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

+ EX.P. 72/2015 & EA(OS) 621/2015

RPG CABLE LIMITED NOW MERGED WITH KEC
INTERNATIONAL LIMITED Decree Holder

Through : Mr Abhishek Birthray and Mr
Abhishek Verma, Advocates.

versus

MAHANAGAR TELEPHONE NIGAM
LIMITED

..... Judgement Debtor

Through : Mr Vaibhav Kalra, Advocate.

CORAM:

HON'BLE MR. JUSTICE VIBHU BAKHRU

ORDER

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07.10.2016

VIBHU BAKHRU, J

1. The Decree Holder (hereafter 'DH') has filed the present petition for enforcement of an arbitral award dated 02.09.2006. In terms of the said award, the Arbitrator had awarded a sum of ₹26,04,432/- in favour of the DH and further directed that Judgment Debtor (hereafter 'JD') will pay future interest at the rate of 10% p.a. on the said sum for a period from 03.09.2006 till the payment is made. It is not disputed that the JD has made the necessary payment in discharge of the aforesaid award. Thus, the award stands executed.

2. Mr Kalra, the learned counsel for the JD states that the payments in terms of the award were made under protest and the JD is still objecting to the execution of the award. The principal ground urged by Mr Kalra is that the Arbitrator had made an obvious error in awarding the amount that he has

awarded. The award relates to the liquidated damages stated to have been imposed by the JD. He states that the liquidated damages levied were in respect of a schedule of deliveries which were specified in three letters; letter dated 18.12.1998, 02.02.1999 and 12.03.1999. He states that in so far as the delivery schedule contained in letters dated 18.12.1998 and 12.03.1999 is concerned, the DH had not raised any dispute. He states that the Arbitrator considered the disputes relating to the delivery schedule as specified in 02.02.1999 and decided the matter in favour of the DH. In the circumstances, the Arbitrator could have awarded refund of liquidated damages only in respect of the delivery schedule dated 02.02.1999 and not the liquidated damages levied in respect of the deliveries under letters dated 18.12.1998 and 12.03.1999.

3. The issue raised by the JD at this stage, is clearly a contentious one. Apparently, the DH had approached the Arbitrator against the entire sum of liquidated damages that were levied/ withheld and claimed a sum of ₹24,99,510/- with interest at the rate of 18% p.a. compounded quarterly amounting to ₹27,82,895.40/-. The Decree Holder also sought *pendente lite* interest at the rate of 18% p.a. with effect from 01.07.2003 till date of the payment/realisation as well as costs.

4. It is in the context of the aforesaid claim that the arbitral award had been rendered.

5. The JD had further filed a petition under Section 34 of the Arbitration and Conciliation Act, 1996, being OMP 45/2007 assailing the award, which was allowed by this Court by an order dated 07.11.2012 on the ground that

the matters were not arbitrable. The said decision was set aside in an appeal by a Division Bench of this Court by an order dated 22.08.2013 passed in FAO(OS) 185/2013.

6. JD had contended before the Division Bench that there were other issues that were required to be considered by the learned Single Judge, however, that contention was not accepted. The Division Bench held that *“this Court is satisfied that the reasoning of the arbitrator are sound, inasmuch as the award holds that the rationale for withholding the amounts claimed was alleged delay, based on a unilateral change in the delivery schedule with respect to certain items..... In any case, appreciation of these aspects and findings of the arbitrator in this regard, do not disclose any fundamental or manifest error of the magnitude warranting interference under Section 34 of the Arbitration and Conciliation Act, 1996.”*

7. The JD now seeks to dispute the quantum of the award which clearly would be beyond the scope of the present proceedings.

8. The aforesaid order passed by the Division Bench of this Court in FAO(OS) 185/2013 was accepted and the JD did not prefer any Special Leave Petition against the said decision.

9. Mr Kalra also submitted that the question as to the quantum of the amount awarded only arose subsequently when the JD received a letter dated 24.04.2014, demanding the awarded amount. The aforesaid contention is clearly without merit as the quantum of amount was clearly specified in the award and if the JD was aggrieved by the same, it was upon the JD to initiate appropriate proceedings and also point out the defect in the award

which is now contended as being an obvious error. Although the JD filed an application to set aside the award but it did not challenge the quantum awarded. Thus, the question of now challenging the quantum of the award does not arise and certainly not in these proceedings.

10. Since the decree has been satisfied in the present petition, no further orders needs to be passed in this petition. The petition and the pending application are disposed of.

OCTOBER 07, 2016
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VIBHU BAKHRU, J

