IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

FAO No.10259 of 2014 (O&M)
Date of decision:22.10.2016

M/s P.D.Steels ... Appellant

Vs.

Union of India and another ... Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present:- Mr. Rahul Sharma-I, Advocate
for the appellant.

Mr. G.S.Bal, Senior Advocate with
Mr. Lakhinder Bir Singh, Advocate
for respondent No.1.

AMIT RAWAL J. (Oral)

The appellant-contractor is aggrieved of the order dated 16.04.2014, whereby, the objections filed under Section 34 of the Arbitration and Conciliation Act, 1996 (hereinafter referred to as "1996 Act"), for setting aside the award dated 02.01.2013, have been dismissed.

Mr. Rahul Sharma-I, learned counsel appearing on behalf of the appellant-contractor submits that the appellant is into the business of the manufacturing of Railway Products and was allotted the contract for supply of 110 Armature Cores for TM/BG 4907 assembled with Armature Shaft Spider, vide purchase order dated 02.05.2008. The value of the purchase order was ₹2,63,84,072/. All the aforementioned goods were supplied as per the specifications in two installments, i.e., on 01.05.2009 and 01.06.2009 and thereafter, the payment of the same was made after inspection by the Ray India Technical and Economical Services (hereinafter referred to as "RITES") engaged on behalf of the respondents to verify the quality. In fact, the contract was complete.

No doubt, Clause No.3202 of the Agreement envisages the warranty clause noticed and extracted by the Arbitrator and the Objecting Court. He further submits that respondent–Railway is stated to have inspected the aforementioned Armature on 10.02.2011 and accordingly, the contractor received a notice dated 24.02.2011 and the joint inspection was done on 15.07.2011.

According to the respondent-railway, 16 Armature were found to be damaged and as a result thereof, a sum of ₹38,37,683/- was deducted from the other running bills. Since the contract envisaged the resolution of dispute through arbitrator and therefore, the matter was referred to the Arbitrator for seeking the alleged claim. The respondent has been unable to establish the Armature being damaged or in broken condition or the same having not put to use, either vide any independent report of expert or of surveyor.

The Arbitrator and objecting Court while reading Warranty Clause, in a most mechanical and unusual manner rejected the claim and rejected the objection. He further submits that until and unless the deduction of the aforementioned amount is not established, the claim of the appellant was justified and thus, urges this Court for allowing the appeal.

Per contra, Mr. G.S.Bal, learned Senior Counsel assisted by Mr. Lakhinder Bir Singh, Advocate appearing on behalf of the respondent-railway submits that the direction was complied with strictly in consonance with the provisions of Section 23 of the Contract Act. There is an admission of the contractor that the Armatures were rusted. A specific stand taken in the written statement qua maintenance of the goods in depot has been taken but the same was not rebutted, therefore, the claim was rightly rejected.

He further submits that even if a different opinion is to be formed yet the Objecting Court would not have upset the award, in view of the ratio decidendi culled out by the Hon'ble Supreme Court in **Navodaya Mass Entertainment Ltd. Vs. J. M. Combines (2015) 5 SCC 698** as this Court, much less, the objecting Court are restrained from re-appreciating the evidence.

No doubt, Armatures were not put to use but on joint inspection, 16 Armatures were found to be in damaged condition which was totally justified and thus, urges this Court for affirming the findings under challenge.

I have heard learned counsel for the parties and appraised the paper book and of the view that there is force and merit in the submissions of Mr. Rahul Sharma, for, shorn of the facts noticed above and in order to prevent repetition of the same, the basic question which is required to be answered by the Arbitrator was whether the deduction of ₹38,37,683/- from the running account by invoking Clause 23 of the Agreement/contract, was justified or not. For the sake of brevity, Warranty Clause No.3202, reads thus:-

> *"The contractor also guarantees that the said goods/stores/articles would continue to conform to the description and quality as aforesaid, for a period of 30 months after their delivery of 24 months from the date of placement in service whichever shall be sooner, and this warranty shall survive notwithstanding the fact that the goods/stores/articles may have been inspected, accepted and payment therefore made by the Purchaser."*

On perusal of the Warranty Clause, it reveals that there are two conditions of the warranty:- 30 months regarding the quality and specifications, much less, 24 months or putting to use from the date of supply.

Undisputed fact is that 16 Armatures were not put to use. On joint inspection held on 15.07.2011, as per the naked eyes, the department-respondent found the Armature to be damaged. However, neither the report of the expert or surveyor had seen the light of day to ascertain the damages of Armatures, whether they could have been used or repaired or not usable. It was a very simple case of the respondent to ascertain the damages by taking the assistance of an expert. In my view, the respondent has not been able to justify the deduction as it was found to be lacking basic requirement, much less, in justifying the same.

I cannot be unmindful of the fact that payment of the Armatures was made to the appellant way back on 01.05.2009 and 01.06.2009 after they were inspected by RITES. It is also not in dispute that the material/Armatures were kept in store but no evidence qua its maintenance and shifting of the same to the workshop for putting to use has seen the light of the day to establish the deduction. All these factors, in my view, were the basic requirement for resolution of the dispute by the Arbitrator and as well as the objecting Court.

In my view, the objections were rightly falling within the parameters of Section 34 of 1996 Act as award of the Arbitrator falls within the expression "Patent Illegality" as per the ratio decidendi culled out by the Hon'ble Supreme Court in **Associate Builders Vs. Delhi Development Authority (2015) 3 SCC 49** .

In view of such situation, the objecting Court was required to cross-examine the aforementioned aspect whether the award was conforming the basic principles of justifying the deduction or not.

For the reasons aforementioned, the award of the Arbitrator, much less, order of the objecting Court are hereby set aside. The claim of the appellant-contractor is accordingly, allowed. In essence, it is held that deduction of ₹38,37,683/- was not justified, thus, claim of ₹38,37,683/- along with interest @ 18% per annum, in view of the provisions of Section 31(b)(7) of 1996 Act from the date of deduction till realization.

The appeal stands allowed.

(AMIT RAWAL)
JUDGE

October 22, 2016
savita

Whether Speaking/Reasoned Yes/No

Whether Reportable Yes/No