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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
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\+ **O.M.P. (COMM) 565/2016**

CROMPTON GREAVES LIMITED ..... Petitioner
Through: Mr. Prashanto Chandra Sen, Mr. Udayan Verma, Mr. Shivanshu Singh and Ms. Sanah Batia, Advocates.

versus

CENTRE FOR DEVELOPMENT OF TELEMATICS (C-DOT) ..... Respondent
Through: Mr. J.C. Seth, Advocate.

CORAM: JUSTICE S. MURALIDHAR

O R D E R
% **16.12.2016**

I.A. 15575/2016 (Exemption)

1. Allowed subject to all just exceptions.

O.M.P. (COMM) 565/2016 & I.A. 15576/2016 (Stay)

2. The Petitioner, Crompton Greaves Limited ('CGL') has filed the present petition under Section 34 of the Arbitration and Conciliation Act, 1996 ('Act') challenging an interim Award dated 16th November 2016 passed by the sole Arbitrator in the disputes between CGL and Respondent Centre for Development of Telematics ('C-Dot') arising out of an agreement dated 1st November 1991 entered into between the parties with respect to transfer of technology for C-Dot 512P RAX and the subsequent agreements dated 14th

April 1999, 10th October 1997 and 15th December 2001 for transfer of other technologies.

3. On 13th November 2006, C-Dot claimed a sum of Rs.2,05,02,772 stating it to be the royalty that was due to it from CGL as on 31st October 2006. By a subsequent communication dated 8th October 2007, C-Dot revised its claim based on the annual average sales figure for Financial Year ('FY') 2004-2007.

4. On 5th March 2008, C-Dot sent a legal demand notice invoking the arbitration clause in the agreement and claiming royalty of Rs.6,86,06,097 for the FY 2001-04 to 2004-07. In terms of the claims filed by C-Dot before the learned sole Arbitrator as amended, a sum of Rs.7,86,48,180 was claimed as a royalty under the first three contracts. The case of C-Dot was that CGL was to pay it royalty at 4% on the products manufactured using the technology provided by C-Dot and further that CGL defaulted payment of royalty. It is also stated that CGL failed to furnish the royalty payment liability certificate of a statutory auditor as it was obliged to do under the contract. The claim was for the period FY 2001-02 to 2006-07. Admittedly no royalty was claimed as far as the fourth contract is concerned.

5. Before the learned sole Arbitrator, CGL presented the royalty certificates issued by the Chartered Accountant ('CA') Mr. A.M. Belliapa on 11th April 2011. In terms of these certificates only a sum of Rs.20,09,403 was due to C-Dot from CGL. This was the plea taken by CGL in its statement of defence. In its amended statement of defence and counter claim dated 21st February 2012, CGL relied upon the certificate issued by another firm of

CAs i.e. M/s. Sharp and Tannan in terms of which also only a sum of Rs.20,09,403 was claimed to be owed to C-Dot.

6. C-Dot then filed an application before the learned sole Arbitrator for discovery and inspection of the documents of CGL. By an order dated 27th July 2013, the learned Arbitrator directed that the documents listed out in the said application, which were in power and possession of CGL shall be filed and in the event of its inability to do so shall file the affidavit of an authorised person setting out the reasons for such failure. C-Dot, inter alia, sought production of such ledger relating to the royalty payable account of C-Dot.

7. CGL filed an affidavit of its Senior Executive, Finance, Mr. Prakash William Rodrigues dated 27th November 2013. For the first time it was conceded that for FY 2003-04 the royalty payable was Rs.46,62,515 which was contrary to the stand taken thus far by CGL that only Rs.20,09,403 was payable. Copies of the royalty payment certificates of the CA for FY 2001-02 and 2002-03 were also set out. In terms of the affidavit, Mr. Rodrigues affirmed on 27th November 2013, the total amount of royalty payable for the FY 2001-02 to 2006-07 worked out to Rs.4,40,79,640 which was inclusive of Rs.1,80,00,000 already paid to CGL by that date.

8. With C-Dot raising an issue that CGL had not submitted the complete documentation, the sole Arbitrator on 25th February 2014 suggested that an Auditor could be appointed to go into the records "so that the real state of affairs come to light." On 3rd May 2014, both parties agreed to the appointment of Mr. J.S. Kochar, CA to examine the books of accounts and

audited statement of accounts of CGL for the FY 2001-02 to 2006-07. Certain elaborate terms of reference were drawn and made to the said CA by the sole Arbitrator.

9. On 19th January 2015, Mr. Kochar submitted a detailed report. The sole Arbitrator has in the impugned interim Award noted that from paras 5.30 to 5.52 of the report submitted by Mr. Kochar, it was evident that he had to face many hurdles to gather the records on the basis of which he ultimately gave the report. The learned Arbitrator has extensively quoted from the report of Mr. Kochar, para 8.6 of which summarises the decision as under:

> "8.6 The result of the audit processes carried out by us, is as follows:
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> Out of the total payment of Rs.3,12,19,000 claimed to have been paid by CGL to C-DOT against Royalty due for the years 2001-02 and 2002-03:
>
> (a) a sum of Rs.7,50,000 was actually paid as know how fee (TOT) for C-DOT TDMA technology.
>
> (b) a sum of Rs.1,09,69,000 was actually paid against the outstanding Royalty dues for the year 2000-01.
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> (c) a sum of Rs.15,00,000 was initially paid as know how fee for C-DOT SBM-VE technology. However, this allowed by C-DOT to be set off against the Royalty dues for 2001-02.
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> (d) Only the balance of Rs.1,80,00,000 was paid against Royalty dues for the year 2001-02.
>
> (e) No amount was paid against the Royalty dues for the year 2002-03."

10. Further in para 9.6 of the report, the Auditor determined that for the

period FY 2001-02 to 2006-07, after adjusting the amounts already paid by CGL to C-Dot a sum of Rs.4,04,51,996 was due and payable.

11. On the basis of the above report, an application was filed by C-Dot under Section 31(6) of the Act for an interim Award. On that application, after hearing the parties, the learned sole Arbitrator passed the first interim Award on 27th May 2015. While allowing the said application of C-Dot, the learned Arbitrator directed CGL to pay C-Dot a sum of Rs.2,18,59,011 with simple interest @ 8% per annum from 31st March 2007 till the passing of the interim Award. By a letter dated 1st June 2015 CGL paid a sum of Rs.3,26,57,396.40 to C-Dot without prejudice to its rights and contentions.

12. Thereafter on 23rd November 2015, the Petitioner filed a detailed objection to the report of Mr. Kochar. One of the main objections was that the computations were based on assessment of sale figures as per the excise record.

13. Meanwhile, on 31st July 2015 a further application was filed by C-Dot before the sole Arbitrator under Section 31(6) of the Act seeking another interim Award for payment by CGL of the balance sum of Rs.1,85,92,985 along with interest @ 12% per annum with effect from 1st April 2007 till the date of payment.

14. It is the aforementioned application that has been disposed of by the sole Arbitrator by the impugned interim Award dated 16th November 2016. The summary of the findings of the sole Arbitrator in the impugned interim Award is as under:

(i) The resort to original excise stock register (RG-1) maintained manually by CGL under Rule 10 of the Central Excise Rules, and copies of the monthly excise returns (RT-12) and invoices have become necessary because CGL failed to file the ledger account for the sale of its products manufactured by C-Dot technology.

(ii) In terns thereof, the net sales under the three agreements in question worked out to Rs.97,49,94,064. Royalty calculated at 4% on the said figure worked out at Rs.3,89,99,763.

(iii) For FY 2002-03, after culling out of the sale of products from RG-1 and invoices and reconciling them with the RT-12, the total sale of products for the FY 2002-03 worked out to Rs.43,08,46,685. This was slightly different from the figure as per RT-12. Therefore, the figure as obtained from RG-1 was adopted and this was inclusive of sum of Rs.58,23,095 relating to sale of products not covered by the three agreements. Thus the net amount of sales covered by the three agreements in question worked out to Rs.1,70,00,944.

(iv) CGL did not challenge before the sole Arbitrator the entries of the sales catalogue in its report. This in fact could not be challenged as they were in fact culled out from RG-1 as reconciled with RT-12. The contents of RG-1 and RT-12 were not disputed by CGL.

(v) The plea of CGL that an additional sum of Rs.1,85,92,985 was not acknowledged by it did not hold water since there was an express acknowledgement to the effect in the books of accounts maintained by it.

(vi) The CA appointed by the sole Arbitrator was expected to examine the audited statement of accounts "including but not limited to the schedules mentioned in Annexure-U". Thus the Auditor could go beyond the schedules and look at any relevant records related to accounts.

(vii) As rightly pointed out by the Auditor the excise stock register contained quantitative and full accounts of goods manufactured. Likewise, RT-12 constituted a submission of the factory sales showing the excise duty paid/due. Therefore, there was nothing wrong in relying upon RG-1 and RT-12 for determining the sale of products. In any event, the authenticity of such excise stock register has not even been challenged by CGL.

(viii) The submission of CGL that there was no dispute with regard to royalty payments for FY 2001-02 to 2003-04 was misconceived. C-Dot had specifically stated in its rejoinder dated 8th January 2014 that the claims were being made for the period 1st April 2001 up to 31st March 2007. The dispute with regard to royalty for the period 2001-02 to 2003-04 was writ large in the record.

(ix) For the purpose of Section 31(6) of the Act an interim Award does not mean a single interim Award. There could be successive interim Awards. Reference was made to the decision of the Supreme Court in ***Numero Uno International Ltd. v. Prasar Bharti 2008 (1) ArbLR 446 (Del)*** where it was held that there was no reason why "the payment of what is admittedly due should not await the determination of final disputes."

(x) The plea of CGL that the application of C-Dot seeking the second interim Award was in the nature of review was also without force. The final accounts of CGL were not known to C-Dot when the first application under Section 31(6) of the Act was filed. Therefore, it could not be said that the second application filed after the revelation of the accounts was in the nature of a review.

(xi) CGL was liable to pay Rs.1,85,92,985 to C-Dot together with simple interest @ 8% per annum from 31st March 2007 till the date of the Award and future interest @ 18% per annum till the date of payment. Further a sum of Rs.8,11,996 towards fees and expenses of Auditor were directed to be paid by CGL to C-Dot.

15. This Court has heard the submissions of Mr. Prashanto Chandra Sen, learned counsel for the Petitioner and Mr. J.C. Seth, learned counsel for the Respondent.

16. Relying on the decision of ***State of Arunachal Pradesh v. Damani Construction Co. (2007) 10 SCC 742***, it was submitted by Mr Sen that the second application for interim Award filed by CGL was not even maintainable.

17. As far as the above submission is concerned it is seen that the aforementioned decision does not deal with Section 31 (6) of the Act at all. What is discussed in para 8 of the judgment is the scope of Section 33 of the Act. In that case, the Appellant had filed an application under Section 33 of

the Act purportedly seeking clarification when in fact it was seeking a review of the Award. It was in the above context the Supreme Court held that the application under Section 33 of the Act was fully misconceived. However, in the present case the question is about invoking Section 31 (6) of the Act for passing of an interim Award.

18. The Court concurs with the view expressed by the sole Arbitrator that after the decision of the Supreme Court in ***Numero Uno International Ltd. v. Prasar Bharti*** (*supra*) the power of the Court to order payment what is admittedly due does not have to wait the determination of other disputes. With CGL having made payment in terms of the first interim Award, the learned Arbitrator was not denuded of the jurisdiction to deal with another application for interim Award concerning the balance sum.

19. Mr. Sen reiterated the arguments advanced before the sole Arbitrator that this application for the second interim Award was in fact an application seeking review of the interim Award. Here the learned Arbitrator noted that while CGL had not objected to calculation of sales made by the Arbitrator for FY 2003-04 to 2006-07 on the basis of the financial records which included the excise stock register, it raised frivolous objections as regards royalties payable for FY 2001-02 and 2002-03. As rightly pointed out by the learned Arbitrator its liability for the aforementioned FYs was determined again only on the basis of RG-1 and RT-12 registers which were maintained by the CGL itself and constituted an acknowledgment of its liability. With the financial accounts of CGL not being known to C-Dot at the stage of the first interim Award it was not precluded from filing a second application.

This certainly was not in the nature of a review.

20. It was then submitted that the impugned interim Award was passed in violation of the principles of natural justice as CGL was in fact not heard as regards its objection to the report of Auditor. Reliance was placed on the decision in ***S.L. Kapoor v. Jagmohan (1980) 4 SCC 379*** where it is held that non-observance of the principles of natural justice was itself sufficient proof of prejudice and would vitiate the decision thereby taken.

21. The reliance on the aforementioned decision in ***S.L. Kapoor v. Jagmohan*** (*supra*) is misplaced. It was not in the context of an arbitration proceeding at all. There are various provisions of the Act that encapsulate the principles of natural justice. In particular, Section 18 of the Act mandates that the parties shall be treated with equality and "each party shall be given a final opportunity to present its case."

22. As far as the case on hand is concerned, the impugned interim Award itself records in detail the submission of the CGL in opposition to the report of the Auditor. It is not possible to agree with the submission of Mr. Sen that CGL was deprived of an opportunity to defend itself against the report of the Auditor. In fact each of its objections have been discussed in sufficient detail in the interim Award.

23. Consequently, the Court finds no merit whatsoever in this petition. No grounds have been made out under Section 34 of the Act to interfere with the impugned Award dated 16th November 2016 passed by the sole Arbitrator.

24. The petition and the application are dismissed but in the circumstances with no order as to costs.

S. MURALIDHAR, J

DECEMBER 16, 2016
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