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

Decided on: 04.07.2017

+ **FAO(OS) (COMM) 131/2017, C.M. APPL.22969/2017 & 22970/2017**

M/S PAWAN HANS HELICOPTERS LTD Appellant

Through : Sh. Puneet Taneja and Ms. Shaheen,
Advocates.

versus

IDEB PROJECTS PRIVATE LIMITED Respondent

Through : Sh. V. Seshgiri, Advocate.

CORAM:

HON'BLE MR. JUSTICE S. RAVINDRA BHAT

HON'BLE MR. JUSTICE S.P. GARG

MR. JUSTICE S. RAVINDRA BHAT (OPEN COURT)

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1. M/s. Pawan Hans Helicopters Ltd. (hereafter "PHHL") is aggrieved by the judgment of the learned Single Judge refusing to interfere with the Arbitration Award dated 06.09.2016 rendered by the Tribunal comprising of the Sole Arbitrator.

2. The contract between the PHHL and the respondent – M/s. IDEB Projects Private Limited (hereafter "IDEB") dated 01.09.2004 was for construction of the former's office complex at Noida. The contract resulted in two arbitration proceedings; the first was by IDEB's invocation of the arbitration clause on 07.10.2008. During the pendency of these proceedings, IDEB sent another notice on 17.12.2012, making claims in respect of the

period after 31.01.2009. The arbitration award – in the second proceedings, which are subject matter of the present appeal awarded ₹12,37,483.98/-, being the admitted amount by PHHL and also ₹57,20,903/-, being the bank guarantee proceedings invoked and encashed by PHHL. The other claims were rejected. The total amount so awarded was ₹73,70,456/-. The Tribunal awarded interest @ 10% per annum with effect from 01.04.2012 till date of award and further interest too at the same rate.

3. PHHL had sought to refer counter claims which were rejected as time-barred. In its objections, the PHHL contended that the findings in the award with respect to the counter claim being time –barred, as also the grant of interest for the amount encashed towards bank guarantee, were without authority of law and contrary to contract. These contentions were overruled and the learned Single Judge, relying upon the general principles enunciated in *Panchu Gopal Bose v. Board of Trustees for Port of Calcutta* 1993 (4) SCC 338 and the subsequent ruling of the Supreme Court in *State of Goa v. Praveen Enterprises* 2012 (12) SCC 561 as well as *Voltas Ltd. v. Rolta India Limited* 2014 (4) SCC 516, ruled that there was no determination with respect to the finding that PHHL's counter claims were barred.

4. So far as the issue of interest was concerned, learned Single Judge noticed the context and purport of Articles 41.1 and 41.3 and concluded that there was no illegality in the grant of interest.

5. It is contended by Sh. Puneet Taneja, learned counsel for the appellant, that the reasoning of the learned Single Judge that the counter claims were time-barred is contrary to the decision in *Praveen Enterprises (supra)*. It was emphasized that IDEB issued notice on 17.09.2012 for the second arbitration and ultimately had to file proceedings under Section 11 of

the *Arbitration and Conciliation Act, 1996*, being AA 79/2013 which was finally decided on 09.02.2015.

6. The counter claims made in the present case after the filing of the statement of claim by IDEB, i.e. on 26.06.2015, stated counsel, were within time. In this regard, reliance was placed both on *Praveen Enterprises (supra)* and *Voltas (supra)* to say that the appellant PHHL fell within the exception envisioned in *Praveen Enterprises (supra)*. Learned counsel submitted that since Article 41.3 clearly contemplated that compensation payable by the contractor to PHHL could be deducted, authorising it to withhold payment or encash the bank guarantee, the question of award of interest did not arise, since it was a matter of contract. The endeavour of the learned counsel was to submit that since the parties voluntarily precluded interest, in such circumstances, there is no question of the Tribunal awarding it.

7. The judgment of the Supreme Court in *Praveen Enterprises (supra)* noticed Section 3(2)(b) of the *Limitation Act, 1963*. That provision spells out what constitutes the date of filing of counter claims. It is similar to Section 3(2)(a) which spells out the date of filing of the suit. That is essential to apply the main part of Section 3 which prohibits entertainment of a suit filed after the period of limitation prescribed under the Schedule. Thus, Section 3(2)(b) only enables the Court or arbitrator to decide what is the date of filing of the counter claim and does not in any manner determine what is the period of limitation for filing it. For that, the period of limitation prescribed in respect of each cause of action is clearly enunciated in the Schedule to the Limitation Act. It does not depend on whether it is a claim or a counter claim. Furthermore, there can be multiple causes of action as in the present case, the cause of action for the filing of counter claim was independent of

cause of action for filing of claim.

8. If one proceeds with the above understanding of the statute, what is clear is that the Supreme Court in *Praveen Enterprises (supra)* stated that Section 21 is *per se* inapplicable and carves out an exception. In that exception it was held that where the respondent, who has an independent claim against the claimant, issues a notice for arbitration at the same time when the claim is made for arbitration (by the other party), then in the event of the claimant filing the statement of claim, it is afforded the extra period. This is logical and also the only reasonable way of considering the period of limitation. The contentions advanced on behalf of the appellant are that in the present case even though cause of action arose in 2009-10, it could nevertheless wait till the statement of claim was filed – in 2016.

8. Now in the present case, the notice for arbitration was issued was made by IDEB on 17.12.2012. Concededly at that point of time, the appellant did not prefer a counter claim or make reference to the counter claim. It instead chose to contest the very tenability of the claim by IDEB. Having suffered an adverse order on 09.02.2015, when IDEB filed its claim, the PHHL woke up and stated that it had a counter claim. This precise situation was envisioned in paras 19 and 20 of *Praveen Enterprises (supra)* where the Court clarified that the counter claimant is afforded a separate period of time from the filing of the main statement of claim if it is in the first instance served a notice for such counter claim. In the present case, there was no such notice for reference or counter claim at the time when IDEB made its claim for arbitration. Consequently, the Tribunal and the learned Single Judge, in our opinion, did not fall into error in holding that such counter claims are barred.

9. So far as the objections with respect of grant of interest is concerned, the learned Single Judge noticed Clause 41.3. The award is an adjudication of various issues, including whether the security deposit could have been adjusted towards alleged liquidated damages, as was done. The Tribunal concluded that the adjustment was not justified. It proceeded to grant interest from the date of the expiry of the defect liability period, i.e. one year after the expiry of contract. Now, in the opinion of the Court, the appellants' argument that interest could not be awarded at all is bereft of merit. Having suffered an adjudication that its claims for liquidated damages was not justified in an award, the only logical method by which arbitrators could reconstitute the aggrieved party was to award interest. The award is careful in that it did not grant interest for all periods but only for the period after the expiry of the defect liability period. This is because during the defect liability period, PHHL was entitled to withhold security as that was a matter of contract. In withholding amounts beyond the defect liability period, PHHL travelled beyond the terms of contract and, therefore, payment of compensation was not only legal but justified.

10. For the above reasons, we are of the opinion that there is no merit in the appeal. It is accordingly dismissed along with the pending applications.

S. RAVINDRA BHAT
(JUDGE)

S.P. GARG
(JUDGE)

JULY 04, 2017/ajk