

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

Decided On: 25.08.2015

+ FAO(OS) No.454/2014

OIL & NATURAL GAS CORPORATION LTD. Appellant

Through: Mr. Tushar Mehta, ASG with Mr. Ameet Singh, Mr. Suvesh Kumar and Mr. Sandeep Singh, Advocate.

Versus

AMTEK GEOPHYSICAL PVT. LTD. Respondent

Through: Mr. Samrat Nigam, Advocate.

CORAM:

HON'BLE MR. JUSTICE S. RAVINDRA BHAT

HON'BLE MR. JUSTICE DEEPA SHARMA

MR. JUSTICE S. RAVINDRA BHAT (OPEN COURT)

%

1. Vide this appeal, a judgment and order of learned Single Judge dated 11.10.2012 in OMP No.15/2007 and a subsequent order of 12.02.2014 disposing of Review Petition No.159/2013 have been challenged.

2. The appellant (hereinafter referred to as “ONGC”) awarded two contracts to the respondent (hereinafter referred to as “AMTEK”). The work volume in each work was 600 LKM. Both works were for acquiring seismic data in the upper Assam (Assam Contract) and in the Cambay Basin in Gujarat (Cambay Contract). The total value of

the Assam Contract was ₹7,28,98,000/- which included 14 days experimental work and 14 days of standby charges. AMTEK claimed that while work was in progress in Assam, there was an intrusion in its site by terrorists on 22.11.1992 and later they addressed a communication demanding the handing over of the explosives used by it for its work. This was reported and signed by all parties. Some correspondence ensued between AMTEK and ONGC; the former had claimed that the developments constituted a *force majeure* condition under which it was entitled to standby charges. It was only on 21.07.1993 that the ONGC assured AMTEK full protection necessary for the work. After all these developments, disputes arose between the parties and on 08.06.1995, a common deed of settlement was executed by the parties. In terms of this deed, the ONGC agreed to release the net amount of ₹31,79,971/- for the Assam Contract and ₹6,03,641/- in respect of the Cambay Contract. The disputes which were not covered by the deed included the claim for standby charges for 88 days. These 88 days comprised of 66 days' suspension of work due to extremist activities and non-availability of armed guards and 22 Sundays when operations were prohibited by the militants.

3. AMTEK invoked the arbitration clause which is a part of the contract with respect to the Assam Contract on 19.01.1998. The applicability of the Arbitration Act, 1940 became the subject matter of another dispute. On 22.11.2001, the Division Bench of this Court held that the Arbitration & Conciliation Act, 1996 alone was applicable. ONGC's SLP to the Supreme Court failed and ultimately on 22.11.2002, a new Arbitral Tribunal was constituted under the

Arbitration and Conciliation Act, 1996. After considering the pleadings and hearing the parties, the Arbitral Tribunal made its award on 04.09.2006 stating, inter alia, that claims prior to the deed of settlement could not be reopened, and that the scope of the arbitral proceedings included the claim for standby charges of 88 days. The Tribunal finally held that AMTEK was entitled to 65 days of standby charges for which the award amount was of ₹165.10 lakhs and 1 day was reduced from 66 on account of Christmas. The claim for 22 Sundays' standby charges was rejected. On the second head, i.e., for experimental work (claim No.3.2.1), the award for ₹7,62,000/- with simple interest @ 6% per annum from 23.05.1996 was granted. Likewise as against ₹6,52,000/- under claim No.3.2.2, a sum of ₹3,19,087/- with simple interest @ 6% from 02.03.1997 was awarded. So far as the claim with respect to wrongful invocation of bank guarantee, i.e., ₹14.58 lakhs was concerned, AMTEK was awarded ₹10.00 lakhs with simple interest @ 6% from 28.10.1996 to the date of the award. A post-award interest of 18% per annum was directed till the date of actual payment.

4. The learned Single Judge upon a consideration of the award – in the objections preferred by the ONGC held that the Tribunal's decision that terrorist threats were the cause for stoppage of 66 days' work, was clearly covered by clauses 8.5 and 8.6 of the contract, and did not require interference. Only modification directed was that of reduction of one day on account of Republic Day from the number of days for which standby charges had to be paid, i.e., finally 64 days. The learned Single Judge held that there was no illegality in regard to

the award as against claim No.3.2.1 for experimental work, i.e., ₹7,62,000/-. Likewise, the award in respect of the claim No.3.2.2 and 3.4.2, for ₹3,19,087/- and ₹10.00 lakh (bank guarantee) was found to be in order.

5. By the review order, the learned Single Judge modified the direction so far as the post-award interest was concerned by stating that from the date of award, ONGC was to pay to AMTEK 9% simple interest if the payments were to be made within eight weeks from 12.02.2014 and in the event of default, the post-award interest was to be 12% per annum for the period of delay.

6. The ONGC has urged several grounds contending that the Arbitral Tribunal's observations with respect to claim for standby charges were untenable. It was submitted besides that the interpretation of clauses 8.5 and 8.6 as opposed to the overriding nature of clause 11.1 was plainly contrary to the terms of the contract. Similarly, with respect to the other claims, i.e., experimental charges and claim No.3.2.2 and 3.4.2, learned counsel argued that these were, ex facie, unsustainable.

7. This Court has carefully considered the submissions. It cannot be disputed that the jurisdiction to interpret the terms of the contract is within the exclusive domain of an arbitrator. In the present case, the Arbitral Tribunal took into consideration not only clauses 8.5 and 8.6, but also the material in the form of 15 letters which, spanned the period between 22.11.1992 to 26.02.1993. These letters were addressed by AMTEK to ONGC indicating temporary shifting of explosives; and letters were also written to the Inspector General of

Police and COY Commander. Besides these, communications were addressed to the Village Council Chairman, Bhandari. Having regard to all these, the Court is satisfied that AMTEK was prevented from carrying on the work on account of the disturbed nature of the locality or area and the threats extended by terrorists. The claim granted by the Tribunal was 65 days' standby charges (which was later reduced by the Single Judge to 64 days) as against 88 days which had been originally made by AMTEK. Considering that the questions related to pure findings of fact and an interpretation of contract which can by no means be called as patently illegal or contrary to public policy, this Court discerns no ground to interfere with the impugned judgment and order.

8. As far as the confirmation of the other claims, i.e., Nos. 3.2.2 and 4.3.2, etc. is concerned, no infirmity amounting to a patent illegality resulting in the award being opposed to public policy was made out during the hearing. Furthermore, we notice that the post-award interest was, in fact, reduced in the review proceedings.

9. For all the above reasons, this Court is of the opinion that this appeal has no merit. The FAO(OS) No.454/2015 with all pending applications are consequently dismissed.

**S. RAVINDRA BHAT
(JUDGE)**

**DEEPA SHARMA
(JUDGE)**

AUGUST 25, 2015