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

+ O.M.P. 475/2014

% **Date of Decision: 23rd December, 2015**

DIRECTORATE GENERAL OF HYDROCARBONS Petitioner
Through: Mr. Somiran Sharma and Mr. K.P.
Sasiprabhu, Advocates.

versus

M/S AMBIENCE EXIM (P) LTD Respondent
Through: Mr. D.N. Goburdhan and Mr. Prabal
Bagchi, Advocates.

CORAM:
HON'BLE MR. JUSTICE J.R. MIDHA

JUDGMENT

1. The petitioner has challenged the award dated 03rd January, 2014 whereby the learned arbitrator awarded Rs.98,42,413.35 along with interest and cost to the respondent.
2. Vide lease agreement dated 02nd July, 2007, the respondent let out property bearing No.C-139, Sector-63, Noida to the petitioner for a period of three years. Vide letter dated 29th January, 2008, the respondent let out additional space of 2298 sq. ft. to the petitioner. After the expiry of initial 36 months, the lease was extended for a period of further 11 months up to 30th June, 2011. The petitioner vacated the subject premises on 31st August, 2011.
3. On 8th April, 2008, the petitioner awarded annual maintenance contract to the respondent for providing the services for operation and maintenance of two DG sets, one lift, two AC units, fire alarm, and detection

systems, fire hydrants and main electrical panel room for a period of one year w.e.f. 1st April, 2008 to 31st March, 2009. On completion of one year, the petitioner awarded fresh annual maintenance contract to the respondent on annual basis till the vacation of the premises. The petitioner paid Rs.53,36,861/- to the respondent under the aforesaid annual maintenance contracts for the period from 1st April, 2008 to 30th August, 2011. On 3rd January, 2012, the petitioner for the first time raised an objection that the annual maintenance contracts have been executed by the petitioner under a mistake because the respondent was liable to provide maintenance under clause 8 of the lease agreement dated 2nd July, 2007. The petitioner sought refund of Rs.53,36,861/- from the respondent before the learned arbitrator.

4. The learned arbitrator rejected the petitioner's claim seeking refund of Rs.53,36,861. Relevant portion of the award is reproduced here under:-

“At this stage itself I may also refer to the counterclaim advanced by DGH which has sought refund of Rs.53,36,861/- on the ground that the amount was wrongly paid to the Lessor towards operation and maintenance of the fixtures for the period from 1.4.2008 till 30.08.2011. It is contended that DGH is entitled to refund of this amount in terms of Clause 8 of the Lease Agreement under which it was a function of the lessor to maintain the AC system, lift power generator and all other permanent fixtures at lessor's cost. Again the plea that this amount was paid under mistake and in ignorance of clause 8 of the lease agreement is not correct. It is for the first time that DGH by its letter dated 03.01.2012 said that maintenance of AC system etc. under clause 8 of the lease agreement, was the responsibility of the lessor and was part of the monthly rental. By this time possession of the leased property had already been handed over to the claimant on 31.08.2011 and claimant was demanding various payments due to it. In fact, notice invoking arbitral clause was issue by the claimant as 28.02.2012. After quoting clause 8, DGH said “however, it has been noticed from our record that you have been paid Rs.53,36,861/- towards operation and maintenance of all the aforesaid fixtures in the said property from 01.04.2008 till 30.08.2011. Lessor was thus

advised to refund of this amount within 15 days of receipt of this letter.

Aambience has referred to letter dated 08.04.2008 of DGH under which DGH said “we are pleased to award you the service contract for providing the services for Operation & Maintenance of two no. DG Set, one lift, two No. AC units, Fire Alarm & Detection Systems and Fire hydrants and Main Electrical Panel Room”. DGH further said in the letter that the contract would be for a period of one year w.e.f. 01.04.2008 and will be extended on year to year basis based on satisfactory performance. With its letter DGH attached Annexure-I giving the details of applicable rates and other terms and conditions. The service contract had been extended from year to year. It is entirely a different contract away from clause 8 of the Lease agreement. Annexure gave the scope of work with reference to different items and separate rates per month. This letter dated 08.04.2008 of DGH containing terms and conditions as in Annexure, had been confirmed by Aambience and thus a contract different from clause 8 of Lease agreement came into operation. Under this contract DGH has been paying maintenance charges to the Aambience. Strange does it look that it took 4 years for DGH to realise its mistake. Claim of the DGH seeking refund of the amount paid under the service contract constituted by this letter dated 08.04.2008 and affirmed by Aambience is incorrect and is therefore rejected.”

5. Learned counsel for the petitioner submitted that the annual maintenance contracts have been executed by the petitioner under a mistake and therefore, the petitioner is not liable to pay the annual maintenance contract amount to the respondent.

6. Learned counsel for the respondent submitted that the petitioner awarded the annual maintenance contract to the respondent on 8th April, 2008 for a period of one year and renewed the same year after year. Clause 8 of the lease agreement dated 2nd July, 2007 would not in any manner invalidate the annual maintenance contracts. On the other hand, the annual maintenance contracts would supersede clause 8 of the lease agreement dated 2nd July, 2007. It was further submitted that the plea of “mistake” is

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misconceived and in any case, the petitioner did not lead any evidence to prove the mistake and thereafter, the arbitrator was justified in rejecting the petitioner's claim for refund and awarding balance annual maintenance contract amount to the petitioner.

7. On careful consideration of the rival contentions of the parties, this Court is satisfied that there is no infirmity whatsoever in the finding of the learned arbitrator. The petitioner raised a vague plea of "*mistake*" in executing the annual maintenance contracts but did not lead any evidence whatsoever to prove the same. In the absence of any such proof, the learned arbitrator was justified in rejecting the same.

8. No other contention was urged before this Court at the time of the hearing. It may be recorded that vide order dated 6th May, 2014, this Court has already dismissed the petitioner's objections with respect to the claim of refund of Service Tax. The petitioner's appeal against the order dated 6th May, 2014 has been dismissed by the Division Bench on 16th July, 2015 in FAO(OS) 299/2014.

9. There is no merit in this petition which is hereby dismissed.

J.R. MIDHA, J.

DECEMBER 23, 2015/dk