

IN THE HIGH COURT OF DELHI AT NEW DELHI

O.M.P. 196/2004

Reserved on: January 21, 2015

Decision on: March 24, 2015

SILICON GRAPHICS SYSTEMS (INDIA) P. LTD.

..... Petitioner

Through: Mr. Rajiv Tyagi, Advocate.

versus

STERLING AND WILSON ELECTRICALS P. LTD.

..... Respondent

Through: Mr. Anurag Kumar, Advocate.

CORAM: JUSTICE S. MURALIDHAR

JUDGMENT

24.03.2015

1. The challenge in this petition is to an Award dated 12th January 2004 passed by the Arbitral Tribunal ('AT') in the disputes between the parties arising out of the two agreements dated 6th August 1998 for electrical work and supply and installation to the premises of the Petitioner Silicon Graphics Systems (India) Pvt. Ltd. at Gurgaon by the contractor, i.e., the Respondent Sterling and Wilson Electricals Pvt. Ltd. and a second contract dated 9th October 1998 for supply and installation and running of diesel generator sets (DG sets).

2. Under the first contract, the work was to be completed by 15th December 1998 and under the second contract by 8th February 1999. It is stated that when the Petitioner while making payment deducted liquidated damages ('LD') from the bills of the Respondent, the resultant dispute was referred to the AT.

3. Seven claims were filed by the Respondent before the AT. Four under the electrical works contract and three under the DG sets contract. By the majority Award 2:1, the AT awarded Rs. 13,58,928 in favour of the Respondent together with interest at 12% per annum from 1st June 1999 till the date of payment. Costs of Rs. 4 lakhs were also awarded in favour of the Respondent. The dissenting Member accepted the claims of the Respondent under the electrical works contract in part by allowing levy of LD at 0.25% for each day's delay and capping the LD at 10% and further holding that the claim for Rs. 69,399 at 5% per annum as security against extra work was untenable and therefore rejected. Under the DG sets contract, the dissenting Member upheld the recovery of the AT to the extent of Rs. 7.25% for 29 days and directed part refund of the balance LD recovered. However, the claim of interest on the above sum was disallowed as it was held that the reference to arbitration was itself barred by limitation.

4. One of the first issues before the AT was whether the claims of the Respondent were barred by limitation. The dissenting Member held that the Respondent had knowledge and notice of recovery of the LDs as early as 16th March 1999 in the electrical works contract and 9th March 1999 in the DG sets contract but chose to protest against the recovery only on 17th April 2001. It was held that in terms of Clause 98.1 of the contract, the Respondent was bound to inform the Petitioner or their Architect within 28 days, i.e., within 6th April 1999 in the case of the DG sets contract and within 13th April 1999 in case of the electrical works contract of the intention to invoke arbitration. Consequently, it was held that the claim was barred by limitation. The dissenting Member further held that there were major deficiencies in the statement of claims as the material

particulars were absent. Therefore it would not be possible to adjudicate upon a vague statement of claim particularly since it did not set out the scheduled date of completion, actual date of completion and chronology of important date and events.

5. The majority Award on the other hand held that the Petitioner by ordering extra work after 15th December 1998, by ordering variations and lastly by making interim payments after the stipulated date on interim certificates without deducting LD had caused delay in work due to which the work remained unfinished; the Petitioner had thus waived its right to thereafter levy LD under the relevant clauses of the contract. It further held that the Respondent No. 1's deposit could not have been forfeited when in fact there was no loss caused to the Petitioner as a result of any default by the Respondent. Consequently the majority awarded the Respondent in respect of the claims under the electrical works contract, the following sums:

(i) Security deposit @ 5%	-	Rs. 4,21,898.20
(ii) Against LD @ 5 %	-	Rs. 4,21,898.20
(iii) Security Deposit @ 5% on extras-		<u>Rs. 69,398.30</u>
Total-I		<u>Rs. 9,13,194.70</u>

6. The majority Award noted that the Petitioner had agreed to issue the duplicate TDS certificate for Rs. 37,800 and therefore that issue stood resolved.

7. As against contract for DG sets, the majority awarded the following sums in favour of the Respondent:

(i) Security deposit @ 5%	-	Rs. 2,22,866.45
---------------------------	---	-----------------

(ii) Against Liquidated

Damages @ 5% - Rs. 2,22,866.45

Total-II Rs.4,45,733.30

8. Mr. Rajiv Tyagi, learned counsel for the Petitioner, first submitted that the reference of the claims to arbitration by the Respondent was barred by limitation. In terms of Clause 98.1, it was mandatory for the Respondent to have given 28 days' notice to the Petitioner immediately upon completion of works. The works were completed on 16th March 1999 and the LD was deducted on that date. However, the notice of invocation of arbitration was given only on 28th March 2002 and received by the Petitioner on 15th April 2002. The Respondent in its letter dated 17th April 2001 admitted that it became aware of the deduction of LD on 16th March 1999 and therefore the limitation had to be reckoned from that date. It was further submitted that in terms of Clauses 86 and 87 of the electrical works contract, the Respondent had to prepare the interim bill and the final bill. The LD was deducted from the final bill on 16th March 1999. The Architect merely approved the payments on 12th May 1999. In other words, the Architect certifying the payment on 12th May 1999 was a mere approval of the deduction already made on 16th March 1999.

9. Mr. Anurag Kumar, learned counsel for the Respondent, on the other hand, referred to the majority Award and pointed out that it discussed in detail the reasons for holding that there was no delay in the Respondent preferring the claims. He referred to the fact that the bills were ultimately cleared by the Architect only on 12th May 1999. As regards 28 days' notice, he submitted that the decisions of this Court have held a similar clause restricting the period of

limitation during which a claim could be raised to be hit by Section 28 of the Contract Act, 1972. He accordingly submitted that the minority Award holding that the claim was barred by limitation was contrary to the legal position. The claims were raised within three years of the certificate of the Architect and therefore were within time.

10. In the first place, the Court would like to refer to the relevant clauses of the contract which have a bearing on the issue of limitation. Clause 98.1 of the contract reads as under:

“98.1 All disputes and difference of any kind whatever arising out of or in connection with the Contract or the carrying out of the Works (whether during the progress of the Works or after their completion and whether before or after the determination, abandonment or breach of the Contract) shall be referred to and settled by the Architect who shall state his decision in writing. Such decision may be in the form of a final certificate or otherwise. The decision of the Architect with respect of the excepted matters shall be final and without appeal. But if either the Contractor or the Owner be dissatisfied with the decision of the Architect on any matter, question or a dispute of any kind (except any of the excepted matters) or as to the withholding by the Architect of any certificate to which the Contractor may claim to be entitled then and in any such case either party (the Owner or the Contractor) may within 28 days after receiving notice of such decision give a written notice to the other party through the Architect requiring that such matters in dispute be arbitrated upon. Such written notice shall specify the matters which are in dispute or difference of which such written notice given and no other shall be and is hereby referred to the arbitration and final decision of a single arbitrator of a technical background to be agreed upon and appointed by both the parties or in case of disagreement as to the appointment of a single arbitrator to the arbitration, of two arbitrators of technical background one to be appointed by each party and the arbitrators shall, before

taking upon themselves the burden of reference, appoint an umpire.”

11. The bills of the Respondent are dated 16th March 1999. However, from the copies of the bills, it is claimed that they were certified for payment by the Architect i.e., M/s Jyoti Rath Associates only on 12th May 1999. Each of the final payments certificate have been signed by the Architect only on 12th May 1999. On 28th June 1999, the Respondent wrote to the Petitioner stating *inter alia* as under:

“Subject: Payment against Final bills

Dear Sir,

This refers to the electrical work carried out by us at your premises and the final bill raised against electrical work/DG sets. This also refers to my telephonic conversation with you this morning.

We have been following up with Mr. Gurjot Bhatia of M/s. Colliers Jardine for early processing of bills and release of payment for last so many months. Every time we have asked for payments, we have been informed that certain tests have to be carried out by electrical consultant and test reports to be submitted. We have cooperated fully with the electrical consultant and many tests have been carried out on installation successfully and testing has been witnessed and recorded by the electrical consultant. Any deficiencies pointed out by the electrical consultant were rectified immediately and the installation was tested yet again.

In fact, we have cooperated with you on so many matters related to UPS, which were neither a part of the contract nor connected with our responsibility. In case of any problems, we have sent our engineer within the shortest possible time to attend to the problems. In spite of all this cooperation our payment is being delayed for one reason or the other for a very long time now. We hope you will

appreciate that we have to release final payment to our various suppliers who have supplied material for this project. It is a great loss of face if we cannot pay our suppliers in time due to non-payment from your end. A company of your repute would also not like to keep us wanting infinitely for payments without a good reason.

We would, therefore, request you to release payment against our final bills immediately or let us know the reasons for not making payments to us.

Thanking you and assuring you of our best services at all times.”

12. A reply was sent by Colliers Jardine to SGI claiming some of the amounts. A further letter was sent on 18th August 1999 pointing out that the imposition of penalty was unjustified and unreasonable. The letter also pointed out the delays on the part of the Petitioner, in making available the premises to the Respondent for carrying out the work. It was contended that the reasons for the delay were not attributable to the Respondent and in any event there was sufficient reason for the Petitioner to grant necessary extension for completion of work and waive the penalty. Further reminders about the outstanding payments were sent on 7th and 22nd September 1999.

13. Considerable reliance was placed by the learned counsel for the Petitioner on a letter dated 17th April 2001 written by the Respondent to the Petitioner containing an acknowledgment that “the final payment certificate for the DG set contract was issued on 09.03.99 by the Architect and for the main Electrical Contract on 16.03.99.” The fact remains that the final payment certificates themselves are on record and they show that the certificate of the

Architect appended at the bottom of the final payment certificate is in fact dated 12th May 1999. Therefore, it is of no avail that in the above letter the Respondent stated to the contrary. The fact remains that there was no reply to the above letter or to the subsequent letter dated 21st August 2001.

14. On 28th March 2002, the Respondent in its letter addressed to the Petitioner stated that in the event that the Petitioner was disputing the Respondent's payment "this communication be taken as notice of invoking arbitration". Annexures I and II to the said letter set out the claims of the Respondent. It is clear therefore that by the letter dated 28th March 2002, the Respondent invoked the arbitration clause. The further letter dated 6th May 2002 was the one where the Respondent appointed an Arbitrator and called upon the Petitioner to nominate its Arbitrator. This letter and the subsequent letter dated 12th July 2002 were not responded to by the Petitioner.

15. The dissenting Arbitrator has referred to Clause 98.1 which requires the contractor to have given a written notice within 28 days of receiving the decision of the Architect to give a written notice of arbitration. A stipulation in a contract of 28 days' limitation for disputes to be referred to arbitration has been held by this Court in a number of decisions to be hit by Section 28 of the Contract Act. [See *Union of India v. Pt. Munshi Ram & Associates* 2013 1 AD (Delhi) 801, *DDA v. Pandit Construction Co.*, FAO(OS) 382/2007 decided on 19th April 2012, *Manohar Singh v. Raksha Karamchari Coop. Gr. H. Soc.* (2010) 114 DRJ 665, *Explore Computers Pvt Ltd v. Cals Ltd.* 131 (2006) DLT 477, *Hindustan Construction Corporation v. DDA* 77 (1999) DLT 165]. The

dissenting Arbitrator failed to notice the above settled position in law. As long as the claims were made within three years of the final certificate appended to the bills by the Architect, it cannot be said that the claims were barred by limitation. Without the certification of Architect on 12th May 1999 it cannot be said that a dispute could be said to have arisen which required reference to arbitration. The deduction of LD from the bill stood confirmed only on that date as far as the Respondents are concerned. Consequently, this Court is unable to accept the submission of learned counsel for the Petitioner that the reference to arbitration was barred by limitation or that the notice of invocation of arbitration was beyond the period of three years and therefore barred by limitation.

16. The next ground of challenge to the impugned Award is that under Clause 98.4, the decision of the Architect regarding discrepancies and disputes on quantities, performance of works and delays beyond the control of the contractor were final and binding upon the parties without any appeal or arbitration. It is accordingly submitted that the majority Award which dealt with the claim regarding deduction of LD was beyond the jurisdiction of the Arbitrators and liable to be set aside.

17. As pointed out by the majority Award, Clauses 86, 87 and 88 of the contract provide for certification of final bill by the Architect. Clause 86 deals with interim bills and Clause 87 with the final bills. Clause 88 deals with withholding of payments. All that Clause 98.4 states that a decision of the Architect regarding discrepancies in drawings or schedule of quantities, conformance of the works to the contract documents and delays beyond the control of contractor shall be final and binding. Clause 98.3 states that if

either party is dissatisfied with the decision of the Architect then such party is permitted to submit such dispute to the arbitration. The *non obstante* phrase in Clause 98.4 should be restricted to those decisions of the Architect concerning discrepancies in drawings etc. and not on deductions to be made from the final bill under Clause 87. It also would not apply to the matters mentioned in Clause 88.1, that is, the specific grounds on which the Architect may withhold the payments. Consequently, this Court is unable to consider the claim regarding LD made by the Respondent to be covered by Clause 98.4 and therefore beyond the jurisdiction of the Arbitrator.

18. It is next contended that the entire dispute in the arbitration related to the imposition of the LD. However, the statement of claim filed by the Respondent did not set out any facts on those claims, i.e., the point in issue and the relief and remedy sought as required under Section 23(1) of the Act. It is submitted that the claim should have been rejected “as lacking in basic pleadings and in particulars and not disclosing any cause of action”.

19. The Court has perused the majority Award as well as the minority Award on the above aspect. While the minority Award accepts the above plea of the Petitioner, the majority Award does not. The majority Award points out that under Section 19 of the Act the AT is not bound by the CPC and the parties are free to agree upon the procedure to be followed by the AT in the conduct of its proceedings. Failing such agreement, the AT may conduct such proceedings “in the manner it considers appropriate”. This power includes the power to determine “the admissibility, relevance, materiality and weight of any evidence”. As pointed out by the

majority “all that is required is that the procedure should be suitable to the circumstances and cases, avoiding unnecessary delay or expense”.

20. The Court must be satisfied that the rules of natural justice have been followed and that the Arbitrators have adopted a judicial approach. Subject to the above, the Arbitrators are free to devise a procedure which is flexible without being bound by the requirements of CPC. The legislative intent was to free the arbitral proceedings from the technicalities of the CPC or the Evidence Act. The Act encouraged the Arbitrators to evolve a procedure which they considered appropriate given the context and subject matter of the arbitral proceedings. It would be contrary to the legislative intent if the entire discipline of Order VII Rule 11 CPC is imported into the Act. That will deprive the arbitral proceedings of the required flexibility.

21. The majority Award acknowledges that the statement of claims does not itself clearly set out the facts in support of the claims. It sets out clearly the relief sought. All the necessary information was available in Exhibit 45. The facts were set out in the chronology of events but could have been set out in the body of the statement of claims. The Arbitrators were able to cull out from the notice dated 28th March 2002 of the Respondent as to what its precise claim was. The essential ingredients of Section 23 of the Act therefore stood satisfied. The contractor's claims were broadly for the deduction of LD and the bill for the running DG sets.

22. The view of the majority negating the Petitioner's contention regarding non-compliance with the requirements of Section 23 of

the Act appears to be a plausible one. It is not a view that could be stated to be perverse or irrational. It is certainly not one which could be stated to be contrary to law and therefore liable to be set aside under Section 34 (2) (b) (ii) of the Act. While the view taken by the minority Award is another possible view, that in itself does not render the majority view on the point unsustainable in law.

23. It is next contended that the composition of the AT was not in accordance with the contract and therefore the Award was liable to be set aside under Section 34 (2) (a) (v) of the Act. It is stated that the Arbitrator appointed by the Respondent Ms. Vandana Bhatt was a Civil Engineer and did not have the background of Electrical Engineering whereas the nominee of the Petitioner Mr. P.K. Acharya was fully qualified.

24. Clause 98.1 only mentions that the Arbitrator should have a “technical background”. It does not specifically state that they should be qualified in Electrical Engineering or have a background of Electrical Engineering. No such objection appears to have been raised before the AT. In any event, merely because one of the Arbitrators was a Civil Engineer, does not mean that such Arbitrator lacked “a technical background”. Consequently this objection to the impugned Award raised by the Petitioner is rejected.

25. It is then contended that in passing the majority Award, the two Arbitrators constituting the majority travelled beyond the terms of the contract and therefore, they committed legal misconduct. It is accordingly submitted that the Award is liable to be set aside under Section 28 (3) and 34 (2) (a) (iv) of the Act. It is further contended

that the majority Award is in conflict with the public policy of India; that the Award is contrary to Section 34 (2) (b) (ii) of the Act as it deals with the disputes concerning LD which were not arbitrable under Clause 98.4; the majority Award was based on the Doctrine of Waiver under the English law and not under the Indian law; it is contrary to the Doctrine of Waiver as set out in Section 63 of the Contract Act which states that waiver is a question of fact that has to be properly pleaded and proved. Reliance is placed on the decisions in *Moti Lal Padampat Sugar Mills Limited v. The State of Uttar Pradesh AIR 1979 SC 621* and *V.M. Salgaocar & Bros. v. Board of Trustees of Port of Mormugao (2005) 4 SCC 613*. It is further submitted that there cannot be any waiver unless the person who is alleged to have waived his right, is fully informed of his right and with full knowledge of such right, he intentionally abandons it. A mere delay cannot amount to waiver or abandonment and waiver cannot be assumed or presumed. A reference is made to the decisions in *Municipal Corporation of Greater Bombay v. Dr. Hakimwadi Tenants' Association AIR 1988 SC 233*, *P. Dasa Muni Reddy v. P. Appa Rao (1974) 2 SCC 725*, *Madamsetty Satyanarayana v. G. Yelloji Rao AIR 1965 SC 1405* and *Associated Hotels of India Limited v. S.B. Sardar Ranjit Singh AIR 1968 SC 933*.

26. On the aspect of waiver, the majority Award has discussed the evidence in great detail. It was noticed that there could not be an extension of time after the conclusion of the contract. The time fixed for completion of the contract in the present case ceased to be applicable since the contractor was continuing the work even after the scheduled date of the completion. The completion could not be achieved since the Petitioner kept ordering extra work in

November-December 1998 and January-February 1999. The basement was not handed over till the fag end of the contract because there was water-logging and also the stone cutting machine had not been removed. Civil works had not been completed. As a result of the extra works ordered, the life of the contract was prolonged beyond 15th December 1998. It was open to the Petitioner to terminate the contract on 15th December 1998 in terms of Clause 77 if indeed time was the essence of the contract. However, the Petitioner continued with the Respondent as the Contractor.

27. The majority Award quotes the classic work of Hudson on Waiver, and concludes that by its own actions, the Petitioner waived its right to enforce the LD clause. The Petitioner itself treated the contract as subsisting beyond the completion date. With the Petitioner having not exercised its right to terminate the contract, there was a deemed extension for completion both by the Petitioner's own conduct and by ordering extra works. In para 64 of the impugned Award, the majority observed as under:

“Waiver may be implied from circumstances. If the employer prevents the completion of the works in any way, as for example, by failing to give possession of the site or by ordering extras which necessarily delay in the carrying out of the works, the general rule is that he loses the right to claim LD for non-completion to time, for he cannot insist on a condition if it is his own fault that the condition has not been fulfilled. (*Keating on Building Contracts 7th ed. P.289*). By his conduct the employer had disabled himself from recovering LD.”

28. Under Clause 77 for each day's delay after the scheduled date of completion, 0.25% of the contract sum was to be paid. Despite work not being completed within the scheduled date, the LD was

not deducted from interim payments. It was deducted only at the time of final bill. The Court concurs with the following observations of the majority Award:

“ 'Wait and see' attitude adopted by the architect till he came to the final certificate at the end is a clear indication that at the stage of interim payments no LD was deducted because the architect did not want to exercise the strict legal right to recover LD from the contractor. He did it at the end. But then it was too late. The clause had not been enforced earlier when payments were made without deduction of LD for each day's delay though at that time also completion date had passed and the work had remained unfinished and delay had occurred.”

29. This was not a case where the plea of waiver could not be adjudicated by the AT on the basis of the evidence of the parties. This point was discussed in great detail by the majority. It cannot be said that the view taken by the majority is not a reasonable one or contrary to the evidence on record. In terms of the law explained by the Supreme Court, the question of waiver is indeed a question of fact. In this case, that has been clearly established by the evidence led by the parties which has been analyzed in great detail by the majority Award. The clauses of the contract were known to the Petitioner. If despite its right to recover the LD at the stage of interim payments, the Petitioner failed to do so then certainly the conclusion arrived at by the majority Award that there was acquiescence by the Petitioner, and waiver of its right to recover LD cannot be said to be an improbable view. Consequently, this Court is unable to agree with the submission of the learned counsel for the Petitioner that the decision of the majority regarding waiver is unsustainable in law.

30. It is then contended that the Arbitrators failed to examine the

critical issues of the two contracts. The majority did not take into account the dates on which the transformers and DG sets were brought to the site, the dates when they were made operational and successfully commissioned. It is stated that an inference ought to have been drawn that the Respondents failed to give any explanation or justification for the delay in completion of the two contracts.

31. The above submission of the learned counsel for the Petitioner, invites the Court to re-examine the evidence and then sit in appeal over the Award on the basis of such re-examination. This is precisely what the Court in exercise of its power under Section 34 of the Act is prohibited from doing. In numerous decisions of the Supreme Court, it has been time and again reiterated that while examining the validity of the Award, the Court cannot, in exercise of its powers under Section 34 of the Act, act as an appellate court. Merely because upon re-appreciation of the evidence another view is possible does not by itself furnish a ground for the Court to interfere.

32. A careful perusal of the Award belies the submission of the learned counsel for the Petitioner that the reasons or justification offered by the Respondent for the delay in completion of the work was not forthcoming. The majority Award is an exhaustive discussion of the evidence on record. The conclusion of the majority that there was sufficient explanation given by the Respondent for the delay in completion of the project and those delays were not attributable to the Respondent cannot be said to be contrary to the evidence.

33. Mr. Tyagi further submitted that the majority Award regarding claim for refund of the LD was contrary to the terms of the contract. He submitted that it was based on no evidence at all. It was perverse, illegal and contrary to the public policy of India. Considerable reliance was placed on the minority Award in support of the above plea. It is submitted that 11 KVA transformers which were central to the scheme of works were brought to the site by the Respondent/Claimant only in the middle of February 1999. Transformers were commissioned only on 16th February 1999. At the end of the arbitral proceedings, the Respondent filed an affidavit alleging that the electricity was brought to the site only in March 1999 and thus the Respondent was making contradictory and false statements.

34. The majority Award on the aspect of LD is a very detailed one. As to when electricity was supplied, the majority noted that while the Respondent filed an affidavit and also enclosed an electricity bill dated 20th April 1999 of the Haryana Vidyut Prasaran Nigam Ltd., the Petitioner had not filed any affidavit. The bill produced by the Respondent showed that the electricity connection was given in March 1999. The majority noted that the transformer was already at site by December 1999. The bill of M/s Kirloskar for supply of transformer as also the HT Switchgear was referred to for this purpose. On the other hand, the Respondent was able to show that the civil work was not ready till 20th January 1999. Since electricity connection was not available, the transformer could not be put to use. Since the civil work was not ready, there was no point in bringing the transformer to the site earlier. It would have had to remain idle till April 1999.

35. The Court fails to appreciate as to how the above factual determination can be re-examined at this stage by the Court. The Court is also unable to find any error committed by the majority in its analysis of the evidence in coming to the above conclusion. As already mentioned, the Court is not sitting as an appellate court for re-appreciating the evidence. The view taken by the majority appears to be a plausible one and is not shown to be suffering from any perversity. Consequently, the challenge to the impugned Award on the ground that LD were not justifiably deducted from the bills is hereby rejected.

36. On the DG sets contract, again Mr. Tyagi placed considerable reliance on the minority Award. He referred to Clause 63.4 of the Special Conditions of Contract which made the Respondent responsible for getting the electrical installations inspected and approved by the local authorities. The approval granted by the Haryana State Electricity Board was conditional upon the approval from C.L.I. before the DG sets could be commissioned. After initially taking the plea that it had completed the DG sets contract on 8th February 1999, the Respondent filed an affidavit stating that the work was complete only on 9th March 1999, i.e., three weeks after the scheduled date of completion. Referring to the decision in ***P. Manohar Reddy & Bros. v. Maharashtra Krishna Valley Development Corporation (2009) 2 SCC 494***, it is submitted that where the contractor had accepted the final payment without demur and only after three years raised the dispute, then such claim would be barred by limitation.

37. As regards the plea of limitation, this Court has already rejected the case of the Petitioner and therefore, it need not be further

reiterated. As regards the facts concerning the supply of DG sets, the Court finds that the majority Award has separately dealt with this whole issue from paras 88-94 and again from para 105-111. In fact the claim for running of the DG sets for Rs. 2,12,008.60 was rejected. What was allowed, was the LD deducted and the claim for return of the security deposit at 5% on extras. In dealing with the claim for DG sets, the majority Award has noted that there cannot be any restoration of benefit to the Contractor for the work done by him under a verbal order. The majority found that as far as the forfeiture of security deposit was concerned since there was no default committed by the Respondent, the security deposit had to be returned. Also LD could not have been deducted because the evidence placed on record showed that the Respondent was prevented from performing the contract within the scheduled date of completion.

38. The Court is therefore, satisfied that the Award does not suffer from any illegality and none of the grounds under Section 34 of the Act have been shown to be made out.

39. The petition is accordingly dismissed with costs at Rs. 20,000 which will be paid to the Respondent by the Petitioner within two weeks.

S. MURALIDHAR, J

MARCH 24, 2015

akg