

THE HIGH COURT OF DELHI AT NEW DELHI

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Judgment delivered on: 08.02.2016

+ **FAO(OS) 17/2016**

**BHARAT IMMUNOLOGICALS AND
BIOLOGICAL CORP. LTD**

... Appellant

versus

M/S UPPAL ENGINEERING COMPANY PVT LTD ... Respondents

Advocates who appeared in this case:

For the Appellant : Mr R.B. Singhal, Sr Advocate with Mr Anshuj Dhingra

For the Respondent : Mr Ritesh Khatri

CORAM:-

HON'BLE MR JUSTICE BADAR DURREZ AHMED

HON'BLE MR JUSTICE SANJEEV SACHDEVA

JUDGMENT

BADAR DURREZ AHMED, J (ORAL)

CM No. 1469/2016 (condonation of delay in re-filing)

The delay in re-filing is condoned.

The application stands disposed of.

FAO(OS) 17/2016 and CM Nos. 1466-67/2016

1. The learned counsel appearing on behalf of the appellant has flagged three issues. The first point urged by him is that the issues which were noted by the learned Arbitrator have not been categorically dealt with or decided by the Sole Arbitrator based on any reasoning. The second point that was urged by the learned counsel for the appellant was that the learned

Arbitrator awarded loss of profit to the respondent and at the same time granted the other claims of the respondent which, according to the learned counsel for the appellant, the learned Arbitrator ought not to have done because that would amount to benefitting the respondent twice over. The third point urged by the learned counsel for the appellant was with regard to the payment of interest. He submitted that the date from which the interest ought to be payable, in any event, should be from the date of the award and not from 07.08.1995.

2. We have heard the learned counsel for the parties. Insofar as the first plea is concerned, we find that five issues were framed with the consent of the parties by the learned Arbitrator. The issues framed were as under:-

- “a. Whether the claimant has breached the contract and failed to comply with the terms and conditions of the contract;
- b. Whether the respondent has breached the contract and failed to comply with the terms and conditions of the contract;
- c. Whether the claims of the claimant are in consonance with reference order, and whether the claims can be raised at all;
- d. Whether the respective claims / counter claims are legally tenable;

- e. Which party has breached the contract and whether the breach goes to the root of the contract. If so, the injured party is entitled to what compensation in respect of each of its claims.”

In the very next paragraph, the learned Arbitrator noted that the above issues would hinge on as to how the contract was executed and whether the parties had carried out their respective contractual and reciprocal obligations in letter and spirit of the contract. According to the learned Arbitrator this required consideration of the following aspects:-

- “a. Whether Bulandshahar Khurja Development Authority (BKDA) clearance was required, who was to arrange it, and if it was obtained.
- b. Whether the drawings good for construction were issued in time to the Claimant.
- c. Whether the Payments were made in time by the Respondent.
- d. Whether the Respondent was required to provide electricity to the Claimant.
- e. Whether the Respondent was within its rights to delay the decision regarding the extension for time, requested by the claimant.
- f. Whether site Organisation was properly manned by the parties and whether sound decisions were given at site.

- g. Whether the Respondent had the right to terminate the contract and was this power actually exercised in terms of the contract.
- h. Whether there is any legal bar to the parties raising the claims in the present proceedings.
- i. My impressions after the site visit.”

Each of the aspects quoted above [i.e., (a) to (i)], were analysed by the learned Arbitrator in detail. As examples we may point out that the issue with regard to the clearances from the Bulandshahar Khurja Development Authority were analysed in paragraph 13, the issue with regard to drawings was considered in paragraph 14 which ran into several sub-paragraphs. Similarly, the aspect of release of payments to the claimant was considered in paragraph 15 etc. In fact each of the aspects (a) to (i) have been dealt with by the learned Arbitrator extensively in the award. Based on his conclusions on these aspects, the learned Arbitrator arrived at his conclusions on the five issues which had been framed. The conclusions are recorded in paragraph 22 of the award which reads as under:-

“22. Overall findings in respect of issues framed.

22.1 In light of the analysis of the relevant factors as above, my findings, outlined after each issue framed in bold lettering, are as follows:-

- “a. Whether the Claimant has breached the contract and failed to comply with the terms and conditions of the contract. The Claimant has not breached the contract and did not fail to comply with the terms and conditions of the contract.
- b. Whether the Respondent has breached the contract and failed to comply with the terms and conditions of the contract. The Respondent has breached the contract and did not comply with the terms and conditions of the contract.
- c. Whether the claims of the Claimant are in consonance with reference order; and whether the claims can be raised at all. The Claims of the Claimant are in consonance with the reference order and there is no bar to the Claimant raising its claims.
- d. Whether the respective claims counter-claims are legally tenable. The respective claims/ counter-claims are legally tenable.
- e. Which party has breached the contract and whether the breach goes to the root of the contract. If so, the injured party is entitled to what compensation in respect of each of its claims. The Respondent has breached the contract and the breach goes to the root of the contract. The Claimant is entitled to compensation/damages. The quantum is reflected in the text hereafter.”

3. Therefore, we are not in agreement with the submission made by the learned counsel for the appellant that the issues which had been framed had not been dealt with by the learned Arbitrator and that there was no reasoning behind the conclusions arrived at by the learned Arbitrator. On the contrary, as noted above, the learned Arbitrator examined not only the issues but the sub-issues which arose in great detail and arrived at conclusions of fact and law and thereupon gave his final findings on the five issues which had been formulated.

4. We now move on to the second point which had been urged by the learned counsel for the appellant that the learned Arbitrator could not have allowed loss of profit and the other claims at the same time because one negated the other. Here, also, we cannot accept the plea raised by the learned counsel for the appellant for the simple reason that the loss of profit (under claim No. 1) was in respect of the balance work due to the fact that the completion was prevented on account of wrongful termination of the contract by the appellant. We also note that though the respondent/claimant had claimed a sum of Rs 30,23,700/- which was only partly allowed to the extent of Rs 15,90,000/-. Insofar as the other claims are concerned they pertain to the period prior to the termination of the contract and have not

been factored into the computation of loss of profit for balance work. Therefore, it cannot be said that if the learned Arbitrator had awarded loss of profit for the balance work it would simultaneously cut out any other claim in respect of work already done. The point urged by the learned counsel for the appellant, thus, has to be rejected.

5. Insofar as the question of interest is concerned, we find that the learned Arbitrator had awarded 18% simple interest for the future and 12% simple interest during the pendency of the arbitration. This has been modified by the learned Single Judge to 9% simple interest for the entire period. We do not find any reason to interfere with the modification done by the learned Single Judge.

6. For all these reasons, there is no merit in this appeal. The same stands dismissed.

BADAR DURREZ AHMED, J

SANJEEV SACHDEVA, J

FEBRUARY 08, 2016
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