

28

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
§~F-123A and 123B

O.M.P. 69 of 2007

UNION OF INDIA

..... Petitioner

Through : Mr. Ashwani Bhardwaj and
Mr.Munish Kumar Singh, Advocates.

Versus

M/S HIGH TENSILE WIRE COMPANY

..... Respondent

Through : Mr. Sanjeev Sachdeva, Sr. Advocate
with Mr. Preet Pal Singh and
Ms.Priyam Mehta, Advocates.

AND

O.M.P. 83 of 2007

M/S HIGH TENSILE WIRE COMPANY

..... Petitioner

Through : Mr. Sanjeev Sachdeva, Sr. Advocate
with Mr. Preet Pal Singh and
Ms.Priyam Mehta, Advocates.

Versus

UNION OF INDIA

..... Respondent

Through : Mr. Ashwani Bhardwaj and
Mr.Munish Kumar Singh, Advocates.

CORAM: JUSTICE S. MURALIDHAR

ORDER

08.11.2012

%

1. The Award dated 12th October 2006 passed by the sole Arbitrator in the
dispute between Union of India ('UOI'), through Executive Director Track

O.M.P. 69 of 2007 & 83 of 2007

Page 1 of 7

(M), Ministry of Railways, Railway Board and M/s High Tensile Wire Company ('HTW'), a partnership firm, is the subject matter of the challenge in both these petitions filed under Section 34 of the Arbitration and Conciliation Act, 1996 ('Act'). While O.M.P. No. 69 of 2007 has been filed by UOI, O.M.P. No. 83 of 2007 has been filed by HTW.

2. The background of these petitions is that an open tender was floated by UOI (Railway Board) for manufacture and supply of High Tensile Strands ('HTS') wires for the use and manufacture of a quantity of 1,000 metric tonnes ('MT') at the rate of Rs.19,299 per MT ('PMT'). HTW submitted a counter offer on 9th August 2000 pursuant to which a contract agreement was entered into between UOI and HTW on 29th January 2001. On the basis of the said agreement, a release order for 700 MT of HTS wires was issued to UOI to the Central Railway on 25th August 2000. While issuing the said order a clause was introduced stipulating that prior to the supply of the material, necessary approval should be obtained from the Research Design and Standards Organization ('RDSO').

3. The admitted case is that at the stage of inviting tender and even at the stage of entering into the agreement, no such stipulation existed. UOI

informed HTW that RDSO would inspect its plants/works to assess its capacity to manufacture and supply HTS wires. According to HTW it had been supplying HTS wires directly to sleeper manufacturers by submitting copies of certificates to the Bureau Indian Standard ('BIS') and also a letter dated 6th October 2001 of the DG/Track, RDSO stating that the tests certificates of HTW were satisfactory.

4. HTW paid for the RDSO inspection by depositing the requisite fees of Rs.23,000, however, it was unable to obtain approval from the RDSO and ultimately the contract was terminated on 14th August 2002. The disputes raised by HTW were referred to sole arbitration with an Arbitrator being appointed by the Member Engineering, Railway Board on 18th July 2003.

5. Claim No.1 was for a sum of Rs.31,25,000 towards loss of business profit. The learned Arbitrator awarded HTW a sum of Rs.23,000 being reimbursement of the fees deposited with the RDSO for inspection of plants/works of the Respondent.

6. Claim No. 2 in the sum of Rs.26,50,000 towards promoters contribution was rejected. Claim No.3 for payment of interest and Claim No.4 for compensation for mental agony and loss of reputation in the market were

also rejected. Under Claim No.5, towards compensation for interest as per demand notice of the Economic Development Corporation (EDC), as against a sum of Rs.61,30,000, the learned Arbitrator awarded 20% interest on the loan amount for a period of two years in the sum of Rs.21,33,600. Under Claim No.6 costs of Rs.50,000 were awarded. Consequently, the learned Arbitrator held that HTW was entitled to a sum of Rs.22,06,600 together with post award interest at the rate of 9% per annum.

7. In these petitions under Section 34 of the Act, Railways has urged that HTW was not a registered firm. It is pointed out by Mr. Sanjeev Sachdeva, learned Senior counsel appearing for HTW-Respondent that as regards the above submission, even before the learned Arbitrator, HTW had placed on record a copy of the certificate of registration of the firm. Consequently, there is no merit in the above contention.

8. The next submission is that the learned Arbitrator erred in directing the refund of sum of Rs.23,000 which has been deposited by HTW with RDSO for inspection since the inspection was in fact carried out on 15th November 2000. It is further submitted that such inspection revealed that HTW did not have the basic infrastructure to manufacture HTS wires.

9. The admitted position is that when the tender was floated and even at the time of execution of the contract, there was no stipulation that HTW had to obtain permission of RDSO before manufacture and supply of HTS wires. As has been held by the learned Arbitrator, this contention was sought to be imposed at the stage of issuance of supply orders. Consequently, such contention should not have been imposed after the contract is entered into between the parties. In the considered view of this Court, the learned Arbitrator was right in coming to the conclusion that HTW is entitled to refund of the sum of Rs.23,000 which was deposited by HTW with RDSO for inspection.

10. It is next contended that the availing of loan from the Economic Development Council (EDC), Goa on 10th September 1995 was not sanctioned for manufacture and supply of HTS wires for which the contract was awarded to the Respondent in the year 2000.

11. It is pointed out by Mr. Sachdeva, learned Senior counsel appearing for the Respondent that the loan was availed for setting up of the plant and machinery for HTW and to meet the manufacturing requirements. It is further submitted that loan was taken for setting up factory for manufacture

of HTS wires which was certainly essential for setting up of the factory for manufacturing of HTS wires. As a result, imposition of the condition concerning obtaining of approval from RDSO, the UOI prevented HTW from proceeding with such manufacture of HTS wires and, therefore, brought about the situation where the contract had to be terminated.

12. The fact of HTW having availed loan has not been disputed. The fact that such advance was essential for setting up of the infrastructure for manufacturing of HTS wires is also not disputed. With the contract having been terminated on account of the conduct of UOI, it was reasonable for learned Arbitrator to direct compensation to the HTW for a period of two years.

13. This Court is unable to discern any patent illegality having been committed by the learned Arbitrator as regards Claim No.5. The award of Rs.50,000 under Claim No.6 also calls for no interference.

14. Turning to the rejection of Claim No. 1 in part and Claim Nos. 2, 3 and 4, this Court finds justification in the submissions of learned Senior counsel for the Respondent that the learned Arbitrator was expected to give reasons for rejection of the said claims. This Court finds that there is not even a

reference to the documents and evidence on record in respect of such claims. For the purpose of Section 31 (3) of the Act the learned Arbitrator is required to give clear and cogent reasons for rejection of claims. Consequently, the Award in respect of Claim No.1 to the extent of rejection of HTW's claim and Claim Nos. 2, 3 and 4 cannot be sustained. This Court is not inclined to re-appreciate the evidence and in any event that is not even within the scope of the powers of this Court under Section 34 of the Act. However, HTW is given liberty to seek appropriate remedies in that regard if so permissible under law.

15. For the aforesaid reasons this Court affirms the impugned Award dated 12th October 2006 as regards Claim Nos. 5 and 6 and sets it aside as regards Claim Nos. 2, 3 and 4 and part of Claim No.1 to the extent of rejection of the claim of HTW.

16. Both petitions are disposed of in the above terms with no orders as to costs.



S. MURALIDHAR, J.

NOVEMBER 08, 2012

JK