with the consent of the parties, this Court *vide* Order dated 20.02.2013 modified the earlier arrangement and directed that the Board be constituted through the **Central Road Research Institute, Mathura Road, New Delhi<sup>14</sup>**, for carrying out the aforesaid exercise.
- (q) Thereafter, upon a further application seeking clarification and modification of the Order dated 20.02.2013, this Court, by the Consent Order dated 15.03.2013, modified the earlier directions and ordered that NIFM and CRRI would jointly nominate a third expert member for constituting the Board. It was further directed that the Board would submit its final report determining the collection charges payable for integrated toll tax collection within a period of four months.
- (r) Pursuant to the aforesaid directions, a three-member Board came to be duly constituted.
- (s) The Board thereafter undertook an examination of the integrated toll collection mechanism at the Rajokri Border, including the traffic management system, infrastructure

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<sup>14</sup> CSIR



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deployed, operational requirements, and expenses incurred in the collection process. Upon consideration of the relevant material and after carrying out its assessment, the Board submitted its Report dated 03.03.2014, setting out its findings and recommendations.

- (t) In its report, the Board, *inter alia*, recommended that the service charges payable to the concessionaire/Judgment Debtor for rendering integrated toll collection services should be fixed at 7% of the toll tax collections for the contractual period commencing from 16.05.2011 at 6:00 A.M. and ending on 16.05.2014 at 5:59 A.M.
- (u) According to the Decree Holder, notwithstanding the determination made by the Board, the Judgment Debtor continued to deduct service charges at the rate of 11% instead of 7%, thereby retaining an additional 4% of the toll tax collections, which, according to the Decree Holder, belonged to it.
- (v) It is the case of the Decree Holder that, as a consequence of the aforesaid excess deduction of 4% service charges during the relevant period, a sum of Rs. 15,73,95,405/-, along with applicable interest, became recoverable from the Judgment Debtor.
- (w) In these circumstances, the Decree Holder, after three years from the date of the Board's Report, instituted the present Execution Petition seeking enforcement of the Consent Order read in conjunction with the Report submitted by the Board constituted pursuant to the directions of this Court.



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**SUBMISSIONS ON BEHALF OF THE PARTIES:**

7. In support of the objections raised to the maintainability of the present Execution Petition, learned Senior Counsel appearing on behalf of the Judgment Debtor would submit that neither the Consent Order nor the Board's Report, which are sought to be enforced through the present proceedings, possesses the character of an executable decree or an arbitral award.

8. It would be contended that, in the absence of any decree, award, or other executable instrument recognized by law, the present Execution Petition is not maintainable and is liable to be dismissed at the threshold.

9. He would submit that the Board constituted pursuant to the Orders dated 25.04.2012, 20.02.2013 or 15.03.2013 passed by this Court in the Section 9 Petition was merely an expert committee formed for the determination of the rate of service charges payable in respect of integrated toll tax collection at the Rajokri Border and could not be classified as an Arbitral Tribunal constituted under the provisions of the A&C Act.

10. Learned Senior Counsel appearing on behalf of the Judgment Debtor would further submit that the Board was constituted pursuant to the Orders passed by this Court in the Section 9 Petition instituted by the Judgment Debtor. It would be contended that none of the said Orders stipulates that the Report to be submitted by the Board would be final and binding upon the parties. Consequently, the Board's Report cannot be treated as a binding adjudication giving rise to any executable rights or obligations.



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11. He would further submit that the proceedings before this Court in the Section 9 Petition merely resulted in the constitution of an expert Board/Committee for the determination of service charges and not an Arbitral Tribunal empowered to adjudicate disputes *inter se* the parties.

12. Learned Senior Counsel would further contend that the Board's Report is merely recommendatory in nature and does not embody any binding adjudicatory determination. According to him, this is evident, *inter alia*, from the covering letter dated 03.03.2014 accompanying the Report, wherein the Board itself described its exercise as one undertaken by "technical experts".

13. It would be argued by the learned Senior Counsel that the Board did not conduct proceedings in the nature of arbitration, inasmuch as no statement of claim or pleadings were filed before it, no evidence was recorded, no oral hearings were conducted and no adjudicatory procedure contemplated under Section 23 and Section 24 of the A&C Act was followed.

14. He would submit that the Board merely undertook an independent technical study based upon empirical data, operational assessment and visits to various toll plazas and thereafter made recommendations regarding the appropriate rate of service charges. Consequently, the Board's Report could, at best, be treated as an expert determination and not as an Arbitral Award capable of execution under Section 36 of the A&C Act.

15. Learned Senior Counsel would also submit that the essential requirements of a 'decree' under Section 2(2) of the CPC, are absent in the present case since there had been no formal adjudication by a



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competent Civil Court or Arbitral Tribunal conclusively determining the rights and liabilities of the parties.

16. It would further be submitted that none of the aforesaid Orders stipulates that the findings or recommendations of the Board would conclusively determine the rights and liabilities of the parties or would be binding upon them. It would, therefore, be submitted that the Board's Report cannot partake the character of a decree or executable determination in law.

17. In support of the aforesaid submissions, reliance would be placed upon *K.K. Modi v. K.N. Modi and Ors*<sup>15</sup>, *Bharat Bhushan Bansal v. U.P. Small Industries Corporation Ltd*<sup>16</sup> and *South Delhi Municipal Corporation v. SMS Limited*<sup>17</sup> to contend that an expert determination or non-binding recommendation cannot be equated with an Arbitral Award or binding adjudication.

18. Reliance would further be placed upon *Singrauli Super Thermal Power Station v. Ashwini Kumar Dubey*<sup>18</sup>, *Renu Arora v. St. Margaret Senior Secondary School*<sup>19</sup>, *Kantha Vibhag Yuva Koli Samaj Parivartan Trust v. State of Gujarat and Others*<sup>20</sup> and *Gastrade International v. Commissioner of Customs*<sup>21</sup> to submit that expert committee reports merely aid adjudication and remain subject to examination and determination by a competent Court or Tribunal.

19. He would further submit that the conduct of the Decree Holder itself demonstrates that the Board's Report was never treated as an

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<sup>15</sup> (1998) 3 SCC 573

<sup>16</sup> (1992) 2 SCC 166

<sup>17</sup> 2025 SCC OnLine SC 1138

<sup>18</sup> (2023) 8 SCC 35

<sup>19</sup> 2025 SCC OnLine Del 7137

<sup>20</sup> (2023) 13 SCC 525

<sup>21</sup> (2025) 8 SCC 525



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executable award, inasmuch as the Decree Holder independently instituted Civil Suit being CS(OS) No. 110/2017 seeking recovery of the very same amount on the basis of the said Board's Report.

20. It would be argued that filing of the aforesaid civil suit clearly establishes that even according to the Decree Holder, the Report required adjudication through appropriate legal proceedings and was not executable *per se* as a decree or Arbitral Award.

21. He would additionally contend that the Decree Holder had failed to disclose the pendency of the aforesaid Civil Suit in the present proceedings and, therefore, the present Execution Petition was liable to be dismissed on the ground of suppression of material facts alone.

22. Learned Senior Counsel would further submit that the subsequent developments recorded by this Court in its Consent Order dated 19.02.2014, passed in another petition, being OMP No. 288/2013, are also material and have a direct bearing on the maintainability of the present Execution Petition. It would be pointed out that the said order records that, during the pendency of the proceedings, disputes amongst NHAI, IDFC Limited and the Judgment Debtor had been amicably settled. The order further records that the Judgment Debtor and IDFC had agreed to the substitution of the Judgment Debtor by a Special Purpose Vehicle formed by some Senior Lenders.

23. It would further be submitted that this Court, while passing the aforesaid order, took note of a Memorandum of Understanding dated 17.02.2014 executed between the Judgment Debtor and IDFC. Under the said arrangement, the Senior Lenders were to assume and take



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over the liabilities of the Judgment Debtor towards the Decree Holder. In view of the aforesaid settlement and transfer of liabilities, learned Senior Counsel would contend that the present Execution Petition, as framed against the Judgment Debtor, is not maintainable and is liable to be dismissed on this ground as well.

24. **Per Contra**, learned counsel appearing on behalf of the Decree Holder would submit that the present Execution Petition has been filed for enforcement of the Consent Orders dated 25.04.2012, 20.02.2013 and 15.03.2013 passed by this Court in the Section 9 Petition, read along with the Board's Report submitted pursuant thereto.

25. It would be submitted that the Judgment Debtor had expressly consented to the constitution of the Board for determining the service charges payable in respect of integrated toll tax collection at the Rajokri Border. The Judgment Debtor not only agreed to the constitution of the Board but also participated in the proceedings conducted by it, which ultimately culminated in the submission of the Board's Report.

26. It would be argued that pursuant to the directions issued by this Court, the Board undertook a detailed assessment of the toll collection mechanism, infrastructure, operational expenditure and traffic management system and thereafter determined that the service charges payable to the Judgment Debtor ought to be restricted to 7% for the relevant contractual period.

27. It would also be submitted that by virtue of Section 36 of the CPC, the provisions relating to execution of decrees are equally applicable to execution of Orders passed by competent courts.



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28. It would further be submitted that the controversy involved in the present execution proceedings is no longer *res integra* in view of the judgment of the Division Bench of this Court in ***Angle Infrastructure Pvt. Ltd. v. Ashok Manchanda***<sup>22</sup>, wherein, according to the Decree Holder, this Court held that a compromise agreement/board report arrived at pursuant to proceedings such as under Section 9 of the A&C Act, would partake the character of a conciliated settlement and would consequently be executable in accordance with law.

29. Learned counsel further places reliance upon the judgment of the Co-ordinate Bench of this Court in ***Anand Gupta v. Almond Infrabuild (P) Ltd.***<sup>23</sup> to contend that the Orders passed in proceedings under Section 9 of the A&C Act, or the Report submitted by the Board constituted pursuant thereto, are fully executable in law by virtue of Section 36 of the CPC.

30. In support of the aforesaid contention, reliance would be placed upon the judgment of the Hon'ble Supreme Court in ***M.V.S. Manikayala Rao v. Narasimhaswami***<sup>24</sup>, wherein it was held that the provisions relating to execution of decrees are equally applicable to execution of orders by virtue of Section 36 of the CPC.

31. He would also seek to place his reliance upon the judgment of the Division Bench of this Court in ***Rohit Shekhar v. Narayan Dutt Tiwari***<sup>25</sup>, wherein this Court reiterated that Section 36 of the CPC makes the provisions relating to execution of decrees applicable to execution of orders as well.

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<sup>22</sup> 2016 SCC OnLine Del 1534

<sup>23</sup> 2024 SCC OnLine Del 6184

<sup>24</sup> AIR 1966 SC 470

<sup>25</sup> 2012 SCC OnLine Del 2438



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32. Learned counsel would accordingly submit that the Board's Report, having been rendered pursuant to the consent directions issued by this Court, the Judgment Debtor could not be permitted to evade compliance with the determination made therein.

**ANALYSIS:**

33. This Court has heard the learned counsel appearing for the parties at considerable length and has carefully perused the material placed on record, the judicial precedents relied upon by the respective parties, as well as the written submissions filed pursuant to the conclusion of oral arguments.

34. A consideration of the submissions advanced on behalf of the Decree Holder indicates that the entire foundation of the present Execution Petition rests upon the Consent Orders dated 25.04.2012, 20.02.2013 and 15.03.2013 passed by this Court in the Section 9 Petition, read along with the Board's Report dated 03.03.2014 submitted pursuant thereto. According to the Decree Holder, since the Judgment Debtor had expressly consented to the constitution and reconstitution of the Board for determining the service charges payable in respect of integrated toll tax collection at the Rajokri Border, the determination made by the Board became final and binding upon the parties. It is on this premise that the present petition has been instituted, seeking execution of the Board's determination.

35. At the outset, this Court notes that there can be no quarrel with the proposition canvassed by the Decree Holder that an order of a civil court is capable of execution in the same manner as a decree by virtue



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of Section 36 of the CPC. The principle is well settled and requires no further elaboration.

36. However, before examining whether the present petition is maintainable, it becomes necessary to ascertain whether the orders relied upon by the Decree Holder are, in fact, of such a nature as would render them executable. Section 2(14) of the CPC defines an "order" to mean the formal expression of any decision of a civil court which is not a decree.

37. Thus, the essential attribute of an order is the existence of a judicial determination or decision by the court. To the extent that a court renders a decision determining rights, liabilities, obligations, or issues arising before it, such determination may constitute an order capable of enforcement in accordance with law. The question, therefore, is whether the Orders dated 25.04.2012, 20.02.2013 and 15.03.2013 contain any determination of rights or liabilities, either expressly or by necessary implication, which is capable of being enforced through execution proceedings.

38. In order to answer the aforesaid question, it is necessary to examine the contents and true import of the said orders.

39. Initially, in the Section 9 Petition instituted by the Judgment Debtor, this Court had granted interim protection by directing maintenance of the *status quo* in relation to the collection of toll tax. Thereafter, with the consent of the parties, this Court passed the Order dated 25.04.2012 directing the constitution of a Board for determining the collection charges payable to the Judgment Debtor for rendering integrated toll tax collection services at the Rajokri Border. The Board was to comprise representatives nominated by NIFM and IDFC, who



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would jointly nominate a third expert member. The Board was directed to submit a report determining the collection charges payable for integrated toll tax collection within three months. The Section 9 Petition was thereafter disposed of by consent. The relevant portion of the said Order reads as under:

“8. Both the parties have handed over a list of proposed entities to determine the service charges. It is agreed between the parties that National Institutes of Financial Management (NIFM, Faridabad) and Infrastructure Development Financial Corporation Limited (IDFC) shall appoint a person not less than a rank of Chief Engineer and having a knowledge of traffic and engineering studies who shall jointly appoint the third officer to constitute a Board (hereinafter referred to as the Board). The Board shall give a report to determine the collection charges payable to the petitioner for the integrated toll tax collection, within three months. Till such time, the collection charges payable to the petitioner for the integrated toll tax collection is finalized, the interim orders will continue.

9. Petition stands disposed of as agreed between the parties. Dasti.”

40. Since the Board could not be constituted in terms of the Order dated 25.04.2012, an application came to be filed seeking modification of the said arrangement. Consequently, by consent of the parties, this Court passed the Order dated 20.02.2013 directing that the CRRI would constitute the Committee/Board for the determination of the service charges at the Rajokri Border and submit its report within a period of four months. The relevant portion of the said Order reads as under:

“I.A.No.22998/2012 (u/S 151 CPC) in O.M.P. 408/2011

This Court disposed of the present petition by order dated 25th April, 2012 with the following directions:

“Both the parties have handed over a list of proposed entities to determine the service charges. It is agreed between the parties that national Institutes of Financial Management (NIFM, Faridabad) and Infrastructure Development Financial Corporation Limited (IDFC) shall



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appoint a person not less than a rank of Chief Engineer and having a knowledge of traffic and engineering studies who shall jointly appoint the third officer to constitute a Board (hereinafter referred to as the Board). The Board shall give a report to determine the collection charges payable to the petitioner for the integrated toll tax collection, within three months. Till such time, the collection charges payable to the petitioner for the integrated toll tax collection is finalized, the interim orders will continue.”

Thereafter the respondent has filed present application seeking direction to reconstitute the Committee for the determination of the service charge at Rajokari Boarder by directing the petitioner to nominate the organization as mentioned in para 7. The learned counsel appearing on behalf of both the parties submit that their clients are agreeable if the CRRI, P.O. CRRI, Mathura Road, New Delhi-110020, is appointed who shall constitute the Committee for the determination of the service charge at Rajokari Border. The learned counsel for both the parties request that CRRI be directed to submit its final report within a period of four months. Ordered accordingly. The application is disposed of.”

41. Subsequently, another application was filed seeking clarification and modification of the Order dated 20.02.2013. By Consent Order dated 15.03.2013, this Court directed that NIFM and CRRI would jointly appoint the third expert member to constitute the Board and further directed that the Board would submit its final report determining the collection charges payable for integrated toll tax collection within four months. The relevant portion of the said Order reads as under:

**“I.A.No.4392/2013**

The abovementioned application has been filed by respondent No.2 under Section 151 CPC seeking clarification/modification of the order dated 20th February, 2013 to the extent that NIFM and CRRI shall jointly appoint the third officer to constitute a Board and the Board shall give a final report to determine the collection charge payable for the integrated Toll Tax collection within four months. Learned counsel for the petitioner has no objection, if the application is allowed. Ordered accordingly.”



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42. Pursuant to the aforesaid directions, a three-member Board consisting of technical and financial experts came to be duly constituted and thereafter proceeded to undertake the exercise entrusted to it.

43. A conjoint reading of the Orders dated 25.04.2012, 20.02.2013 and 15.03.2013 makes it evident that the sole object of the said orders was to establish a mechanism through which experts possessing technical and financial expertise could determine the appropriate collection or service charges payable in respect of integrated toll tax collection at the Rajokri Border. The Order dated 25.04.2012 merely provided for the constitution of the Board and directed it to submit a report. The Order dated 20.02.2013 was concerned only with reconstituting the mechanism owing to practical difficulties in constituting the Board in the manner originally contemplated. Likewise, the Order dated 15.03.2013 merely clarified the composition of the Board and reiterated that the Board would submit its final report within a stipulated period.

44. Significantly, none of the aforesaid orders contains any adjudication by this Court regarding the rights and liabilities of the parties. Equally, none of the orders records any agreement between the parties that the Board would function as an adjudicatory body, exercise powers akin to those of an arbitral tribunal, or render a determination that would be final and binding upon them. The Orders merely entrusted a panel of experts with the task of examining the relevant material and submitting a report regarding the appropriate collection charges payable for integrated toll tax collection.



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45. There is nothing in the language of the Orders, either express or implied, from which it can be inferred that the parties agreed that the Board's determination would, by itself, create enforceable rights and obligations or attain the status of a decree, award, or other executable instrument. Consequently, the mere fact that the parties consented to the constitution of the Board cannot, without more, lead to the conclusion that every recommendation or determination contained in the Board's report became binding and executable as a matter of law.

46. At this juncture, it would be apposite to examine the nature, scope and contents of the Board's Report itself. Pursuant to the directions issued by this Court, the Board prepared its report dated 03.03.2014. A perusal of the report reveals that the Board undertook a technical study concerning the determination of service charges payable for integrated toll tax collection at the Rajokri Border.

47. The Board's Report records the objective and scope of the study, the methodology adopted by the Board, the data and material considered by it, the various operational, infrastructural, traffic and financial factors taken into account, and ultimately sets out its conclusions and recommendations. The Board's Report culminates in a section titled "*Conclusions and Recommendations*", wherein the Board recorded its findings and, on the basis thereof, recommended, *inter alia*, that the service charges payable to the concessionaire/Judgement Debtor for the contract period from 16.05.2011 to 16.05.2014 be fixed at 7% of the MCD toll tax collection. Such Conclusions and Recommendations as recorded in the Board's Report read as under:

## **“6. CONCLUSIONS AND RECOMMENDATIONS**

### ***6.11 Conclusions***



Based on the data/information gathered and analysis conducted, through the implementation of this study, towards determination of service charges, the following conclusions may be drawn:

1. The service-time and waiting time for vehicles in queue at the gates for paying the toll tax has been observed to be less in case of integrated toll plazas when compared with the non-integrated toll plazas.
2. Capital cost viz., civil cost and equipment cost (which are integral part of the normal toll plaza operations) have already been accounted for in the Concession Agreement between the Concessionaire and NHAI. Therefore, these costs should not be shared by MCD because in that case it would be accounted twice which is incorrect.
3. Certain cost items (as indicated in table-2) by the Concessionaire to be pertaining to MCD toll tax collection, were not agreeable to the Board on the ground that Concessionaire is under obligation to provide necessary arrangements, logistics and resources at the toll plaza in order to fulfill its contractual obligations irrespective of MCD toll tax collection.

### **6.2 Recommendations**

Based on findings of the study, Board recommends the following:

1. An annual increase of 10 percent should be considered towards factoring in inflation while estimating the cost.
2. The Concessionaire would be collecting higher MCD toll tax for the current contract in comparison to the previous contract on account of higher toll rates even without any Increase in the traffic volume. The increased MCD toll collection would consequently give higher returns to the Concessionaire without any significant incremental/additional cost to the concessionaire.
3. There has been a phenomenal growth of traffic on Delhi-Gurgaon Expressway since It became operational. With the increase in traffic volume, the Concessionaire is likely to get higher returns in terms of higher MCD toll tax collection and consequently the higher service charges even without any significant incremental cost. With the increased toll fees/rates; phenomenal traffic growth and increased usage of toll plaza operations, the concessionaire is bound to get much higher and increased returns (in terms of service charges) with least Increase in his collection cost towards MCD toll. Therefore, the Board is of the view that the rate of service charges should get reduced from one contract to another contract (of 3 years duration) due to specific reasons mentioned herein above. However, the exact extent of service charges ought to be determined for each contract period separately. Further, the service charges need to be unique to the specific toll plaza since different toll plazas operate under widely varying operating and environmental conditions, including



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varying financial health which has significant bearing on the determination of service charges.

4. The service charge for Rajokari toll plaza has been worked out to be 7.02 percent of MCD toll tax collection. As per its majority view, the Board recommends that the service charge of 70% of MCD toll tax collection shall be paid to the Concessionaire by MCD for the contract period from 16th May 2011 (6.00 AM) to 16th May 2014 (5.59 AM) for the services (MCD toll tax collection) being provided on behalf of MCD.”

48. The contents of the Board's Report themselves demonstrate that the Board was engaged in a technical and consultative exercise involving traffic studies, operational assessments, infrastructure evaluation and financial analysis. The exercise undertaken by the Board was not adjudicatory in nature. Significantly, no arbitral or judicial procedure was followed before the Board. No statement of claim or defence was filed; no pleadings were exchanged; no issues were framed; no evidence was led; no witnesses were examined; and no oral hearings were conducted. The Board merely gathered information, analysed relevant data and, on the basis of its technical assessment, arrived at certain conclusions and recommendations regarding the appropriate rate of service charges.

49. It is also pertinent to note that there is no subsequent order of this Court either accepting, affirming, modifying or otherwise conferring legal sanctity upon the Board's Report. Equally, there is no material on record to indicate that, after submission of the Board's Report on 03.03.2014, the Decree Holder approached this Court in the disposed of Section 9 proceedings seeking clarification, implementation, adoption, or any declaration regarding the legal effect of the said Report. On the contrary, for a considerable period thereafter, no such steps appear to have been taken, and the Decree



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Holder has directly sought to invoke the machinery of execution on the basis of the report itself, by way of the present Execution Petition.

50. Equally significant is the fact that neither the consent orders passed by this Court nor the consensual arrangement recorded between the parties stipulates that the findings of the Board would attain finality *inter se* the parties, constitute a binding adjudication of their disputes, or become enforceable as a decree, order or arbitral award.

51. If it were the intention of the parties that the Board's determination would operate as a final and binding adjudication of their disputes, such intention would ordinarily have found explicit expression in the Consent Orders themselves. The Orders could have provided that the parties would be bound by the Board's determination, that the report would attain finality, or that the same would be enforceable against the parties. However, no such stipulation is to be found in any of the Orders dated 25.04.2012, 20.02.2013 or 15.03.2013. In the absence of any such express or necessarily implied provision, this Court cannot read into the consent orders consequences which neither emerge from their language nor appear to have been consciously contemplated by the parties.

52. It is, in fact, an admitted position that the Board was never constituted as an arbitral tribunal under the provisions of the A&C Act. No reference was made to it under the said Act, no arbitral mandate was conferred upon it, and no arbitral proceedings were conducted before it. The Board's Report, therefore, cannot also be regarded as an arbitral award capable of enforcement under Section 36 of the A&C Act. The parties merely agreed to the constitution of an



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expert body for the purpose of technical determination of service charges and not for the adjudication of disputes through a process having the attributes of arbitration.

53. The Board's Report itself reinforces this conclusion. The Board proceeded on the basis of technical inputs, empirical observations, field studies and operational data collected from various toll plazas. The exercise undertaken was essentially advisory and recommendatory in nature. Significantly, the portion of the Board's Report dealing with the determination of the rate of service charges appears under the heading "*Recommendations*". Indeed, Paragraph 6.2 of the Board's Report expressly states that the Board "*recommends*" that service charges be fixed at 7% of the MCD toll tax collection. The language employed by the Board leaves little room for doubt that what was rendered was a recommendation based upon technical analysis and not a binding adjudicatory determination intended to conclusively determine the legal rights and liabilities of the parties.

54. This Court is therefore of the view that the entire foundation of the case set up by the Decree Holder proceeds upon an impermissible expansion of the scope and effect of the consent Orders passed in the Section 9 Petition. The fact that the parties agreed to obtain the opinion of a panel of experts regarding the appropriate service charges cannot, by itself, elevate the expert opinion rendered by such panel to the status of an executable decree, order or arbitral award.

55. It bears reiteration that a careful reading of the Orders dated 25.04.2012, 20.02.2013 and 15.03.2013 demonstrates that the consent accorded by the parties was confined to the constitution of a Board comprising technical and financial experts for the purpose of



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determining the appropriate service charges payable in respect of integrated toll collection. Neither the orders passed by this Court nor the consensual arrangement recorded therein contains any decision or declaration that the findings of the Board would attain finality inter se the parties so as to conclusively determine their legal rights and liabilities.

56. Significantly, the Orders do not record any agreement between the parties that:

- (a) The Board would function as an adjudicatory forum;
- (b) The Board would exercise powers akin to those of an arbitral tribunal;
- (c) The findings rendered by the Board would be final and binding upon the parties;
- (d) The report submitted by the Board would constitute an executable determination; or
- (e) All disputes between the parties concerning service charges would stand conclusively determined upon submission of the report.

57. Further, nor do the Orders contain any stipulation, express or implied, that the determination made by the Board would automatically acquire binding and enforceable status merely upon submission of the Report.

58. In fact, the language employed in the Consent Orders is confined to directing the Board to determine or submit a report regarding the collection/service charges payable in respect of integrated toll tax collection. The Orders are conspicuously silent as to the legal consequences flowing from such determination. In the



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absence of any express provision conferring finality or enforceability upon the Board's report, this Court is unable to accept the contention that the Report, by itself, constitutes an executable instrument capable of enforcement through the present execution proceedings.

59. It is a settled principle of law that finality of adjudication cannot be inferred by implication, particularly where the parties have not expressly agreed to be bound by the determination of an expert body. The legal consequences flowing from an adjudicatory determination must emanate either from a statutory framework or from a clear and unequivocal agreement between the parties. If the parties intended that the Board's determination would constitute a final and binding adjudication of their disputes and conclusively determine their rights and liabilities, such intention would necessarily have found express reflection in the Consent Orders themselves.

60. This Court cannot, therefore, read into the Consent Orders, consequences in the nature of a binding decision or adjudication which neither emerge from the language employed therein nor were consciously contemplated by the parties at the time when the Board was constituted. To do so would amount to rewriting the terms of the consensual arrangement between the parties and attributing to the Board a legal status which was never envisaged either by the parties or by the orders of this Court. Consequently, no executable right can be said to arise merely from the submission of the Board's Report.

61. The submission advanced on behalf of the Decree Holder would, in effect, require this Court to treat a consensual arrangement providing for a technical determination by experts as equivalent to a binding adjudicatory mechanism, notwithstanding the complete



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absence of any agreement to that effect. Such an approach would be contrary to settled principles governing consensual adjudication, contractual autonomy and the doctrine of *consensus ad idem*.

62. This Court also finds merit in the contention that there was no meeting of minds between the parties to treat the findings of the Board as final and binding. The concept of legally enforceable terms and the necessity of *consensus ad idem* has been succinctly explained by this Court in *Midpoint Commodore Private Limited v Fidatocity Homes Private Limited & Ors.*<sup>26</sup>, wherein it was observed that binding terms can arise only when there exists a clear manifestation of mutual assent and the parties agree upon the same thing in the same sense. The said judgment further reiterates that contractual obligations cannot be founded upon unilateral assumptions or subjective understandings and that, unless the parties have mutually agreed upon essential and material terms with certainty, clarity and finality, no concluded terms can be said to exist in the eyes of law. The relevant paragraphs of the said judgement read as follows:

“36. At this stage, it would be apposite to advert to the foundational principles embodied in the **Indian Contract Act, 1872**<sup>27</sup>, which govern the formation and enforceability of contracts in law. Section 2(e) of the ICA defines an “agreement” to mean “every promise and every set of promises, forming the consideration for each other.” The statutory definition itself makes it abundantly clear that the existence of reciprocal promises founded upon mutual assent forms the very basis of a legally recognizable agreement.

37. Further, Section 2(b) of the ICA stipulates that when a proposal is accepted, it becomes a promise. Thus, the essence of a legally binding agreement lies in the existence of a lawful proposal meeting with an absolute, unconditional, and unequivocal acceptance. The statutory scheme under Section 2 of the ICA clearly postulates that contractual obligations arise only where

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<sup>26</sup> 2026 SCC OnLine Del 4476

<sup>27</sup> ICA



there exists a clear manifestation of assent by the parties to the same proposal. For ready reference, the relevant extracts of Section 2 of the ICA are reproduced herein below:

**“2. Interpretation clause.** - In this Act the following words and expressions are used in the following senses, unless a contrary intention appears from the context:—

- (a) When one person signifies to another his willingness to do or to abstain from doing anything, with a view to obtaining the assent of that other to such act or abstinence, he is said to make a proposal;
- (b) When the person to whom the proposal is made signifies his assent thereto, the proposal is said to be accepted. A proposal, when accepted, becomes a promise;
- (c) The person proposing is called the “promisor”, and the person accepting the proposal is called the “promisee”;
- (d) When, at the desire of the promisor, the promisee or any other person has done or abstained from doing or does or abstains from doing, or promises to do or to abstain from doing, something, such act or abstinence or promise is called a consideration for the promise;
- (e) Every promise and every set of promises, forming the consideration for each other, is an agreement;
- (f) Promises which form the consideration or part of the consideration for each other, are called reciprocal promises;
- (g) An agreement not enforceable by law is said to be void;
- (h) An agreement enforceable by law is a contract;
- (i) An agreement which is enforceable by law at the option of one or more of the parties thereto, but not at the option of the other or others, is a voidable contract;
- (j) A contract which ceases to be enforceable by law becomes void when it ceases to be enforceable.”

**(emphasis supplied)**

**38.** In continuation thereof, Section 10 of the ICA provides that all agreements become enforceable in law only when they are made with the free consent of parties competent to contract, for lawful consideration and with a lawful object. The expression “*free consent*” assumes considerable significance in the present context, for consent in the eyes of law cannot be equated with a unilateral understanding, subjective assumption, or uncommunicated intention of one of the parties. The statutory requirement is one of *consensus ad idem*, namely, meeting of minds between the parties upon the same thing in the same sense, as expressly postulated under Section 13 of the ICA. Sections 10 and 13 of the ICA read as follows:



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**“10. What agreements are contracts.** - All agreements are contracts if they are made by the free consent of parties competent to contract, for a lawful consideration and with a lawful object, and are not hereby expressly declared to be void.

Nothing herein contained shall affect any law in force in [India] and not hereby expressly repealed, by which any contract is required to be made in writing<sup>2</sup> or in the presence of witnesses, or any law relating to the registration of documents.”

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**“13. “Consent” defined.-** Two or more persons are said to consent when they agree upon the same thing in the same sense.”

*(emphasis supplied)*

39. The doctrine of *consensus ad idem* constitutes the very foundation and soul of binding terms between them. Unless it is demonstrated that the parties had mutually agreed upon the essential and material terms governing the transaction with certainty, clarity, and finality, no concluded agreement can be said to exist in the eyes of the law.”

63. Applying the aforesaid principles to the facts of the present case, this Court finds that the consent recorded between the parties was confined to the constitution of an expert Board for the purpose of determining the service charges payable in respect of integrated toll tax collection. The Consent Orders do not indicate, either expressly or by necessary implication, that the parties agreed to submit their disputes for final and binding adjudication by the Board or that they intended the Board's determination to attain the status of a conclusive and enforceable adjudication.

64. Further, in respect of the nature and function of the Board, it must be emphasised that the mere constitution of an expert body pursuant to consent directions issued by a Court cannot, by itself, elevate the status of such body to that of an arbitral tribunal constituted under the A&C Act. The source of authority, nature of



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functions, procedure adopted and legal consequences flowing from the determination of an expert body are fundamentally distinct from those associated with an arbitral tribunal.

65. The distinction between an expert determination and an arbitral adjudication is no longer *res integra*. Judicial precedents in India as well as comparative common law jurisdictions have consistently recognised that a reference of a technical or specialised issue to an expert does not, by itself, amount to an arbitration agreement. Courts have repeatedly held that the decisive consideration is whether the parties intended the third party to act judicially and adjudicate disputes between them, or merely to apply specialised knowledge and expertise for arriving at a technical determination. Unless the former intention is clearly established, the process remains one of expert determination and not arbitration.

66. The distinction may be stated thus that an expert is appointed for the purpose of applying his specialised knowledge, skill and experience to ascertain or determine a particular technical issue, often on the basis of his own expertise and investigation. An arbitrator, on the other hand, acts in a quasi-judicial capacity. He receives rival claims and defences, considers evidence and submissions advanced by the parties, adjudicates disputed questions and ultimately renders a binding determination of their rights and obligations. The two functions, though they may occasionally overlap in subject matter, are fundamentally different in character and consequence.

67. The Hon'ble Supreme Court, including in *K.K. Modi (supra)*, while delineating the attributes of an arbitral process, has held that for a proceeding to qualify as arbitration, there must be a clear intention



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on the part of the parties to submit their disputes to a private tribunal empowered to adjudicate upon them in a judicial manner. The Apex Court further observed that an arbitrator ordinarily acts upon rival contentions, evidence and submissions advanced by the parties and renders a binding adjudication upon such disputes. The decision makes it clear that every determination by a third person does not amount to arbitration; rather, the intention of the parties and the nature of the procedure adopted assume determinative significance in deciding whether the process constitutes arbitration or merely an expert determination.

68. Tested on the anvil of the aforesaid principles, this Court has no hesitation in concluding that the Board constituted pursuant to the consent directions contained in the Orders dated 25.04.2012, 20.02.2013 and 15.03.2013 was intended to function only as a technical expert body. The Board was neither constituted as an adjudicatory forum nor vested with the authority to judicially determine disputes between the parties. Its role was confined to examining technical and financial aspects relating to service charges and furnishing its opinion in the form of a report. The Board, therefore, cannot be equated with an arbitral tribunal, nor can its report be treated as a binding adjudicatory determination capable of execution in the absence of any express agreement or legal provision conferring such status upon it.

69. The Court shall now consider the reliance placed by the Decree Holder on the decisions in *Angle Infrastructure (supra)* and *Anand Gupta & Ors (supra)* in support of the contention that the Orders passed in the proceedings under Section 9 of the A&C Act, or any



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Report submitted by a Board constituted pursuant thereto, are fully executable in law by virtue of Section 36 of the CPC.

70. In the considered opinion of this Court, the reliance placed on the aforesaid decisions is misplaced and proceeds on a misunderstanding of the ratio laid down therein.

71. Insofar as *Angle Infrastructure (supra)* is concerned, the said decision arose in an entirely different factual context. In that case, the parties had arrived at a settlement through mediation conducted under the auspices of the Mediation Centre. The Section 9 proceedings were thereafter disposed of by the Court on the basis of the settlement arrived at between the parties. It was in those circumstances that the Court held that although a settlement agreement resulting from mediation may not, by itself, constitute either a decree or an arbitral award, the order passed by the Court disposing of the proceedings in terms of such settlement would nonetheless be enforceable under Section 36 of the CPC in the same manner as a decree.

72. There can be no disagreement with the aforesaid proposition. Indeed, this Court fully accepts the principle that where a Court disposes of proceedings on the basis of a settlement mutually arrived at between the parties, the resulting order may be enforced in accordance with Section 36 of the CPC. However, the said principle has no application to the facts of the present case. The present matter does not involve any mediated settlement, compromise, or consensual resolution of disputes whereby the parties agreed upon their respective rights and liabilities and requested the Court to record the same. The Consent Orders relied upon by the Decree Holder merely provide for the constitution of an expert body to determine service charges and do



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not themselves embody any settlement of disputes or any determination of liability.

73. The reliance placed by the Decree Holder upon *Anand Gupta & Ors (supra)* is equally unavailing. A perusal of the said decision demonstrates that the learned Coordinate Bench applied the principles laid down in *Angle Infrastructure (supra)* in the context of a settlement agreement that had been accepted and recorded by the Court. The factual foundation of that case was therefore substantially similar to that in *Angle Infrastructure (supra)*. The present case stands on an entirely different footing. Here, there exists neither a compromise decree, nor a settlement quantifying liability, nor any adjudicatory determination conclusively fixing the amount payable by one party to the other.

74. As already observed, this Court has no quarrel with the proposition that an order passed by a Court may be executable in the same manner as a decree by virtue of Section 36 of the CPC. The real issue, however, is whether the orders relied upon by the Decree Holder contain any enforceable determination capable of execution.

75. In this regard, it is necessary to recall that Section 2(14) of the CPC defines an "order" to mean the formal expression of any decision of a civil court which is not a decree. The defining characteristic of an order, therefore, is the existence of a judicial decision rendered by the Court. Mere procedural directions or arrangements facilitating future determination of issues do not automatically assume the character of executable orders unless they embody a decision determining rights or liabilities.



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76. Section 36 of the CPC merely extends the provisions relating to execution of decrees, insofar as they are applicable, to the execution of orders. However, before recourse can be had to Section 36 of the CPC, the Court must first identify an executable order within the meaning of Section 2(14). In other words, there must exist a judicial determination or decision, which could be made with the consent of the parties as well, by the Court capable of enforcement. Only then can the machinery of execution be invoked.

77. The consent orders passed in the present proceedings merely facilitated the constitution and functioning of an expert Board for the purpose of determining the appropriate service charges payable in respect of integrated toll tax collection. None of those orders directed payment of any quantified amount by the Judgment Debtor to the Decree Holder. Equally, none of them adjudicated the rival rights and liabilities of the parties or conclusively determined any monetary claim.

78. In substance, the present proceedings seek to execute a determination which neither the Consent Orders nor the Board's Report was ever intended to constitute. Acceptance of the Decree Holder's contention would require this Court to convert a technical recommendation into a binding adjudicatory determination and thereafter enforce the same through the coercive machinery of execution. Such a course is impermissible in law.

79. At this stage, this Court also finds considerable merit in the contention advanced on behalf of the Judgment Debtor that the conduct of the Decree Holder itself is inconsistent with the stand presently sought to be urged.



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80. It is an undisputed position that the Decree Holder instituted a Civil Suit, being CS(OS) No. 110/2017, seeking recovery of the very same amount which is now sought to be recovered through the present Execution Petition on the basis of the Board's Report.

81. The institution of the said civil suit is itself indicative of the Decree Holder's understanding that the Board's Report did not, by itself, constitute an executable decree, award, or binding adjudicatory determination. Had the report possessed the status of an executable instrument, there would have been no necessity whatsoever to institute independent civil proceedings seeking adjudication and recovery of the same amount. The fact that the Decree Holder simultaneously pursued substantive recovery proceedings substantially undermines the premise on which the present Execution Petition is founded and lends further support to the contention that the report was merely recommendatory in nature.

**DECISION:**

82. In view of the foregoing discussion and analysis, this Court is of the considered opinion that the present Execution Petition is wholly misconceived and proceeds on an erroneous understanding of the nature, scope, and legal effect of the Consent Orders dated 25.04.2012, 20.02.2013, and 15.03.2013, as well as the Board's Report dated 03.03.2014. Neither the aforesaid Consent Orders nor the Board's Report possesses the character of an executable decree, arbitral award, or any other enforceable adjudicatory determination recognised by law. Consequently, no execution proceedings can be maintained on the basis thereof.



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83. The present Execution Petition is, therefore, not maintainable and is accordingly dismissed.

84. The Execution Petition, along with pending application(s), if any, stands disposed of.

85. No order as to costs.

**HARISH VAIDYANATHAN SHANKAR, J.**

**JULY 01, 2026/sm/va**