$~34

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

\+ **<u>O.M.P. (COMM) 135/2018 & IA No. 4263/2018</u>**

M/S SEW INFRASTRUCTURE LIMITED ..... Petitioner

Through: Mr Arun Kumar Varma, Senior Advocate with Mr S.K. Chandwani, Mr Sameer Chandwani and Mr Ashish Joshi, Advocates.

versus

STEEL AUTHORITY OF INDIA LIMITED (SAIL) ..... Respondent

Through

CORAM:
HON'BLE MR. JUSTICE VIBHU BAKHRU

<u>O R D E R</u>

% 03.04.2018

1. The petitioner (hereafter 'SEWIL') has filed the present petition under Section 34 of the Arbitration and Conciliation Act, 1996 (hereafter 'the Act'), *inter alia*, impugning the arbitral award dated 22.11.2017 (hereafter 'the impugned award') delivered by the Arbitral Tribunal comprising of three members, namely, Dr Vishwapati Trivedi, Sh M.M. Sharma and Sh K.K. Singal (hereafter 'the Arbitral Tribunal'). The impugned award was rendered by the majority with Sh K.K. Singal passing a separate order dated 30.11.2017 in the matter.

2. The impugned award was rendered in the context of disputes that had arisen between the parties in relation to a contract dated 28.09.2007 (hereafter 'the Agreement'), in terms of which SEWIL had agreed to carry out the civil work for the expansion of a Cold Rolling Mill Complex in Zone-2B of the respondent (SAIL).

3. The dispute between the parties related to the price payable by SAIL for the work of expansion of a Cold Rolling Mill Complex of SAIL's Salem Steel Plant to SEWIL.

4. The controversy involved in the present petition relates to SEWIL's claim for the entitlements with respect to three invoices raised on SAIL. The first invoice dated 02.04.2013 for an amount of ₹9,99,12,156.38/- towards price adjustments in contract price and the other two invoices both dated 21.10.2013 on account of service tax for an amount of ₹59,716/- (that is, Service Tax at the rate of 12.35% on 40% of the pre-final bill released in May 2012) and ₹4,67,870/- (that is, Service Tax at the rate of 12.36% on 40% of the retention money released in January 2013 of ₹5,67,80,330/-).

5. The principal question to be addressed is whether the Arbitral Tribunal had the jurisdiction to adjudicate the dispute relating to the termination of the contract on account of the No Claim Certificate issued by SEWIL.

6. Briefly stated, the controversy between the parties arise in the following context:-

6.1 On 03.03.2007, SAIL issued a Notice Inviting Tender (NIT) for "*Civil Work for Expansion of a Cold Rolling Mill Complex (Zone-2B) at its Salem Steel Plant*" (hereafter 'the Work'). SEWIL submitted its bid pursuant to the said NIT, which was accepted. Consequently, SAIL issued a Letter of Acceptance (LoA) dated 13.09.2007 awarding the subject works for a contract value of ₹89,24,47,041/- (that is, ₹87,44,33,707/- other than Service Tax and Education Cess on Service Tax amounting to ₹1,80,13,334/-).

6.2 On 28.02.2011, a Virtual Completion Certificate was issued by SAIL's Consultant (that is, M/s M.N Dastur & Co).

6.3 On 16.08.2012, SEWIL submitted its final bill towards the work done for ₹5,91,29,317.76/- alongwith Price Adjustment Bill dated 01.08.2012 for an amount of ₹9,79,35,407.99/-. On 17.10.2012, SEWIL submitted a 'No Claim Certificate' as per Clause 57.1 & 57.2 of the Agreement stating that 'except the payments to be received by them from SSP against their Final Bill and Price Adjustment Bill'. On 28.02.2013, SAIL released payment against the Price Adjustment Bill dated 01.08.2012.

6.4 On 02.04.2013, SEWIL submitted another bill for an amount of ₹9,99,12,156.38/- including Service Tax and Education Cess at the rate of 4.12% on account of price variation/escalation.

6.5 On 15.04.2013, SAIL issued a letter to SEWIL in response to the invoice dated 02.04.2013 along with the letter dated 09.04.2013 by M/s M.N. Dastur & Co informing SEWIL that their bill could not be certified and was accordingly returned.

6.6 SEWIL issued a letter dated 18.04.2013 to SAIL notifying SAIL that the price adjustment bills were returned thereby denying the genuine payment due to SEWIL.

6.7 On 15.07.2013, SEWIL notified SAIL that they are facing financial hardship and requested SAIL to release the amount of ₹6,49,09,421.43/- towards price variation/escalation.

6.8 On 18.10.2013, SAIL responded to SEWIL stating that the amount payable towards price adjustment comes out to be ₹3,03,75,105.63/- and requested SEWIL to submit a No Claim Certificate. On 04.11.2013, SEWIL submitted a 'No Claim Certificate' unconditionally accepting the amount of ₹3,03,75,105.63/- against the bill submitted.

6.9 Thereafter, on 07.11.2013, SAIL released an amount of

₹2,97,67,604/- towards price variation after obtaining the No Claim Certificate by SEWIL.

6.10 On 25.11.2013, SEWIL lodged a protest stating that the No Claim Certificate was issued without free consent.

6.11 On 19.02.2016, SEWIL invoked the arbitration under Indian Council of Arbitration (ICA) Rules.

7. The Arbitral Tribunal (by majority) delivered the impugned award rejecting the claims made by SEWIL. The Arbitral Tribunal (by majority) held that SEWIL had failed to establish that the 'No Claim Certificate' dated 04.11.2013 was issued under coercion or undue influence. Accordingly, it was held that the contract between the parties was discharged by accord and satisfaction.

8. SEWIL has challenged the impugned award on several grounds, which are similar to the grounds urged in O.M.P.(COMM) 136/2015 to impugn an arbitral award, whereby the similar claims raised by SEWIL were rejected. This Court, has by a separate decision, rendered in O.M.P.(COMM) 136/2018 rejected SEWIL's challenge to an arbitral award. Mr Varma states that the decision rendered in O.M.P.(COMM) 136/2015 is also determinative of the issues involved in the present petition. Thus, for the reasons stated in the order passed in O.M.P.(COMM) 136/2015, the present petition is dismissed. The pending application is also disposed of.

VIBHU BAKHRU, J

APRIL 03, 2018
RK