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

+ **EX.P. 224/2011 & Ex. Appl. (OS) Nos.52/2012, 370/2016**

S.C.JAIN

..... Decree Holder
Through: Mr. F. Hasan, Advocate.

versus

THE STATE TRADING CORPORATION OF INDIA
LTD.

..... Judgement Debtor
Through: Mr. Ravi Sikri, Senior
Advocate with Mr. Deepank Yadav,
Advocate.

CORAM: JUSTICE S. MURALIDHAR

ORDER

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04.11.2016

1. Ex. Appl. (OS) No. 370/2016, filed by the Decree Holder (DH), is with regard to the objections to the report of the Commissioner appointed by this court for the purposes of examining the documents produced by the DH.

2. An order was passed by this Court on 24th November, 2014 which set out the basis for verification of the claims of the DH that wages had been paid to the employees/workmen deployed in the premises of the Judgment Debtor (JD) during the period 1st October, 1990 to 30th September, 1995. The subject-matter of the arbitration was *inter alia* the reimbursement claimed by the DH of the wages paid to the workmen. It is necessary, therefore, to reproduce in full the order

passed by this court on 24th November, 2014 which reads as under:

“1. This execution petition has been filed pursuant to award dated 10.11.2007 passed by the learned arbitrator. I am informed that the award was followed by a supplementary award dated 25.01.2008.

1.1 I am also informed by the learned counsel for the parties that judgment debtor corporation had filed a petition under Section 34 of the Arbitration and Conciliation Act, 1996, which was numbered as : OMP 163/2008. This petition was dismissed as withdrawn on 01.07.2009, based on the assertion of the counsel for the judgment debtor corporation, to the effect that, requisite safeguards had been incorporated in the award with regard to payment of claims pertaining to the reimbursement of remuneration paid by the decree holder to its employees / workmen.

2. In the award, it is noticed that the learned arbitrator with respect to some claims has made observations to the effect that while paying the amount, as directed in the award, the judgment debtor corporation would have the liberty to examine the genuineness of the claims. In other words, the judgment debtor corporation was required to ensure that money was paid to the concerned employee / workman of the decree holder.

2.1 According to Mr. Sikri, the learned senior counsel appearing on behalf of the judgment debtor corporation, the claims falling in the said category are as follows : claim Nos.1, 2, 3, 5, 6, 7, 15 and 18.

2.2 The liberty given, by the learned arbitrator, to the judgment debtor corporation, to examine the genuineness of the said claims is discussed in paragraphs 24, 27, 33, 36, 38, 40, 56 and 64 of the award dated 10.11.2007.

2.2 Mr. Sikri, further says that in so far as the following

claims are concerned, the decree stands satisfied. These being : claim nos.4, 8, 9, 17, 19 and 20.

2.3 The learned counsel for the decree holder, on the other hand, says that though payments to the extent of Rs.23 Lakhs (approximately) have been made, it is not clear as yet as to the claims against which, payments have been made by the judgment debtor corporation.

2.4 It is also his contention, that interest, on these claims has not been paid.

2.5 Accordingly, what is obvious, is that claim nos.10, 11, 14 and 16 were rejected and hence, no payment was required to be made against them.

3. Having regard to what has been stated by the learned arbitrator, at one stage, an attempt was made at conciliation, and the matter was referred by this court, at the request of parties, to Hon'ble Mr. Justice R.C. Chopra; a former judge of this court for the said purpose. I am told that conciliation proceedings have failed.

3.1 In these circumstances, the only way forward, according to the learned counsel for the parties is, as follows :

(i) that a public notice be taken out calling upon every employee / workman employed within the relevant period i.e., 01.10.1990 to 30.09.1995, to lodge his / her claim, for payment of dues if, the same are outstanding;

(ii). verification of details of personnel employed, be carried out, with the Directorate General of Resettlement (DGR), (which was the sponsoring agency), in terms of information already supplied by the decree holder; and

(iii). lastly, to have the decree holder in any event, execute indemnity bonds, in favour of the judgment debtor corporation, as and when, payments are made.

3.2 It is ordered accordingly. In my view, these three steps should, broadly, satisfy the requirement that the disbursements is genuine or at least duly protected in so far the judgment debtor corporation is concerned.

3.3 Mr. Sikri says that the entire exercise would take about three months. In accordance with the request made by Mr. Sikri, the accommodation sought, is granted. It is made clear, however, that the decree holder will render all possible assistance, which is sought by the judgment debtor corporation. If any assistance is sought by the judgment debtor corporation, written communication, will be sent to the decree holder. The response to the same will be sent in writing by the decree holder to the judgment debtor's corporation. If necessary, the concerned officer of the judgment debtor corporation will be free to request personal presence of the decree holder, in their office, for rendering due assistance.

3.4 It is also made clear that the cost for taking out the public notice will be borne by the judgment debtor corporation. The public notice will be taken out in two daily newspapers; one in vernacular language and the other in an English daily.

3.5 In case the judgment debtor corporation requires any assistance from DGR, the DGR will render the necessary assistance. If at all, there is any difficulty in respect of the same, the parties, will be free to approach the court and seek necessary directions to that effect.

4. List on 16.03.2015.

5. Dasti.”

3. Thereafter on 2nd July 2015, the court appointed a Commissioner to verify the claims of the decree holder and passed a detailed order which reads as under:

“1. The decree holder has filed this execution petition for execution of the award dated 10th November, 2007, whereby the learned arbitrator awarded a sum of Rs.1,09,33,790/- to the petitioner in the manner indicated against the respective claims.

2. Learned counsel for the decree holder submits that the decree holder has satisfied the requirement with respect to 565 employees and, therefore, a sum of Rs.67,76,689/- along with interest is payable by the judgment debtor to the decree holder.

3. Learned senior counsel for the judgment debtor submits that the decree holder has not satisfied all the requirements and the claims of the decree holder have to be verified in terms of the award. Learned senior counsel suggests that a Commissioner be appointed to verify the claims of the decree holder in terms of the award.

4. In the facts and circumstances of this case, Mr. P.K. Saxena, Retd. Additional District Judge (Mobile No.9910384668) is appointed as Commissioner to verify the claims of the decree holder.

5. The judgment debtor shall deposit the principal award amount of Rs.86,30,191/- [Rs.1,09,33,790/- minus Rs.23,03,599/- already paid by the judgment debtor] with the Registrar General of this Court within four weeks.

6. The Commissioner shall verify the claims of the decree holder in terms of the award within a period of two months and submit a report whereupon the Registrar General shall release the amount in terms of the said

report to the decree holder.

7. Both the parties shall appear before the Commissioner on 10th July, 2015 at 04:00 p.m. and submit the copies of the relevant documents before the Commissioner.

8. The fees of the Commissioner is initially fixed at Rs. 1 Lac, which shall be paid by the judgment debtor on the date of appearance fixed before the Commissioner.

9. List before Court on 13th October, 2015.

10. Copy of this order be given dasti to parties under the signatures of the Court Master. Copy of this order be sent to the Commissioner.”

4. Pursuant to the above order, the Commissioner held 17 sittings. IN his report the Commissioner set out the documents produced by the DH as under:

“5. During the course of the proceedings, the following documents/charts etc. were filed by the parties:-

i. Copy of the relevant award etc. including the 'copies of the alleged vouchers (stated to have been submitted and filed by the DH before the Hon'ble Court), were filed by Ld. Counsel for the JD on 10.07.2015 (414 pages).

ii. Chart containing the 'details of the payment made to the Security Guards by V.D.85 F.S.' filed by Ld. Counsel for the DH on 07.10.2015.

iii. Another Chart containing the 'details of the payment made to the Security Guards by V.D.85 F.S.' filed by Ld. Counsel for the DH on 10.10.2015.

iv. Objections alongwith affidavit, affidavits of 25 workmen and calculation sheet filed by Ld. Counsel for the JD on 06.11.2015 (90 pages).

v. Copy of the Order dated 24.11.2014 passed by the Hon'ble Court in this case and copy of the letter dated 15.02.2010 written by the JD to the DH, were filed on 16.11.2015 by Ld. Counsel for the DH.

vi. Affidavit dated 11.12.2015 of the DH filed by Ld. Counsel on 18.12.2015 85 Jk;

vii. Affidavit of Sh.Bachan Singh DGM (Elect.) of the JD was filed by Ld. Counsel for the JD on 22.12.2015.”

5. The report also refers to the fact that affidavits of 25 workmen and calculation sheets were filed by the counsel for the JD on 6th November, 2015. The area of dispute has been noted by the Commissioner in paras 8 to 12 of his report as under:

“8. Both parties also admit that the DH wants release of Rs.50,55,756/- mentioned in the chart filed on his behalf on 10.10.2015 out of the payment already deposited by the JD in the Hon'ble Court, which according to him had been paid to the workmen/employees engaged by him during the aforesaid period and posted at various locations of the JD.

9. Also admittedly the said payment pertains to Claim Nos.1, 2, 3, 13 and 15, awarded by Ld. Arbitral Tribunal in favour of the DH and against the JD.

10. It is significant to note that the DH before this Hon'ble Court on 02.07.2015 had stated that 'he had satisfied the requirements with respect to 565 employees

and therefore a sum of Rs.67,76,689/- alongwith interest was payable to him by the JD' and this is so mentioned in the Order dated 02.07.2015 passed by the Hon'ble Court.

11. Ld. Arbitral Tribunal in its award in para 24, while dealing with Claim No.1, awarded a sum of Rs.33,59,460/-to the DH out of which an amount of Rs.3,35,946/- towards service charges, was to be paid to him without production of any document. As regards the balance amount of Rs.30,23,514/- which was payable to the workmen who were in his employment and who had been deputed for performance of duties in various premises of the, it was directed that the said amount would be paid by the JD to the DH on furnishing of the certificates towards full and final settlement obtained from the concerned workmen by the DH or in the alternative the DH shall produce the workmen in person to receive their respective share directly from the JD and in case of production of the certificates towards full and final settlement obtained from the concerned workmen, the JD has any doubt about the genuineness of any such certificate, then the DH shall produce the workman concerned before the JD/any officer nominated by it for the purpose of identification. The interest on this amount was also directed to be paid in the same manner.

12. Similarly the Ld. Arbitral Tribunal in its award in para 28, while dealing with Claim No.2, awarded a sum of Rs. 1,20,848/-to the DH towards service charges, was to be paid to him without production of any document. As regards the balance amount of Rs.8,05,647/- which was payable to the workmen who were in his employment and who had been deputed for performance of duties in various premises of the, it was directed that the said amount would be paid by the JD to the DH on furnishing of the certificates towards full and final settlement obtained from the concerned workmen by the DH or in the alternative the DH shall produce the

workmen in person to receive their respective share directly from the JD and in case of production of the certificates towards full and final settlement obtained from the concerned workmen, the JD has any doubt about the genuineness of any such certificate, then the DH shall produce the workman concerned before the JD/any officer nominated by it for the purpose of identification. The interest on this amount was also directed to be paid in the same manner.”

6. The vouchers/certificates filed before the Commissioner for the purpose of verification was at pages 21 to 237 of the list of documents. The Commissioner noted that DH did not produce the originals pertaining to the vouchers/certificates placed at pages 211-230 and the value of these vouchers/certificates worked out to Rs.11,01,213. It was noted that if the said sum was subtracted from the total amount of Rs.50,55,756/-, the balance amount worked out to be Rs.39,54,446/-. Both the DH as well as the JD informed the Commissioner in their respective affidavits that they do not have the details of the workmen/employees engaged by the DH for deployment at various locations of the JD.

7. The Commissioner in para 19 of the report noted the specific objections of the JD to the vouchers/documents produced by the DH as under:

“i. Vouchers at page nos. 21 to 30 do not reflect the period during which the concerned persons mentioned therein had worked and the places where they had worked. It is further mentioned that these also do not mention fathers' names, their addresses etc. Identical lacunae are stated to be existing in the vouchers placed at

page nos. 30 to 42.

ii. In respect of the vouchers placed at page nos.43 to 50 it is mentioned that fathers' names, addresses of the workmen/employees, the period of payment, have not been mentioned.

iii. In respect of the vouchers placed at page nos.51 to 210, it is mentioned that fathers' names, addresses of the workmen/employees, the period of payment, have not been mentioned.

iv. In respect of the vouchers placed at page nos. 230 to 237, it is mentioned that addresses of the workmen/employees, have not been mentioned.

v. Sh. Satyabir Singh mentioned on page no.26, Sh.Jagbir Singh mentioned on page No. 32, Sh.Jaipal Singh mentioned on page No.39, Sh.Shishpal Singh mentioned on page No. 39 and Sh.Dharambir mentioned on page No. 36, have made representations dated 16.3.2015 stating that they have not been paid. Further LRs of late Sh.Pratap Singh mentioned on page No.38, have made representation dated 16.3.2015 stating that Sh.Pratap Singh had not been paid.

vi. Name of one workman Sh.Satbir has been mentioned twice i.e. on page nos. 122 and 140.

vii. The workmen mentioned on page nos. 139 to 146 did not work in the premises of STC.”

8. The Commissioner has rightly noted that in the light of the above objections it was mandatory for the DH to produce the concerned workmen/employees posted against various locations of the JD. However, the DH informed the Commissioner that he would not be

able to produce the concerned workmen/employees. In the circumstances, the Commissioner came to the conclusion that DH was not in a position to satisfy the requirements in terms of the Award of the Tribunal for the purposes of carrying out necessary verification.

9. It was repeatedly urged by learned counsel for the DH that despite producing documents and vouchers, the Commissioner declined to verify their genuineness. The Court finds that the Commissioner has prepared a very detailed report analysing the documents filed before him. The Court notes that the objections of the JD to the vouchers filed by the DH could not be effectively countered by the DH. In particular, the vouchers did not mention the father's name, the addresses, the period of payments. In other words, even the basic details concerning the workmen to whom payments were purportedly made was not forthcoming. Mere setting out of the names of the workmen would hardly be sufficient for the purposes of verification.

10. It is then urged that even if such details had been produced, the JD was not in a position to verify them since admittedly the JD itself did not have any records. If the DH had discharged the initial burden of producing the relevant details of the workmen to whom payments were made the onus would then have shifted to the JD to counter it with its records and in the absence of such records the genuineness of the documents produced by the DH would remain unchallenged. However, with the DH not producing the relevant details, it is not possible for the Court to shift the onus to the JD to disprove their

genuineness.

11. It is also required to be noticed at this stage that some of the workmen filed statements denying having received any payment from the DH. Further, the DH stated before the Commissioner that he would not be able to produce the workmen to whom payments were purportedly made. These are factors that cannot be ignored in deciding whether the DH has been able to discharge the onus of proving the genuineness of the payments made to the workmen.

12. In that view of the matter, the objections filed by the DH to the report of the Commissioner are hereby rejected.

13. The Court hereby accepts the report filed by the Commissioner and holds that DH has been unable to satisfy one of the essential terms of the Award, viz., proving that payments were made by the DH to the workmen as claimed.

14. It is, however, made clear that if at any time in future any of the workmen deployed in the premises of the JD by the DH are able to show to the satisfaction of the JD that they have not been paid their legitimate dues, the JD will make such payment in terms of the Award.

15. The balance of the amount deposited by the JD in this court together with interest accrued thereon will be returned to the JD by the Registry within a period of two weeks upon proper verification.

16. The execution petition and application are disposed of.

S. MURALIDHAR, J.

NOVEMBER 04, 2016
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