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IN THE HIGH COURT OF DELHI AT NEW DELHI

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OMP No. 518 of 2012

Reserved on: December 19 2016

Date of Decision: January 31, 2017

CDR S.P.PURI (DEAD) by LRs.

.... Petitioner

Through Mr. Deeptakirti Verma with
Ms. Neha Sharma, Advocates.

versus

AGRICULTURAL PRODUCE MARKET
COMMITTEE

..... Respondent

Through: Ms. Avnish Ahlawat and Ms.
Latika Chaudhary Advocates.

CORAM: JUSTICE S. MURALIDHAR

JUDGMENT

31.01.2017

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1. The challenge in this petition under Section 34 of the Arbitration and Conciliation Act, 1996 ('Act') filed by the Petitioner, Cdr. S.P. Puri as Sole Proprietor of M/s. Spiral Services, is to an Award dated 1st February 2012 passed by the learned sole Arbitrator in the disputes between the Petitioner and the Respondent, Agricultural Product Market Committee (APMC).

2. At the outset it requires to be noticed that during the pendency of the present petition, Cdr. S.P. Puri expired. By an order dated 9th November 2016 his legal representatives (LRs) were substituted in his place.

The Agreement between the parties

3. The background facts are that on 29th December 2000 an Agreement was entered into between the Petitioner and the Respondent to set up a Compost Plant to convert the biodegradable part of the Fruit and Vegetable Waste (FVW)

generated in the *mandis* operated by the Respondent. The object of the Agreement was conversion of 125 Metric Tonne ('MT') FVW and other biodegradable material generated in fruit and vegetable markets of APMC, Azadpur, Delhi into organic manure.

4. In terms of the said Agreement, the Respondent was to provide to the Petitioner land on lease. The Respondent was to make available FVW and render assistance with all facilities. The Petitioner was to dispose of the said 'VW as delivered in an efficient manner by manufacturing/generating bio-organic enricher and any other products without entailing any financial burden on APMC towards capital and recurring expenditure for setting up, operation, maintenance and service of such treatment plant.

5. Under Clause 1.1 of the Agreement, 'Site' was defined as land measuring approximately 6 acres situated at Khampur, Delhi belonging absolutely to APMC. The date of completion was to be not later than six months from the date of handing over the site. The measurement of the FVW was to be by "mutually acceptable procedure to be worked out subsequently."

6. Under Clause 2.2 of the Agreement, in the event APMC was not in a position to supply 125 MT of FVW (+/-10%) on all working days to the Petitioner from its own yards, it would ensure delivery of the balance of the daily quantity of FVW from other markets under the jurisdiction of Delhi Agriculture Marketing Board ('DAMB'). The Petitioner could also collect garbage from other sources to run the plant at full capacity at its own cost, in case there was shortfall in supply of FVW by APMC.

7. Clause 2.4 provided that the Respondent would render all help by way of providing necessary 'no objection certificate' (NOC), permission, sanctions, clarification, endorsement and recommendations as may be required by the

concerned authorities to whom the Petitioner was to apply for fiscal incentives, financial assistance, grant-in-aid etc. The Respondent further agreed to pass on any benefits received by it in terms of grant-in-aid, fiscal, incentives, etc. for the FVW treatment project undertaken by the Petitioner.

8. Under Article 3.2 the Petitioner was to construct, install and subsequently operate the plant on the site provided by the Respondent on lease. The lease rent was Rs. 1 per sq. m per annum from the 'effective date' i.e., the date on which the possession of the site was handed over to the Petitioner by the Respondent. It was payable to the Respondent every quarter. Under Article 3.3, the Petitioner was to pay a royalty of 2.5% of gross profit by account payee cheque drawn in favour of the Respondent.

9. Article 5.1 talked of measurement of FVW which was to take place in the presence of the authorized representatives of the Respondent for which a log book duly signed the representatives of both the parties would be maintained on day-to-day basis by the Petitioner and the Respondent. The log book would record name of the driver, vehicle number of the truck/tripper and quantity nature of waste.

10. Another obligation of the Respondent was to make the approach road connecting the plant motorable. The maintenance of such road was also to be at the cost and expense of the Respondent. It was to be constructed within one month of handing over of the site to the Petitioner. The licence for the plant was granted by the Respondent to the Petitioner for a period of 30 years without any premium on a nominal licensee fee of Rs. 1 per sq.mt. per annum. The other obligation of the Respondent was to provide fencing of site and electricity connection for the load required to run the plant. It is pointed out that as a gesture of goodwill, the Respondent also agreed to provide office space at the entrance for the sale of the compost to the farmers visiting the area and even for

this space nothing was charged.

11. The compost plant commenced operations on from 23rd July 2001 and FVW/garbage was delivered at the plant from all the *mandis*, i.e., Azadpur, Okhla and Keshopur.

12. Disputes subsequently arose between the parties, with one blaming the other for several breaches of their respective obligations. The Respondent states that the Petitioner closed the plant from 9th January, 2002 to 2nd March, 2002, then from 18th August, 2003 to 6th April, 2004, and again from 4th May, 2004 to 11th May, 2004 and 2nd June, 2004 to 25th June, 2004.

Proceedings in Court

13. The Petitioner filed Arbitration Petition No. 129 of 2006 on 1st September 2006 under Section 11 of the Act in which an order was passed on 3rd October 2006 appointing a sole Arbitrator (Justice Jaspal Singh) to adjudicate the disputes between the parties. On 15th December 2006 an interim direction was issued as regards electricity. A conditional order was passed in that regard requiring the Petitioner to pay Rs. 10,000 per month towards the arrears of electricity dues and keeping paying current charges. The order further recorded Petitioner's grievance that the FVW was not being supplied in terms of the agreement and 70% of the FVW was sent to Municipal Corporation of Delhi (MCD) landfills. The Respondent however denied this. It stated that it had been sending truckloads of the waste to the site in question but the Petitioner had not been accepting it. The Petitioner then assured the Court that the supplies, as and when made, would be accepted.

14. However, it has been the case of the Respondent before the learned Arbitrator as well as before this Court that since the Petitioner was not accepting full FVW/garbage even from Azadpur Mandi, the supplies from the

Okhla and Keshopur *mandis* were stopped as truckloads would come from the said *mandis* and on refusal they had to be diverted to the Bhalaswa/Gazipur Sanitary landfills of MCD thus incurring extra expenditure on petrol as well as dumping.

Termination of Agreement

15. During the subsistence of the agreement, a show-cause notice ('SCN') was issued by the Respondent to the Petitioner on 2nd July, 2010 invoking Clause 17 of the agreement which gave either party the right to alter or withdraw the agreement after giving six months' notice to the other party. The Petitioner denied having received any such SCN. The Respondent by its order dated 1st January, 2011 terminated the said agreement and required the Petitioner to hand over the vacant possession of six acres of land as well as space/room at the entrance of New Subzi Mandi, Azadpur.

16. The Petitioner then filed OMP No. 17 of 2011 under Section 9 of the Act seeking to restrain the Respondent from forcibly dispossessing or disturbing the peaceful enjoyment of the site or from obstructing smooth running of the plant. A further direction was sought by the Petitioner to the Respondent to continue to supply FVW to the plant in terms of the Agreement dated 29th December, 2000.

17. During the pendency of the said petition, the Respondent issued a letter dated 14th July, 2011 asking the Petitioner to remove their belongings lying at the composite plant at Tikri Khampur and hand over the peaceful possession thereof to the Executive Engineer (Civil) of the Respondent on 16th July, 2011. The Petitioner then filed an application in the pending petition seeking stay of the above letter/notice dated 14th July, 2011. Meanwhile, on 16th July, 2011, the Respondent took over the possession of the site.

18. When OMP No. 17 of 2011 was heard on 20th July 2011, the Court was informed that another Arbitrator, Justice Sat Pal, had been appointed to adjudicate the dispute concerning the validity of the termination of contract. Accordingly, the said OMP No. 17 of 2011 was dismissed as withdrawn with liberty to the Petitioner to file an appropriate application before Justice Sat Pal.

19. As far as the present petition is concerned, the arbitration proceeded before Justice Jaspal Singh who on 1st April, 2011 noted that although the proceedings were almost “at the fag end”, subsequent developments had taken place including the termination of the contract with effect from 1st January, 2011. He accordingly observed that it would not be possible to continue the directions issued on 15th December, 2006 as they were the subject matter of separate proceedings before the High Court.

20. An application was filed on 2nd January, 2012 before Justice Jaspal Singh seeking *sine die* adjournment of the arbitration proceedings to await outcome of the other arbitration proceedings which were taking place before Justice Sat Pal. Notice in the said application appears to have been issued on 3rd January, 2012. It should be recalled at this stage that before Justice Jaspal Singh, the Petitioner filed his 22 items of claim and the Respondent filed 8 counter-claims.

Impugned Award on the Claims

21. Without passing an order on the above application filed by the Petitioner, Justice Jaspal Singh, proceeded to pronounce the impugned Award on 1st February, 2012. The summary of the said Award in respect of the Petitioner's claims is as under:

- (a) Claim No. 1 was for recovery of Rs. 4,05,75,668 towards (i) segregation cost of non-biodegradable material supplied, (ii) for short supply of basic raw material and (iii) towards consequent loss of profit

etc.

(b) The claim as regards (i) was rejected on the ground that there was no cogent evidence to prove the cost of segregation and the loss allegedly suffered; further, the claim was beyond the scope of the agreement. It was held that there was nothing in the agreement to show that on supply of biodegradable material waste with non-biodegradable waste, the Petitioner would be entitled to the cost of treating the same or segregation treatment.

(c) As regards (ii), the learned Arbitrator held that though the blame for non-supply of the stipulated quantity lay with the Respondent and not the Petitioner, the only remedy available to the Petitioner was in terms of Article 4.1 of the Agreement which permits the Petitioner “to specifically enforce any or all of such obligations which are cast upon” the Respondent should there be any default in performance of the Respondent’s obligations. Further, there was no evidence that it was on account of short supply that the Petitioner had to purchase FVW from other outside suppliers and that he had in fact incurred losses. Therefore, the Petitioner was not held entitled to any damages as regards second part of Claim No. 1.

(d) As regards the consequent loss of profit, there were self-generated bills of the Petitioner which did not provide details as regards the lifting of refuse. Further, there were no supporting vouchers from the truck owners. This part of the claim was, therefore, rejected.

(e) Claim No. 2 was regarding failure by the Respondent to release the grant of subsidy that was sanctioned by the Development Department of the Government of National Capital Territory of Delhi (‘GNCTD’) to the

Petitioner. It was contended that although the total grant-in-aid was in the sum of Rs. 50 lakhs. The entire sum was received by the Respondent but only Rs. 38 lakhs was disbursed to the Petitioner leaving a balance of Rs. 12 lakhs. The learned Arbitrator held that the Petitioner could not show that taking of the loans was necessitated as a result of the default committed by the Respondent.

(f) The learned Arbitrator noticed that the Claim Nos. 3 and 4 were not pressed during arguments.

(g) As regards Claim No. 5 for damages to the tune of Rs. 1,00,00,000 towards harassment and mental torture hampering/adversely effected functioning of the plant, again, the learned Arbitrator noted that learned counsel for the Petitioner had submitted that since the termination of the agreement was under challenge, no finding should be given and the matter should be left open.

(h) Claim No. 6 related to interest free loan of Rs. 50 lakhs for expansion of the existing plant and to provide segregation facility. The learned Arbitrator agreed with the Respondent that there was no obligation to grant such industrial loan for the segregation plant under the agreement. Therefore, it was not possible to give any direction in this regard.

(i) Claim No. 7 was for a direction to the Respondent to honour its contractual commitments in the future with regard to daily supply of FVW and to pay segregation charges at the rate of Rs. 2,000 per truck load. The learned Arbitrator noted that though lengthy arguments were initially advanced on the said claim, learned counsel appearing for the Petitioner stated that keeping in view the notice of termination of the agreement, he was not pressing the claim though, at the same time, he

also submitted that the Petitioner was not admitting the legality of the notice in question.

(j) As regards Claim No. 9 for a direction to the Respondent to shift non-biodegradable material from the plant on regular basis, the learned Arbitrator directed that the Respondent was to lift all the dumped waste from and around the plant within 20 days of the passing of the Award.

(k) Claim No. 10 to 15 were not pressed. As regards Claim No. 16 for a direction to the Respondent not to sell or deliver FVW to any other party or agency, the learned Arbitrator held that it would be better to leave this issue to be decided by the High Court or some other appropriate forum.

(l) Claim Nos. 17 to 22 were not pressed. As regards Claim No. 18 for grant of interest, the learned Arbitrator held that the question of interest did not arise since none of the other claims had been allowed.

Impugned Award on the counter-claims

22. Counter-claim No. 1 of the Respondent was for refund of Rs. 12 lakhs out of the subsidy paid to the Petitioner on the ground that it was entitled to only Rs. 26 lakhs towards subsidy whereas Rs. 38 lakhs was received by it. The learned Arbitrator rejected it on the ground that actual cost was not a condition for grant of subsidy in terms of the sanction letter dated 27th September, 2002.

23. Counter-claim No. 2 was for Rs. 3,11,25,504 on account of the Petitioner not accepting the full quantity of FVW and the Respondent having been compelled to send it to the various landfills of MCD thus incurring the above expenses. The learned Arbitrator held that there was nothing on record to show that said expenditure was incurred on account of the failure of the Petitioner to accept the FVW.

24. Counter-claim No. 3 was for Rs. 88,200 towards closure of the plant. The learned Arbitrator rejected it since the explanation offered by the Petitioner for those closures was found justified.

25. Counter-Claim No. 4 was not pressed. Counter-claim No. 5 was for Rs. 2,51,034 as regards royalty payable upto 31st March, 2004 under Clause 3.3 of the Agreement. It was held that the Petitioner, admittedly, did pay royalty but only in the sum of Rs. 65,000 upto 31st March, 2004. The sole Arbitrator directed the Petitioner to submit the complete record and held it liable to pay the amount as claimed by the Respondent along with interest @ 9% per annum from the date of reference till realization. The Petitioner was asked to submit to the Respondent the complete record with regard to the period subsequent to 31st March, 2004 and to pay royalty due for the period as well.

26. Counter-claim No. 6 was for Rs. 58,220 of which the Petitioner was to pay a sum of Rs. 29,446 towards hire charges of JCB along with interest @ 9% per annum from the date of reference till its realization.

27. Counter-claim Nos. 7 and 8 were towards cost of the proceedings and payment of interest. The learned Arbitrator left the parties to bear their own costs and the net result was that under the impugned Award the Petitioner was now held liable to pay to the Respondent Rs. 2,51,034 plus Rs. 58,200 thereby totalling Rs. 3,09,234 together with interest @ 9% per annum from the date of reference till its realization.

Submissions of counsel for the Petitioner

28. One of the grievances articulated by Mr. Deeptakirti Verma, learned counsel for the Petitioner, and as noted in the order dated 30th May, 2012 passed by the Court, is that “in the impugned Award the learned Arbitrator has wrongly noted

that the Petitioner was not pressing Claim Nos. 3, 5 and 8". Further although Claim No. 6 was not pressed, it was nevertheless adjudicated by the learned Arbitrator. He also submitted that despite notice being issued on the application filed by the Petitioner on 2nd January, 2012, the learned Arbitrator without dealing with it proceeded to pronounce the impugned Award soon thereafter.

29. Mr. Verma clarified that the challenge to the impugned Award was confined to Claim Nos. 1, 2, 3, 5, 18 and 23. As regards Claim No. 1, he submitted that the learned Arbitrator held that under the agreement, supply of FVW alone was contemplated and the material supplied by the Respondent was not only FVW but included many extraneous materials compelling the Petitioner to carry out segregation thereof. It was further held that segregation became necessary because of the failure of the Respondent to faithfully implement its obligation and that failure was glaring as what was being supplied included 'stones, tyres, polythene, mud etc.'

30. Mr. Verma pointed out that despite the above finding, the learned Arbitrator refused to grant compensation to the Petitioner because there was no basis provided by the Petitioner's counsel for the figure of Rs. 695 PMT claimed by the Petitioner as compensation. The other reason mentioned by the learned Arbitrator that it was beyond the scope of the agreement and that there was nothing in the agreement to show that the Petitioner would be entitled to the cost of segregation was not sustainable in law.

31. He further submitted that in response to the questionnaire provided by the learned Arbitrator, written submissions had been furnished and the basis for the calculations was also submitted. However, these were not referred to by the learned Arbitrator in his Award. It is submitted that at one stage, the Governing Body of the Respondent had approved the grant of compensation to the Petitioner under this head @ Rs. 208/MT.

32. Relying on the decision of the Rajasthan High Court in *Smt. Pani Bai v. Smt. Site Kanwar AIR 1981 Raj 184* and the decision of this Court in *EMCO Limited v. Malvika Steel Limited 2012 SCC Online Del 5763*, Mr. Verma submitted that if the learned Arbitrator was not inclined to accept the calculations provided by the Petitioner, he ought to have at the very least awarded the figure accepted by the Respondent's own Sub-Committee and Market Committee as a reasonable assessment of the costs incurred by the Petitioner towards segregation of the non-biodegradable waste supplied by the Respondent.

33. Further, the reasons given by the learned Arbitrator that the Petitioner could have rejected the supply as it was not pure biodegradable material would also have amounted for breach of the contract as on the one occasion when the Petitioner took the step of rejecting the material supplied, the Respondent issued a SCN in relation to breach of the contract. He submitted that the observation made by the learned Arbitrator that there was nothing in the agreement entitling the Petitioner to the cost of segregation was inconsistent with the findings of the learned Arbitrator that "segregation became necessary because of the failure of the Respondent to faithfully implement its obligation and that failure was glaring as what was being supplied included stones, tyres, polythene, mud etc."

34. Mr. Verma further submitted that the finding that the claim was "beyond the scope of the Agreement" was also incorrect since Article 2.2 is an 'enabling clause' that permitted the Petitioner to seek other sources of raw material but did not absolve the Respondent for fulfilling its contractual obligation of supplying 125 MT (plus/minus 10%). According to Mr. Verma, rejection of the claim by the learned Arbitrator is "unjust, perverse and unsustainable". Mr. Verma pointed out that the total volume of non-biodegradable material received

during the relevant period was 11,517 MT for which compensation was required to be awarded as claimed.

Submissions of counsel for the Respondent

35. In reply to the above submissions, Ms. Avnish Ahlawat, learned counsel appearing for the Respondent, submitted that segregation of the FVW was not part of the contract at all. As far as the *mandis* were concerned, there was no time for segregation as every day's FVW had to be removed from the site and the space was to be made available for the next day's FVW.

36. Ms. Ahlawat pointed out that the Petitioner had raised imaginary self-created bills which were not the bills of any truck loader or a company removing the FVW and so that claim was rejected on 16th October, 2003. The question of payment of damages, therefore, did not arise.

37. In the cross-examination of the Petitioner on 6th October, 2007, when asked about the supporting document with respect to those self-generated bills, he answered that "I have already provided justification of the bills." According to the Petitioner, the bills find support from his account and his balance sheet only. In his cross-examination, when it was pointed out that none of the bills were reflected in the balance sheet, his answer was that all the expenses had been reflected in the balance sheet but those expenses had not been dealt with separately. In his cross-examination, he admitted that he had not produced any bill with regard to purchase of any material from the market. He further admitted that waste had been sent to him but he did not know whether the supply made was entire waste of those mandis. He also admitted that more than 731/800 truck load of refuse were lifted from the site by the Respondent at their own cost. No books of accounts to show any expenses incurred on segregation in any of the years were produced. The follow-up report of the Ministerial Committee clearly showed that the reports/recommendations of the sub-

committee were considered by the Marketing Committee and rejected.

Analysis and reasons

38. The Court has the above submissions. At the outset it requires to be noticed that the Court is not sitting in appeal over the findings of the learned Arbitrator. In other words, this Court is not deciding an appeal and is not required to re-examine the evidence. The legal position in this regard is well settled. The threshold for interference with an Award within the scope of the powers of judicial review under Section 34 of the Act is very high. Unless the Award is shown to be perverse or shocking to the judicial conscience, the Court is not expected to interfere with it only because a different view is possible to be taken on the evidence on record.

39. The application filed by the Petitioner on 2nd January, 2012 seeking postponement of the arbitral proceedings must be taken to have been rejected by the learned Arbitrator for the obvious reason that within a month thereafter the impugned Final Award was passed. Thus, there was no purpose in adjourning the proceedings at that stage.

40. The Petitioner may have a legitimate grievance about the learned Arbitrator deciding claims that were not been pressed, and wrongly declining to decide those that in fact were pressed. The submission that the learned Arbitrator wrongly noted that Claim No. 5 was not pressed cannot be appreciated in light of what is noted by the Arbitrator in the Award which cannot possibly be doubted by the Court. In any event, this Court has decided to examine both Claim Nos. 3 and 5 which, according to the Petitioner, were wrongly noted by the learned Arbitrator as not having been pressed.

Claim 1 (1)

41. As regards Claim No. 1 (1), the learned Arbitrator held that the agreement

envisaged supply of FVW and no other ‘unwarranted material’. The learned Arbitrator was categorical that the agreement did not envisage the Respondent compensating the Petitioner for segregation of waste. The Court is unable to find any inherent contradiction in the findings of the learned Arbitrator as is sought to be made by the Petitioner.

42. As regards the basis of the claim at Rs. 695 PMT, the Court has perused the calculations provided to the learned Arbitrator by the Petitioner. The Court is satisfied that the conclusion reached by the learned Arbitrator that this claim of the Petitioner is inadmissible, suffers from no legal infirmity and is not inconsistent with the various clauses of the Agreement. The recommendations of the sub-Committee were certainly not binding on the Government and were, in fact, rejected by it. Therefore, the decision in *Smt. Pani Bai v. Smt. Site Kanwar* (*supra*) and *EMCO Limited v. Malvika Steel Limited* (*supra*) do not support the case of the Petitioner at all.

43. The Petitioner was not able to produce any legal or factual basis for any portion of Claim No. 1 (i). This was, therefore, rightly refused by the learned Arbitrator.

Claim 1 (2)

44. Turning to Claim No. 1 (2) regarding the short supply of FVW, the argument of learned counsel for the Petitioner was that Article 2.2 of the Agreement was an enabling clause. Further, Article 4.1 states that in the event of any default committed by the Respondent in performance of its obligation, the Petitioner would have the unqualified right to specifically enforce any or all of such obligations which are cast upon the Respondent in pursuance thereto. Relying on the decision in *Simplex Concrete Piles (India) Limited v. Union of India ILR (2010) II Del 699* Mr. Verma submitted that any clause in an agreement that restricts the right of a party to seek compensation would be hit

by Section 23 of ICA and hence be void. As regards lack of evidence to show that the Petitioner had to purchase FVW from other outside suppliers, it is submitted that since the requirement was in hundreds of metric tonnes every day, it would have been impossible for the Petitioner to get the same from outside suppliers.

45. As regards the evidence to show that the Petitioner suffered consequential losses, it is submitted that it was evident that the functioning of the plant at a reduced capacity because of short supply of FVW would obviously result in lesser production. Mr. Verma submitted that the Petitioner ought to be granted full compensation as claimed in the statement of claim under this head.

46. On the other hand, it is submitted by Ms. Ahlawat that despite there being nothing to suggest that there was short supply of FVW by the Respondent, the learned Arbitrator noted that the remedy available to the Petitioner was under Article 4.1 of the Agreement. This was only to seek specific enforcement of such obligation and not compensation. There was no evidence adduced to show that it was on account of short supply that the Petitioner had to purchase FVW from other outside suppliers or that he suffered losses on account of such short supply.

47. The Court is unable to agree with the above submissions of the counsel for the Petitioner. The learned Arbitrator did record that the Respondent failed to supply the contracted quantity despite repeated protests by the Petitioner. However, this was immediately followed by the observations that the result of such failure to make full supply was that the Petitioner would “at its own cost” collect the garbage from other sources. This was in fact a correct reading of Article 2.2 of the Agreement.

48. The interpretation placed by the learned Arbitrator on Article 4.1, restricting

the right of the Petitioner to only seek specific enforcement of the obligations, was certainly a plausible view to take. The Court does not see the interpretation as attracting Section 23 of the ICA at all. If the Petitioner wanted to seek compensation, then it should have laid the factual foundation by adducing evidence in support thereof.

49. The learned Arbitrator did not stop at interpreting Article 4.1. The evidence produced by the Petitioner was analysed and found to be incomplete. No details were produced by the Petitioner in support of the claim for compensation. There is a detailed discussion in the impugned Award on this aspect which the learned counsel for the Petitioner has been unable to show to be perverse. For the aforesaid reasons, the Court finds that the rejection by the learned Arbitrator of this portion of Claim No. 1 (2) was justified.

50. As regards Claim No. 1 (3), viz., compensation for shifting in the sum of Rs. 30,000, the reasons given by the learned Arbitrator are cogent and clear and do not call for interference.

Claims 2 and 3

51. Turning to Claim Nos. 2 and 3 which pertain to the grant-in-aid, the Petitioner was entitled under a scheme of the Ministry of Agriculture for setting up an environment friendly plant, it needs to be noted in the first place that the obligation of the Respondent was to render help for providing necessary NOC, permission, sanctions, clarification, endorsement etc.

52. The total grant-in-aid received by the Respondent for onward transmission to the Petitioner was Rs. 50 lakhs. Admittedly, a sum of Rs. 38 lakhs was disbursed to the Petitioner. There are two aspects of the matter. One which forms subject matter of Claim No.3 i.e., balance of Rs. 12 lakhs ought to have been released to the Petitioner, and the other which forms part of Claim No. 2

that since Rs. 38 lakhs were not released to the Petitioner, it had to take loans for the purposes of the plant and its operations thus suffered additional financial burden.

53. The case of the Respondent was that the grant-in-aid was on the basis that the Petitioner was entitled to one-third of the total investment as grant-in-aid. The further case of the Respondent is that the Petitioner had in fact spent Rs. 78 lakhs as reflected in the balance sheet. In this regard, the learned Arbitrator noted in the impugned Award that the report of the Respondent itself stated that the project was qualified for the entitlement of the grant-in-aid of Rs. 50 lakhs. The report also indicated that the total cost of the project was Rs. 307 lakhs for Phase I and II and that “a sum of Rs. 154 lacs had already been spent on the plant.” Thus, the learned Arbitrator rejected the above argument by stating that “this again goes against the stand taken by the Respondent.”

54. As regards Claim No. 2 the learned Arbitrator noticed that the Petitioner had taken loans from Punjab National Bank in the sum of Rs. 12.5 lakhs and Rs. 37 lakhs. In fact, the balance sheet shows the loans taken by the Petitioner under the bank overdraft. There appears to be an obvious misreading of the evidence placed on record by the Petitioner.

55. If indeed, the Petitioner was entitled to Rs. 50 lakhs on the above basis, then the question of the Petitioner not pressing Claim No. 3 on the basis of the letter dated 26th November, 2002 did not arise. The said document has been placed on record. There is nothing in it to indicate that this part of the claim was not being pressed by the Petitioner.

56. The Court is of the view that the Award in respect of Claim Nos. 2 and 3 is based on an erroneous reading of the evidence and is hereby set aside. The corresponding rejection of the claim of interest on the said claims is also hereby

set aside.

57. In exercise of its powers under Section 34 of the Act, the Court cannot itself examine the above claims and pass an order substituting the Award in that regard. All that the Court can do is to set aside the said portion of the Award and leave it to the Petitioner to seek arbitration afresh in that regard. It is ordered accordingly.

Other claims and counter-claims

58. Now turning to Claim No. 5, which is a claim for mental harassment of the Petitioner, there is no credible material placed on record by the Petitioner, even by way of written submissions, to justify such claim. The Court finds no material placed on record by the Petitioner that would justify allowing Claim No. 5. Therefore, even if it is accepted that the learned Arbitrator erred in noting that this claim was not pressed, the rejection of the claim by the impugned Award does not call for interference.

59. As regards Claim Nos. 18 and 23, the impugned Award is set aside only to the extent that they correspond to Claim Nos. 2 and 3 which the Petitioner has been permitted to re-agitate in accordance with law.

60. Turning to the counter-claim No. 6, it has been rightly pointed out by Ms. Ahlawat that the sum payable by the Petitioner to the Respondent should be Rs. 29,446 and not Rs. 58,200 as wrongly noted in the operative portion of the impugned Award. The Court agrees that the Award to the above extent will stand corrected and the sum payable by the Petitioner is required to be read as Rs. 29,446.

Conclusion

61. The petition is disposed of in the above terms but, in the facts and

circumstances, with no orders as to costs.

S.MURALIDHAR, J

JANUARY 31 , 2017

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