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

Decided on : 12.08.2015

+ **FAO(OS) 497/2013 and CM No. 17461/2013 (Stay)**

UNION OF INDIA THR THE CENTRAL ORGANIZATION

..... Appellant

Through: Mr Bhagwan Swarup Shukla, CGSC

versus

M/S TAL MANUFACTURING SOLUTIONS LTD. ... Respondent

**Through: Mr Akhil Sibal and Mr Shakunt and
Mr Aditya Garg, Advs.**

CORAM:

HON'BLE MR. JUSTICE S. RAVINDRA BHAT

HON'BLE MS. JUSTICE DEEPA SHARMA

MR. JUSTICE S. RAVINDRA BHAT (OPEN COURT)

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1. This appeal questions the decision of the learned Single Judge dated 04.02.2013, whereby the objections to the award—to the extent that it wrongly denied a direction to repay the amounts encashed by the appellant—were upheld.

2. The brief facts of the case are that the appellant-Union of India entered into a contract with the respondent (hereinafter referred to as 'the claimant') for supply of Minerallic Abrasive (Sand) Blasting Plant for Stainless Steel Passenger Coach/Car Shells. The contract was amended by mutual agreement on 17.04.2000. The Union of India invoked two bank guarantees on 22.06.2007 and 10.07.2007 respectively for an aggregate

amount of Rs.1,42,82,785.86. The claimant was aggrieved and raised the dispute which was referred to the arbitration. The arbitrator held *inter alia* that the invocation of the bank guarantees was unlawful. The operative portion of the award, however, confined the relief only to a declaration with regard to the wrongful invocation of the bank guarantees, but did not grant any consequential relief. The operative portion of the award reads as follow:-

“1. Based on the in the above discussion I feel that since, the PTC has been issued to M/s TAL which takes care of the require productivity given by the plant, the invocation of WBG is not justified.

2. The counter claim submitted by the respondent to the extent of spending money for rectification of the plant while giving frequent trouble and was under break down during warranty should be realized from the claimant which amounts to Rs.2,58,594/-.

3. No interest should be applicable on any amount spent by the respondent on the amount of WBG invoked.”

3. The claimant felt aggrieved and approached this Court under Section 34 of the Arbitration and Conciliation Act. The learned Single Judge heard counsel for the parties and also took note of the fact that despite the claimant's efforts to have the award corrected by initiation of the proceedings under Section 33, no relief was afforded. The learned Single Judge also significantly noticed that the Union's objections in OMP No.710/2011 against the award were rejected by judgment dated 21.09.2011. That order had attained finality. In these circumstances, the learned Single Judge directed the payment of Rs.1,42,82,785.86 being the aggregate of the

amount of two warranty bank guarantees together with 9% interest per annum. The Union contends that the learned Single Judge fell into error in interfering with the award. It is submitted that the modification of the award was not warranted given that the Section 33 application itself stood rejected. Likewise, the award of interest has also been challenged.

4. This Court has considered the grounds urged in support of the appeal. The learned Single Judge, in our opinion, pertinently modified the award by exercising the power granted under Section 34 of the Act and directed a consequential relief without which the entire redress mechanism had been rendered academic. So far as the counter-claim is concerned, this Court noticed that the Union's objections have been rejected and attained finality.

5. In view of these circumstances, we find no reason to interfere with the impugned judgment.

The appeal along with the pending application is accordingly dismissed.

**S. RAVINDRA BHAT
(JUDGE)**

**DEEPA SHARMA
(JUDGE)**

**AUGUST 12, 2015
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