

* IN THE HIGH COURT OF DELHI AT NEW DELHI
+ FAO(OS) No.337/2007 & CMs 1510-1513/2010
HINDUSTAN VIDYUT PRODUCTS LTD ...Appellant
Through Mr B.Mohan, Advocate
versus

DELHI POWER COMPANY LTD.& ANR.Respondent
Through Ms Avnish Ahlawat,
Advocate for the DPCL.
Mr Manish Srivastava,
Advocate for NDPL and
BSES

AND

+ FAO(OS) No.338/2007 & CMs 1523-1526/2010
HINDUSTAN VIDYUT PRODUCTS LTD ...Appellant
Through Mr B.Mohan, Advocate
versus

DELHI TRANSCO LTD.& ANR.Respondent
Through Ms Avnish Ahlawat,
Advocate for the DPCL.
Mr Manish Srivastava,
Advocate for NDPL and
BSES

% Date of Hearing: February 23,2011
Date of Decision: March 04,2011

CORAM:

* HON'BLE MR. JUSTICE VIKRAMAJIT SEN
HON'BLE MR. JUSTICE SIDDHARTH MRIDUL

1. Whether reporters of local papers may be allowed to see the Judgment? Yes
2. To be referred to the Reporter or not? Yes
3. Whether the Judgment should be reported in the Digest? Yes

VIKRAMAJIT SEN, J.

1. These Appeals assail the Judgment of the learned Single Judge passed on July 25, 2007 by which OMP No.114/2006 and OMP No. 115/2006 came to be decided. Petitions under Section 34 of the Arbitration & Conciliation Act, 1996 had been filed by the Delhi Power Company Ltd. challenging the validity of the Award dated 22nd December, 2005. A perusal of the records discloses that Arbitration Application No.97/2002 had earlier been filed keeping in view the failure of the DVB (Delhi Vidyut Board) to appoint an Arbitrator. Justice D.K.Jain, as His Lordship then was, had noted that the appointment of an Arbitrator had not been made within thirty days and hence Justice R.P.Gupta, (Rtd.) was appointed as the Arbitrator. The parties before the Arbitrator were arrayed as follows:-

“Hindustan Vidyut Products Ltd.

-vs-

- 1.Delhi Transco Ltd., (Delhi Power Supply Company Ltd.)
- 2.BSES Rajdhani Power Ltd.
- 3.Delhi Power Co. Ltd. (D.P.C.L.)
- 4.North Delhi Power Ltd. (N.D.P.L.)
- 5.BSES Yamuna Power Ltd.

2. In terms of the Award dated 22.12.2005 the Arbitral Tribunal had held in favour of the Appellant that the Respondents before the Tribunal were liable to refund the sum

of ₹ 10,00,000/- alongwith interest thereon aggregating a total sum of ₹ 20,26,000/-. It is also held that the liability rested jointly and severally on those Respondents.

3. It is not disputable that the Award was challenged only by the Delhi Power Company Ltd. (OMP 114/2006) and by the Delhi Transco Ltd. (OMP 115/2006) but not by BSES Rajdhani Power Ltd., North Delhi Power Limited and BSES Yamuna Power Ltd.. In the impugned Judgment dated July 25, 2007 the learned Single Judge has *inter alia* concluded that the claim of the Appellant was time barred and hence the Award was a patent illegality and was liable to be set aside. It was ordered accordingly.

4. We have already narrated hereinabove the parties before the Arbitrator. In the present Appeals, however, only the Objectors before the learned Single Judge viz. Delhi Power Company Ltd. and Delhi Transco Ltd. have been impleaded. It is in these circumstances that BSES Rajdhani Power Ltd. has filed an application before us for impleadment viz. CM 1512/2010 in FAO(OS) 337/2010. Similarly, CM No.1525/2010 has been filed in FAO(OS) 338/2007. Inexplicably, the application has been strongly opposed by the Appellant even though we had earlier expressed the opinion that the Appeal

may not be maintainable in the absence of all the parties before the Arbitral Tribunal being impleaded in the present Appeal. We had made this clarification in the circumstances that if the Appeals were to be allowed the natural effect would be that parties who are absent because of their non-impleadment would become liable, jointly or severally for the amount of the Award even though the Award of the learned Arbitrator has set aside in toto as against all the parties to the Arbitration and not just the Objectors before the Court. On the last date of hearing, the request of learned Counsel for the Appellant for an adjournment had been acceded. Nevertheless, learned Counsel for the Appellant continues to object to the impleadment application; he also insists that the Appeal is maintainable even in the absence of impleadment of parties who would be adversely affected if the Appeals were to be accepted. The brief argument of learned Counsel for the Appellant is that since Objections had not been filed by any of the parties other than Delhi Power Company Ltd. and Delhi Transco Ltd. the Award had become final as against them (the non-objectors).

5. We are not impressed by this argument. It is axiomatic that an Order which may adversely impact any person should not be passed in their absence, denying them the right of an opportunity to be heard. Audi alteram partem is a

cherished principle adhered to in all civilized judicial systems. This is so even though we note that for reasons recondite the Respondents before us had not impleaded all the other parties who were before the Arbitral Tribunal. It was thus fortuitous for the non-objectors that the learned Single Judge has set aside the Award in toto. The maintainability of those Objections has not been assailed before.

6. Despite opportunity having been granted to the Appellant, since it has resolutely failed to take steps to implead all the parties who may be affected by the outcome of the Appeal, it is our opinion that the Appeal is not maintainable. It is for the Appellant to ensure the presence of all parties likely to be affected in the proceedings, by way of their impleadment in the Appeal. In these circumstances, we do not think it appropriate to allow the Application seeking impleadment which has been resisted by the Appellant and instead we dismiss the Appeals as being not maintainable.

VIKRAMAJIT SEN, J.

SIDDHARTH MRIDUL, J.

March 04, 2011
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