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

% Judgment delivered on: 20.05.2015

+ **FAO (OS) 273/2015**

VICTORY ELECTRICALS LTD & ANR.

.... Appellant

versus

GE CAPITAL SERVICES

..... Respondent

Advocates who appeared in this case:

For the Appellant : Mr Sumesh Dhawan with Ms Vatsala
Kak Panda, Advocates.

For the Respondent : Ms Deepika V.Marwaha and Ms
Worthing Kasar, Advocates with Mr Atul
Bansal, AR of respondent in person.

CORAM:-

HON'BLE MR JUSTICE BADAR DURREZ AHMED

HON'BLE MR JUSTICE SANJEEV SACHDEVA

JUDGMENT

BADAR DURREZ AHMED, J (ORAL)

CM No.9265/2015 (exemption)

Exemption is allowed subject to all just exceptions.

FAO (OS) 273/2015

1. This appeal is directed against the order dated 21.04.2015 passed by a learned Single Judge of this Court in OMP 55/2014. The said petition was filed under Section 34 of the Arbitration & Conciliation Act,

1996 (hereinafter referred to as ‘the said Act’) and was in respect of the award dated 03.10.2013 and the amended award dated 10.10.2013 passed by the Sole Arbitrator in the disputes between the parties.

2. The only point urged by the learned counsel for appellant in the present appeal is that the counter-claim which was submitted by the appellant on 03.10.2013 ought not to have been rejected on the ground that the Arbitrator had become *functus officio*. He further submitted that a communication through e-mail had been sent on 28.09.2013 along with the attached counter-claim in electronic form. The hard copy was received by the Arbitrator on 03.10.2013 but, on that very date the learned Arbitrator had already passed the award. The amended award of 10.10.2013 was only an amendment carried out for correcting certain typographical errors.

3. The learned counsel for the appellant submitted that the counter-claim could not have been filed earlier because the event which triggered the counter-claim was the forfeiture of US \$ 75000 by the appellant’s buyer and in respect of which the claim was sought to be made against the respondent. That forfeiture took place only in March 2013 whereas the disputes between the parties had already been referred to arbitration

on 13.01.2012. It is the case of the appellant that the subsequent disputes could very well have been taken up by the learned arbitrator by admitting the counter-claim for resolution.

4. We have examined the impugned order and also heard the learned counsel for respondent. The fact that the counter-claim was not taken up for resolution by the learned arbitrator can in no way impinge upon the validity of the award which had been pronounced on 03.10.2013, as amended by the subsequent award of 10.10.2013. In all other respects, we do not find any reason to interfere with the impugned order or the award.

5. The fact of the matter is that the purported claim based on the forfeiture of March 2013 is a 'future dispute'. It is a future dispute in the sense that at the time when the parties went in for arbitration, this dispute did not exist. It arose subsequently. Therefore, it is open to the appellant to seek arbitration of this dispute also in terms of the arbitration clause between the parties. The refusal to take on record the counter-claim by the learned Arbitrator would not come in the way of the appellant seeking resolution of this dispute. Insofar as the learned Arbitrator is concerned, we are of the view that the decision taken was correct that the counter-

claim was filed at a highly belated stage and, in fact, the hard copy was received after the award had been made and in that sense the learned arbitrator had become *functus officio*. But this would not, as pointed out above, come in the way of the appellant to seek arbitration with regard to the purported cause of action which was the subject matter of the counter-claim in terms of the arbitration clause.

6. The appeal stands disposed of accordingly.

BADAR DURREZ AHMED, J

SANJEEV SACHDEVA, J

MAY 20, 2015
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