

psv

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
IN ITS COMMERCIAL DIVISION**

**COMMERCIAL APPEAL NO.156 OF 2017
IN
ARBITRATION PETITION NO.189 OF 2016
WITH
NOTICE OF MOTION NO.42 OF 2017**

Hindustan Construction Company Limited	..Appellant
Vs.	
Ace Pipeline Contracts Private Limited	..Respondent

Mr.Gaurav Mehta with Ms.Madhumitha Srinivasan i/b. Advaya
Legal for appellant.
Mr.karan Bhosle with Mr.Aziz Khan i/b. M/s.Divya Shah &
Associates for Respondent.

**CORAM : NARESH H. PATIL AND
G.S. KULKARNI, JJ.**

DATE : 20th MARCH 2018

P.C.:

This appeal is directed against the order dated 5th July 2017 passed by the learned Single Judge in Commercial Arbitration Petition No.189 of 2016 whereby the learned Single Judge has rejected the appellant's petition under Section 34 of the Arbitration and Conciliation Act, 1996 (for short, "the Act").

2. The respondent who was sub-contractor of the appellant in respect of a contract for construction of pipeline awarded to the appellant by State of Gujarat was the claimant before the learned Arbitrator in the arbitral proceeding between the respondent and the appellant. The dispute between the parties had arisen under the said sub-contract.

3. By an award dated 13th July 2016, the learned arbitrator inter-alia allowed and decreed three claims of the respondent, firstly, the claim in regard to retention money; secondly, in regard to service tax liability and thirdly, in regard to intelligent pigging charges. In this appeal, the appellant does not dispute the award and the findings of the learned Single Judge on the first two claims and has pressed this appeal only in regard to the third claim “intelligent pigging charges”.

4. The contention as urged on behalf of the appellant is that the claim in regard to refund of the amount of Rs.55 Lakhs retained by the appellant as charges on intelligent pigging ought not to have been allowed, in as much as it was part and parcel of the contract

entered between the parties in view of the letter of intent dated 16th November 2005. Our attention has been drawn to the letter of intent and more particularly to clause (3) which reads thus:

*“3) Testing & Commissioning:
Testing, Drying Precommissioning & commissioning, caliper pigging, intelligent pigging, one month operation of main line.
The detailed breakup will be as agreed & approved by GSPL for prorata monthly payments with HCC.
(emphasis added.)”*

5. It is submitted that the said letter of intent was signed by the Director of the respondent and thus, the intelligent pigging was part and parcel of the contract, and hence, the learned arbitrator ought not to have awarded the said claim in favour of the respondent.

6. On the other hand, learned Counsel for the respondent would submit that the findings of the arbitrator in regard to this claim are clear in as much as the final work order dated 24 February 2006, which is the contract in question, does not include the item of intelligent pigging. Learned Counsel for the respondent taken us through the work order dated 24 February 2006 as also the findings in that regard, as made by the Arbitrator as also the Single Judge.

7. We have heard learned Counsel for the parties. With their assistance, we have perused the relevant documents as placed on record. We have also perused the arbitral award and the impugned order passed by the learned Single Judge.

8. Having done so, we are not persuaded to accept the submission as made on behalf of the appellant. We are in complete agreement with the contentions as urged on behalf of the respondent that the intelligent pigging though had a reference in the Letter of Intent dated 16 November 2005, however, the parties had specifically deleted its inclusion in the final work order dated 24 February 2006 as issued in favour of the respondent. The work order is the contract between the parties. In clause 1.1 of the work order, the parties have specifically agreed that the respondent shall carry out the work and comply with its obligation under attached M.O.U. Nowhere in the M.O.U., which was the document on the basis of which the work order was issued, included the work of intelligent pigging to be undertaken by the respondent under the contract. If this be the position, there was nothing illegal for the learned arbitrator to award the said claim in favour of the

respondent and against the appellant. The learned arbitrator has allowed the said claim based on the evidence on record as also on the clear interpretation of the documents in the arbitration proceeding. The view of the learned Arbitrator is a possible view.

9. On a perusal of the impugned order passed by the learned Single Judge, it is quite clear that the learned Single Judge has taken into consideration all the above aspects in rejecting the contention of the appellant on the issue of intelligent pigging. We find no illegality or perversity in the findings recorded in the order dismissing the appellant's petition under Section 34 of the Act on the above issue. The appeal lacks merits. It is accordingly dismissed. No costs.

[G.S. KULKARNI, J.]

[NARESH H. PATIL, J.]