

In the High Court of Judicature at Madras

Dated : 18.12.2015

Coram :

The Hon'ble Mr.Sanjay Kishan Kaul, Chief Justice

O.P.No.452 of 2015

Subalakshman Constructions
Engineers & Contractors, rep. by
its General Power of Attorney Holder
and Authorized Signatory, N.Venugopal. ... Petitioner

-vs-

The General Manager,
Southern Railway, Head Quarters Office,
Park Town, Chennai. ... Respondent

Petition filed under Section 11 (6) of the
Arbitration and Conciliation Act, 1996, to appoint an
independent and impartial Arbitrator to hear and decide the
disputes between the Petitioner and the Respondent arising
out of the Agreement No.13/GC/SUB/MS/2010 dated 23.11.2010
as set out under details of claims in Para 14 of the
petition.

For Petitioner : M/s.S.Rajeni Ramadass

For Respondent : Mr.A.P.Srinivas
Standing Counsel.

* * * * *

O R D E R

The tender was issued by the respondent on

17.02.2009 for work at Arakkonam Yard - Proposed extension of Platform works, passenger amenity works and other connected miscellaneous works for a contract value of Rs.5,98,40,365/-. The petitioner participated in the tender and was the successful tenderer with a letter of acceptance being issued to it on 20.04.2010. The works had to be completed by 19.01.2011.

2.The currency of the contract, at request of the petitioner, was extended upto 30.06.2011. The work was still not completed and the petitioner seeks to blame the respondent for the pre-requisites not being done. The fact, however, remains that the petitioner itself vide its letter dated 29.08.2011 sought foreclosure of the contract. It appears that there were some negotiations inter se the parties over settlement of the alleged claims of the petitioner and the petitioner issued a 'No Claim Certificate' dated 15.10.2011. This 'No Claim Certificate' is issued in the letterhead of the petitioner and acknowledged by the respondent on 17.10.2011 as per endorsement made on it. It is in the following terms:

''With reference to the above contract, we would submit that we have ''No Claim'' against the above agreement except

Pending bills, Security Deposit recovered Earnest Money Deposit and Deposit receipt for Performance Bank Guarantee and further submit that there are ''No Disputes'' in the above cotract other than the pending amounts as mentioned above.''

3.The petitioner's request for return of the FDR was also accepted and the request of the petitioner for preparation of the final bill dated 13.02.2012 was examined and passed. The payments were made on 06.11.2012.

4.It is after appropriating the aforesaid amount that the petitioner for the first time vide letter dated 05.12.2012 once again sought to rake up the issue of the claims it had made prior to the settlement and sought appointment of an arbitrator in terms of the arbitration clause by raising 11 claims vide notice dated 22.02.2013. This request was naturally rejected on 12.07.2013.

5.The present petition under Section 11 (6) of the Arbitration and Conciliation Act, 1996, has been filed on 17.06.2015, almost two years after the rejection of the request by the respondent.

6.The only contention in the given position which is capable of being raised and which has been raised also, in fact, is the usual plea of duress and pressure being on the petitioner to issue the 'No Claim Certificate'. In this behalf, learned counsel for the petitioner has referred to the earlier communication to state that they wanted a number of other claims, but on insistence of the respondent, issued the 'No Claim Certificate' so as to at least obtain the admitted claims. The learned counsel submits that the petitioner was under a financial duress.

7.On the other hand, learned counsel for the respondent states that it was a commercial decision taken by the petitioner to settle the dispute and having compromised the same, no dispute survives for being referred to arbitration. His submission is, thus, that the respondent also took a conscious commercial decision to settle the dispute and agreed to pay the amount, even if it may have otherwise felt that such amount may not be payable.

8.On examination of the facts of the case, it is found that this is not a case of a formatted 'no claim

certificate' being signed, but the 'no claim certificate' is worded in the own language of the petitioner issued on its letterhead. Other than stating that the petitioner was under financial duress, there is nothing brought on record to show any kind of duress or pressure, but rather it was a commercial decision of the petitioner to compromise and settle the disputes. It cannot be countenanced that the petitioner first settles the disputes, obtains the moneys from the respondent under the settlement and appropriates the same and thereafter seeks to raise the issue of the balance claims.

9. The legal position qua what amounts to full accord and satisfaction is already settled. In **M/s. IRCON International Limited v. Shri Krishna Trading Co. & Anr.**, 2007 (10) AD (Del) 309, (of which Bench I a member), this issue has been dealt with and the legal principle enunciated therein is as under:

''24. The legal position in respect of as to how such a No-Claim Certificate has to be appreciated has been discussed in Pandit Construction Company v. Delhi Development Authority and Anr., 2007 (3) Arb LR 205 (Del), a judgment of this Court. It was found that

often endorsements are made on the final bill as "accepted in full and final". The judgment of the Apex Court in *Bharat Coking Coal Ltd v. Annapurna Construction*, 2003 (3) R.A.J. 44 (SC) was averted to where the Supreme Court has observed that merely because a party had accepted the final bill, the same would not mean that it was not entitled to any other claim. In order for the claim to be presumed to be fully settled, it should unequivocally be stated so that no further claims would be raised and thus the Supreme Court held that in the absence of such a declaration, the contractor must be held not to be estopped and precluded from raising any claim. This Court held that in view thereof, the settlement must be recorded in clear and unambiguous terms."

10. The above decision has also been referred to in **The Oriental Insurance Co. Ltd V. Mercury Rubber Mills, 2012 (127) DRJ 650**. A Division Bench of this Court also had an occasion to deal with the similar issue in **Adam and Coal Resources Pvt. Ltd. vs. Interbulk Trading Sa, 2014 (5) CTC 704**, (of which Bench also I was a member), where in para 18, it has been observed as under:

"18. In our view, the legal principles

are not in doubt that if there is full accord and satisfaction of the claims of the parties, then nothing remains to be arbitrated upon. The fact that it is in writing would support it.''

11. In view of the aforesaid, no dispute really survives for reference to arbitration, as there has been full accord and satisfaction.

12. The Original Petition, thus, stands dismissed, leaving the parties to bear their own costs.

Sd/ (S.K.K., CJ.)
18.12.2015

//Certified to be a true copy//

Dated this the day of 2016

R.s/19.01.2016

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