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

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**OMP No.41/2003**

**10<sup>th</sup> February, 2010**

**NATIONAL BUILDINGS CONSTRUCTION CORPORATION LTD.**

...Petitioner

Through: Mr. Manoj Kumar Das, Advocate.

**VERSUS**

**SCANTEC INDIA PVT. LTD.**

....Respondent.

Through: Mr. Samrat Nigam, Advocate.

**CORAM:**

**HON'BLE MR. JUSTICE VALMIKI J.MEHTA**

1. Whether the Reporters of local papers may be allowed to see the judgment?
2. To be referred to the Reporter or not?
3. Whether the judgment should be reported in the Digest?

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**JUDGMENT (ORAL)**

**VALMIKI J.MEHTA, J**

1. In this objection petition under Section 34 of the Arbitration & Conciliation Act, 1996, only one issue is raised by the counsel for the objector. This issue pertains to an Award of Rs.16,61,612.17/- in favour of the respondent by the Arbitrator.

2. The respondent was the sub-contractor of the petitioner for the main contract of the petitioner with Power Grid Corporation of India Limited(PGCIL) for the work of foundation, tower erection, stringing and

testing and commissioning of 220 kV Double Circuit Transmission line from Salal to Kishenpur (J&K)-work order dated 14.11.1992. Under this contract, with respect to the conductor wire and the earthwire which the respondent receives from the petitioner, all cut pieces measuring less than 20 metre in length were to be treated as scrap and to which the respondent was absolutely entitled to. This clause was made in the contract between the parties because in the contract of the petitioner with PGCIL, there was a similar clause. By the Award, on this issue, the Arbitrator has given a finding that the material having the value of Rs.16,61,612.17/- pertaining to the scrap of conductor wire and the earthwire was given by the respondent herein to the petitioner herein and which was further sent by the petitioner herein to the PGCIL and such value had to be for the benefit of the respondent herein. The material in question was given by the respondent to the petitioner hoping to recover by the same value treating the said material as about 20 metres, however, it transpired that the material was of the length below 20 metres. In view of the above, PGCIL treated this material returned to it by the respondent through the petitioner, as scrap and sold most of the material of 32.8 Metric Tonnes(MT) i.e. 28.5 MT. Thus, out of the total scrap material of Rs.16,61,612.17/-, PGCIL sold material of 25.8 tonnes valuing Rs.14,31,006/- and the balance material remained with PGCIL. Credit of Rs.14,31,006/- was given by PGCIL to the petitioner.

3. In view of the above factual position and more importantly the fact that the material below 20 metres was a scrap value for the benefit of the

respondent and also the fact that no benefit was given to the respondent by treating the material as over 20 metres, the Arbitrator has held that the total material of 32.8 MT of the value of Rs.16,61,612.17/- has been wrongly recovered by the petitioner from the bills of the respondent. The claim in the arbitration proceedings was for payment for the work done by the respondent and the illegal recoveries made for this material of 32.8 MT.

4. In view of the above, the Award has held as follows:

**“Sale of Scrap**

**My finding & award on sale of scrap/cut lengths below 20 mtrs is as:**

The main client PGCIL have affected the recovery of conductor & earthwire cut lengths below 20 mtrs/scrap at penal rate of recovery from the Respondent and the Respondent consequently have also been awarded the recovery from the Claimant at the penal rate of recovery of the generated scrap of conductor & earthwire cut lengths below 20 mtrs. Cut lengths below 20 mtrs as per the terms of the main contract clause 3.13.3 page 9 annexure-III were not to be returned to be main client and was to be treated as a part of unaccountable wastage. The Claimant in the year through the Respondent deposited the cut lengths below 20 mtrs to the main client with the objective that these cut lengths be also considered as return of good conductor. The said scrap as is evident from the Claimant's submissions Colly C-21 of additional affidavit dtd. 10<sup>th</sup> Mar'00 was returned through the Respondent to the main client.

Further the Respondent vide Respondent's letter 2324 dtd. 3<sup>rd</sup> May'00 (submitted by the Respondent vide letter GM/EMZ/ARB/2001-7674 dtd. 12<sup>th</sup> Feb'01 to me) has authorised the main client Power Grid to dispose off the scrap and remit the proceeds to the Respondent. It was incumbent on the part of the main client to immediately dispose of the scrap or at the best before finalisation of the bill wherein the recoveries at penal rate of recoveries were affected or should have return the scrap to the Respondent NBCC for disposal by the Respondent themselves. The Claimant in no way is responsible for delay in sale of scrap.

As the recovery on account of non-return of the balance supply/issue of conductors & earthwire by the main client-PGCIL/NBCC has been allowed in full in favour of the Respondent, the ownership right of the cut lengths below 20 mtrs/scrap so generated lies with the Claimant alone and the Claimant were at liberty to sell the scrap in the open market. Since the scrap so generated has been disposed off by the PGCIL under advice of the Respondent and the main client PGCIL have already passed on the credit to the Respondent, ends of justice would be met if the said credit of Rs.16,61,612.17 (disposed off by PGCIL and assessed by me for the part

nominal quantity retain till date) as detailed at page 33 & 34, be allowed in favour of the Claimant, towards sale of scrap for conductor & earthwire. Accordingly, I hereby also award a credit of Rs.16,61,612.17 in favour of the claimant to be given by the Respondent towards the sale proceeds of scrap received by the Respondent from the client”

5. I do not find any illegality or perversity in the Award for this court to interfere with the Award under Section 34. It was contended by the counsel for the petitioner that this claim which has been allowed does not form part of any of the claim raised by the respondent before the Arbitrator. I, in fact, fail to understand this argument because the respondent claimed the total value of the work done and it was the petitioner who had the value of the material with it either in the form of rupees on account of credit having been given by PGCIL or on account of the material which remained with PGCIL and which the petitioner ought to have recovered from PGCIL.

6. One aspect which was argued by the counsel for the petitioner and which the counsel for the respondent has fairly conceded is that interest which has been allowed by the Award from 19.6.2000 ought to in fact have been allowed from 26.4.2001. Accordingly, where interest has been awarded at 8% per annum, which rate in any case is very reasonable inasmuch as this court has otherwise been awarding 9% per annum, the only change which is to be made in the Award is that the interest which will run in favour of the present respondent and the claimant in the arbitration proceedings only from 26.4.2001 so far as this claim of scrap value of Rs.16,61,612.17/- is concerned and not from 19.6.2000 as stated in the Award.

7. With the aforesaid observations, the present petition is dismissed leaving the parties to bear their own costs, except allowing the amendment to the Award to the extent of interest to be granted from 26.4.2001 and not from 19.6.2000.

**VALMIKI J.MEHTA, J**

**February 10, 2010**

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