

IN THE HIGH COURT OF JUDICATURE AT BOMBAY***ORDINARY ORIGINAL CIVIL JURISDICTION*****COMM.ARBITRATION APPLICATION NO. 132 OF 2018****Transocean Drilling Services (India) Pvt. Ltd. Applicant****VERSUS****Oil & Natural Gas Corporation Ltd.****..... Respondent**

Mr.Kaustav Talukdar, a/w. Mr.Vishesh Kalra, Mr.Ruturaj Bankar,
i/b.Lex Legal & Partners for the Applicant.

Mr.Pankaj Sawant, Senior Advocate, a/w. Ms.Diasy Dubhash,
Mr.J.P.Kapadia, Mr.O.Mohandas, i/b.Little & Co. for the Respondent.

CORAM : R.D. DHANUKA, J.**DATE : 8th OCTOBER, 2018****P.C.**

Pursuant to the order passed by this court on 25th September,2018, Shri Justice J.P.Deodhar, a former Judge of this court who was proposed to be appointed by this court as an arbitrator on behalf of the respondent has filed his statement of disclosure under section 11(8) read with 12(1) of the Arbitration and Conciliation Act, 1996 The statement of disclosure is taken on record and is accepted.

2. Mr.Sawant, learned senior counsel for the respondent invited my attention to the clause 27.2 of this agreement and more particularly sub-clause (8) thereof which prescribes for payment of fees of the learned arbitrators on the basis of the quantum of claim which fees has been agreed by both the parties in the agreement. He also placed reliance on the judgment of Supreme Court in case of *Sanjeev Kumar*

Jain vs. Raghubir Saran Charitable Trust and others, (2012) 1 SCC 455 and in particular paragraphs 37 to 40. In my view the judgment of Supreme Court in case of ***Sanjeev Kumar Jain*** (supra) would apply to the facts of this case. In view of the agreement arrived at between the parties insofar as payment of fees of the arbitral tribunal is concerned, the arbitral tribunal is bound by the amount agreed between the parties in the arbitration agreement.

3. Sub-clauses (7) to (14) of the agreement are extended as under :-

7. The arbitral tribunal shall make and publish the award within time stipulated as under :

Amount of Claims and Counter Claims (excluding interest)	Period for making and publishing of the award (counted from the date of first meeting of the arbitrators) :
Upto Rs. 5 crores	Within 8 months
Above Rs.5 crores	Within 12 months

The above time limit can be extended by the arbitrator(s), for reasons to be recorded in writing, with the consent of the parties.

8. Arbitrators shall be paid fees at the following rates :

Amount of Claims and Counter Claims (excluding interest)	Lump sum fees (including fees for study of pleadings, case material, writing of the award, secretarial charges etc.) payable to each arbitrator (to be shared equally by the parties)
Upto Rs. 50 lakhs	Rs.10,000 per meeting subject to a ceiling of Rs.1,00,000/-.
Above Rs.50 lakhs to Rs.1 crore	Rs.1,35,000/- plus Rs.1,800/- per lakh or a part there of subject to a ceiling of Rs.2,25,000/-.
Above Rs.1 crore and upto Rs.5 crores	Rs.2,25,000/- plus Rs.33,750 per crore or a part there of subject to a ceiling of Rs.3,60,000/-.
Above Rs.5 crores and upto Rs.10 crores	Rs.3,60,000/- plus Rs.22,500/- per crore or a part there of subject to a ceiling of Rs.4,72,500/-
Above Rs. 10 crores	Rs.4,72,500 plus Rs.18,000/- per crore or part thereof subject to a ceiling of Rs.15,00,000/-.

9. If after commencement of the Arbitration proceedings, the parties agree to settle the dispute mutually or refer the dispute to conciliation, the arbitrators shall put the proceedings in abeyance until such period as requested by the parties. Where the proceedings are put in abeyance or terminated on account of mutual settlement of dispute by the parties, the fees payable to the arbitrators shall be determined as under :-

- (i) 20% of the fees if the claimant has not submitted statement of claim.

- (ii) 40% of the fees if the pleadings are complete.
- (iii) 60% of the fees if the hearing has commenced.
- (iv) 80% of the fees if the hearing is concluded but the award is yet to be passed.

10. Each party shall pay its share of arbitrator's fees in stages as under :-

- (i) 20% of the fees on filing of reply to the statement of claim.
- (ii) 40% of the fees on completion of the pleadings.
- (iii) 20% of the fees on conclusion of the final hearing.
- (iv) 20% at the time when award is given to the parties.

11. Each party shall be responsible to make arrangements for the travel and stay etc. of the arbitrator appointed by it. Claimant shall also be responsible for making arrangements for travel/stay arrangements for the Presiding Arbitrator and the expenses incurred shall be shared equally by the parties.

In case of sole arbitrator, ONGC shall make all necessary arrangements for his travel/stay and the expenses incurred shall be shared equally by the parties.

12. The Arbitration shall be held at the place from where the contract has been awarded i.e. at Mumbai. However, parties to the contract can agree for a different place for the convenience of all concerned.

13. The Arbitrator(s) shall give reasoned and speaking award and it shall be final and binding on the parties.

14. Subject to the aforesaid conditions, provisions of the Arbitration and Conciliation Act, 1996 and any statutory modifications or re-enactment thereof shall apply to the arbitration proceedings under this clause.

4. It is made clear that the submissions made by the learned senior counsel for the respondent today insofar as payment of fees is concerned is without prejudice to his rights and contention already urged before this court on 25th September, 2018.

5. The applicant has already nominated Shri Justice G.S.Singhvi, a former Judge of Hon'ble Supreme Court of India as its nominee arbitrator. This court has appointed Shri Justice J.P.Deodhar, a former Judge of this court as an arbitrator on behalf of the respondent. Both the learned arbitrators are directed to appoint the presiding arbitrator in terms of the provisions of the Arbitration and Conciliation Act, 1996.

6. It is made clear that insofar as payment of fees payable to the learned arbitrators is concerned, the same would be in accordance with the provisions of clause 28.1 of the agreement. The fees and expenses of the arbitral tribunal shall be borne by both the parties equally at the first instance.

7. The commercial arbitration application is disposed of in the aforesaid terms. No order as to costs.

8. The parties are directed to convey this order to the learned arbitrators i.e. the learned arbitrator nominated by the applicant and the learned arbitrator appointed by this court by an order dated 25th September, 2018 for information and compliance.

9. The parties as well as the arbitral tribunal to act on the authenticated copy of this order.

[R.D. DHANUKA, J.]