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

Date of Decision: 22nd February 2024

+ O.M.P. (COMM) 102/2024 & I.A. 4177/2024, I.A. 4178/2024

HBL POWER SYSTEMS LIMITED

..... Petitioner

Through: Mr. Sanjay Sharma Darmora and Mr.
Nitin Darmora, Advocates.

versus

ULTRA MEGA POWER PVT. LTD

..... Respondent

Through:

HON'BLE MR. JUSTICE ANUP JAIRAM BHAMBHANI

J U D G M E N T

ANUP JAIRAM BHAMBHANI J.

By way of the present petition filed under section 34 of the Arbitration and Conciliation Act 1996 ('A&C Act'), the petitioner impugns Arbitral Award dated 06.09.2023 ('Arbitral Award') rendered by the learned Sole Arbitrator in disputes that have arisen between the petitioner and the respondent from Contract for Supply and Commissioning of Battery Banks for Solar Power Projects dated 03.02.2017 ('Agreement'). The agreement contemplated that the petitioner (non-claimant) would manufacture and supply batteries to the respondent (claimant) for purposes of deployment in solar power plants at various locations in India.



2. Furthermore, as part of the transaction, the petitioner had also executed an unconditional corporate guarantee dated 24.03.2017 in favour of the respondent. The Agreement, in particular clause 3.9 thereof, as well as the corporate guarantee, contained a provision, whereby the petitioner had warranted that the batteries supplied would be in good operating condition, free from manufacturing defects for a period of 05 years from the date of the invoice, subject to the batteries being handled, stored, installed and operated in strict adherence of the installation and operations manual provided with the batteries.
3. Shorn of all unnecessary detail, the dispute was in relation to the batteries installed on or about March 2017 by the petitioner at the respondent's solar power plant situate in Etah Mandi, Uttar Pradesh. A total of 900 Nos. batteries were supplied and commissioned at Etah Mandi. Of these, the complaint relates to 300 Nos. batteries, which the respondent claims had manufacturing defects; but that the petitioner had failed to replace them.
4. In this backdrop, the respondent made 06 claims, in addition to the claim for relief. Of the 06 claims, 05 claims have been rejected by the learned Arbitrator; and 01 claim has been allowed which relates to the cost of replacing 300 Nos. defective batteries. This claim was for Rs.54,24,800/-. The learned Arbitrator has awarded Rs. 24,03,300/- against that claim.
5. Learned counsel appearing for the petitioner submits that the claim has been awarded based on 'no evidence' and/or incorrect reading of evidence, since the respondent has not *adequately discharged* their burden of proof to demonstrate that the batteries had any



manufacturing defective. Counsel submits that there was no basis for the learned Arbitrator to hold that there was any manufacturing defect in the 300 batteries. Counsel submits, that the batteries malfunctioned since they had not been properly charged.

6. Counsel further argues, that the respondent had never made any written complaint to the petitioner saying that the said 300 batteries were suffering from any manufacturing defect.
7. Learned counsel appearing for the petitioner has also drawn attention to the cross-examination of CW-1 and CW-3 conducted on 25.04.2023 and 16.05.2023 respectively in the course of arbitral proceedings, to submit that in the said cross-examination, the respondent's own witnesses had admitted that there was no manufacturing defect in the batteries.
8. These allegations and the evidence on record have been dealt with by the learned Arbitrator in the following paragraphs of the impugned arbitral award :

*“19. Had there been defects or low charging as mentioned in the reports dated 25.12.2019 or 04.02.2020, the other 600 batteries would have been affected too. **No plausible explanation has been offered by the respondent as to why the remaining 600 batteries did not suffer the defects when the 300 batteries in question allegedly got discharged due to non-availability of electricity.** The claimant in its email dated 25.01.2020 categorically claimed that they had maintained the batteries as per the terms and conditions of the warranty certificates.*

“20. The Tribunal finds no merit in the contention of the Id. Counsel for the respondent that the claimant was required to lodge complaint about the defect in the batteries within 5 days from the date of defect. It has come on record that the batteries in question



did not require any maintenance. The officials of the respondent used to have field inspections and check the batteries in question. Whenever, there was defect in the battery/cell during inspection, the respondent used to replace the same. As such, the respondent had replaced several batteries at different locations of the claimant. When the site was inspected by the officials of the respondent on 25.12.2019 on the complaint of the claimant in November, 2019, several batteries were found defective. Again, the batteries were found defective at the time of joint inspection on 04.02.2020. 300 batteries were segregated and disconnected. The 600 batteries were connected with two battery banks only. The defects continued in the batteries even after 04.02.2020. So there is no substance in the contention of the ld. Counsel for the respondent that 5 days prior notice was required to be served to avail warranty. CWI Pradeep Tiwari categorically deposed that they had not informed the respondent about the defects in the batteries. The officials of the respondent at the time of field inspection used to detect the defects in the batteries. He further deposed that oral complaints were lodged with the respondent. The respondent admitted in the Statement of Defense and affidavit of evidence that the claimant used to raise complaints without any basis.

“21. There is no merit in the respondent’s contention that 300 defective batteries were to be returned to the respondent at its company premises which was never done by the claimant as per the warranty certificates. The warranty certificates clearly state that without prior authorization of the claimant, the defective batteries would not be sent to the respondent’s premises. Case of the claimant is that the respondent did not authorize it to return the batteries at its company premises. The claimant had issued legal notice dated 02.03.2020 (Annexure C-12) to the respondent highlighting the defects in the batteries and request was made to carry out necessary repairs in the said batteries installed at Eta Mandi within 7 days. The respondent sent its response belatedly on 11.06.2020 (Annexure C-13) denying its liability to replace the defective batteries as these were not operated as per the I&O Manual. The respondent has failed to explain as to why there was



inordinate delay in responding to the legal notice dated 20.03.2020 issued by the claimant.

(emphasis supplied)

9. In this backdrop, the learned Arbitrator comes to the following conclusions :

*“22. The Tribunal has examined the comprehensive terms and conditions of the contract (sic) dated 03.02.2017 executed between the parties. **Under clause 3.9, the respondent categorically warranted that the batteries supplied would be in good operating conditions, free from manufacturing defects, for 5 years from the date of invoice.** Clause 3.10 and 3.11 of the contract further obligated the respondent to replace the damaged batteries at the delivery site within a period of 15 days from the identification of defects. The respondent was required to maintain a response time of 36 hours for identification of defects at site. Clause 3.13 required the respondent to support the claimant during the warranty period to carry out regular maintenance of the batteries supplied and installed in the presence of the individual designated by the claimant free of charge once in every quarter during the warranty period. **All these clauses put unconditional obligation upon the respondent to replace the defective batteries during the warranty for 5 years. Merely because there was no complaint of defect in the batteries for 2.5 years, it did not guarantee that there would not be any defect subsequent to that. The warranty certificate itself was for a period of 5 years and the respondent was under legal obligation to replace the batteries or rectify the defects as per the terms and conditions of the warranty for 5 years. Merely because the officials of the claimant had cleared the batteries for dispatch vide deposit dated 27.01.2017, it did not prevent the claimant to bring to the notice of the respondent any defect in the batteries subsequent to that, during the period of 5 years.**”*

*“23. In view of above discussion, **the Tribunal is of the view that the respondent was under obligation to replace the defective batteries numbering 300 as per the warranty certificates issued by**”*



it. There is no concrete or credible evidence produced on record by the respondent that there was no manufacturing defect in the batteries disentitling the claimant to avail the warranty given in the warranty certificates. The respondent had assured that during the warranty period of 5 years, the batteries shall be in good operating condition and free from manufacturing defects. Issuance of warranty certificates was not a formality. Both the parties had given due consideration on this aspect. To ensure that the respondent complies with the terms and conditions of the warranty certificate issued by it, the respondent had executed an unconditional corporate guarantee in the sum of Rs. 16,65,825/- valid up to 24.03.2022. The claimant had moved an application under Section 17 of the Arbitration & Conciliation Act, 1996 for enforcement of the corporate guarantee. Since the corporate guarantee was not invoked within the warranty period, vide order dated 04.01.2023, the application under Section 17 was dismissed. The respondent can't absolve from its responsibilities/obligation on the basis of the report given by its own official which informed that the batteries were not operated by the claimant as per the contentions of I&O manual.

“24. It is on record that the total cost of 900 batteries installed at Eta Mandi was Rs.72,09,000/-. The value of 300 batteries, thus, comes to Rs.24,03,000/-. The claimant has raised demand of Rs.54,24,800/-. It is urged by the Id. Counsel for the claimant that this demand of Rs.54,24,800/- is based upon the current value of the batteries when the respondent declined to replace the same.

“25. The Tribunal is in agreement with, the contention of the Id. Counsel for the respondent that the claimant can't be awarded Rs.54,24,800/- for 300 batteries on the current value. The claimant has not produced on record any evidence whatsoever as to what was the current value of the batteries at the time of filing of the claim petition. The Tribunal is of the view that the claimant can only be awarded cost of the 300 batteries which was charged by the respondent and it failed to replace the batteries during the



warranty period. The claimant has not produced any evidence if on the refusal of the respondent, it had tried to mitigate the losses by purchasing batteries from other sources.”

(emphasis supplied)

10. It is seen that of the 900 batteries installed at Etah Mandi, 300 batteries had malfunctioned. The fact that the other 600 batteries did not malfunction, would suggest that there was nothing amiss in the manner in which the batteries were charged or deployed by the respondent. The petitioner has also not brought on record any evidence to support their contention that the respondent was not charging or deploying the batteries as was required by the installation and operations manual.
11. The award goes on to record that the defect in the batteries was discovered during *joint inspections* conducted by the parties. Therefore the petitioner’s submission that the respondent never issued any written intimation to the petitioner as regards the defect in the batteries also carries no weight, and has been duly addressed in the impugned Arbitral Award.
12. In the opinion of this court, there is also no basis to the contention that the inferences drawn by the learned Arbitrator are not based on any evidence. This is discernible *inter-alia* from a reading of the cross-examination of CW-1 and CW-3, to which attention has been drawn by learned counsel for the petitioner.
13. In any event, it is not the remit of this court under section 34 of the A&C Act to re-appreciate the evidence that was adduced in the course of the arbitral proceedings.



14. A quick review of the enunciation of the law on section 34 by the Supreme Court may not be out of place here. In ***PSA SICAL Terminals (P) Ltd. vs. Board of Trustees of V.O. Chidambranar Port Trust Tuticorin***¹ the Supreme Court has held as follows :

“43. It will thus appear to be a more than settled legal position, that in an application under Section 34, the court is not expected to act as an appellate court and reappreciate the evidence. The scope of interference would be limited to grounds provided under Section 34 of the Arbitration Act. The interference would be so warranted when the award is in violation of “public policy of India”, which has been held to mean “the fundamental policy of Indian law”. A judicial intervention on account of interfering on the merits of the award would not be permissible. However, the principles of natural justice as contained in Section 18 and 34(2)(a)(iii) of the Arbitration Act would continue to be the grounds of challenge of an award. The ground for interference on the basis that the award is in conflict with justice or morality is now to be understood as a conflict with the “most basic notions of morality or justice”. It is only such arbitral awards that shock the conscience of the court, that can be set aside on the said ground. An award would be set aside on the ground of patent illegality appearing on the face of the award and as such, which goes to the roots of the matter. However, an illegality with regard to a mere erroneous application of law would not be a ground for interference. Equally, reappreciation of evidence would not be permissible on the ground of patent illegality appearing on the face of the award.

(emphasis supplied)

¹2021 SCC OnLine SC 508 43



15. Again in **Delhi Airport Metro Express (P) Ltd. vs. DMRC²**, the Supreme Court has held as follows :

*“26. A cumulative reading of the Uncitral Model Law and Rules, the legislative intent with which the 1996 Act is made, Section 5 and Section 34 of the 1996 Act would make it clear that judicial interference with the arbitral awards is limited to the grounds in Section 34. While deciding applications filed under Section 34 of the Act, Courts are mandated to strictly act in accordance with and within the confines of Section 34, refraining from appreciation or reappreciation of matters of fact as well as law. (See *Uttarakhand Purv Sainik Kalyan Nigam Ltd. v. Northern Coal Field Ltd.* [Uttarakhand Purv Sainik Kalyan Nigam Ltd. v. Northern Coal Field Ltd., (2020) 2 SCC 455 : (2020) 1 SCC (Civ) 570], *Bhaven Construction v. Sardar Sarovar Narmada Nigam Ltd.* [Bhaven Construction v. Sardar Sarovar Narmada Nigam Ltd., (2022) 1 SCC 75] and *Rashtriya Ispat Nigam Ltd. v. Dewan Chand Ram Saran* [Rashtriya Ispat Nigam Ltd. v. Dewan Chand Ram Saran, (2012) 5 SCC 306] .)*

(emphasis supplied)

16. As a sequitur to the above, and after a careful consideration of the averments contained in the petition; on a close reading of the impugned Arbitral Award; as well as after considering the submissions made at the Bar, this court finds no ground interfere with the impugned Arbitral Award, especially under the limited scope of its powers under section 34 of the A&C Act.
17. In the opinion of this court, there is nothing in the impugned Arbitral Award that would warrant an inference that the award is based on no evidence; or that the conclusions drawn by the learned Arbitrator are such that no reasonable person would come to such conclusions based

² (2022) 1 SCC 131



on the material produced before it; nor is there any basis to say that the award is perverse.

18. In the circumstances, this court finds no merit in the present petition, which is accordingly dismissed *in limine*; without however, any order as to costs.
19. Pending applications, if any, also stand disposed-of.

ANUP JAIRAM BHAMBHANI, J

FEBRUARY 22, 2024/ak