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

Date of decision: 31.08.2018

+ **FAO(OS) 125/2017**

M/S MAN INDUSTRIES (INDIA) LTD

..... Appellant

Through: None.

versus

IOCL

..... Respondent

Through: Mr. Abhinav Vasisht, Sr.
Advocate with Mr. Rajat Navet
and Mr. Kushagra Pandit,
Advocates.

CORAM:

HON'BLE MR. JUSTICE S. RAVINDRA BHAT

HON'BLE MR. JUSTICE A.K. CHAWLA

MR. JUSTICE S. RAVINDRA BHAT (OPEN COURT)

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CM APPL. 15221/2017 (for condonation of delay)

1. For the reasons mentioned in the application, the delay of 25 days in filing the instant appeal is hereby condoned.

Application stands disposed of.

FAO(OS) 125/2017

2. The appellant is not represented today. It was not represented even on the previous date of hearing.

3. The present appeal under Section 37 of the Arbitration and Conciliation Act, 1996 (hereinafter 'the Act') challenges the judgment

and order of the learned Single Judge to the extent it allowed Section 34 petition of the respondent-Indian Oil Corporation Ltd. (hereafter 'IOCL'). The two issues it is stated in the impugned order were in respect of the price discount of 11% for defective supplies made by the appellant to the IOCL and the other was as to whether it was bound to accept the quantities supplied in excess of the contracted amount.

4. The parties had entered into a contract, whereby, the appellant was to supply 74350 meters of 20" OD AP15LX-65 grade line pipes @ ₹6,550/- per metre for a total contract value of ₹48,69,92,500/-. The thickness of the pipes agreed was 11.1 mm with no negative tolerance. Clause 17 of the purchase order also mandated that there shall be no deviation from the standard terms and conditions. The contractual date of supply was 15.02.2004; a week's further extended period was permitted (ending on 27.02.2004). On 25.02.2004 IOCL wrote to the appellant stating that 1300 pipes did not conform to the standard thickness and ranged between 11.01 and 11.090 mm. It therefore asked the appellant to send details of number of pipes manufactured and place the number of pipes on hold etc. On 29.07.2004 IOCL offered to accept the defective pipes from the appellant at a discount of 11% of the contract price in the quantities supplied. The appellant apparently wrote on 30.03.2004 requesting that the price differential of the discount need not be made. This was rejected on 05.04.2004 by IOCL. Subsequently on 13.04.2004 the appellant wrote to IOCL. The letter which is important for the purpose of this case is extracted below:

*"Sub: Your PC No. PLM/PREXPL/MKPU02/11/PO-IND/17044697 dated 16.09.03 for supply of 28" Line Pipe.
Dear Sirs,*

This is with reference to above Purchaser order and further to your letter PLM/PREXPL/02/11 dated 5th April 2004 wherein you have requested M/s SGS India Pvt. Limited to take up inspection of the Pipes.

Further to the above, we would like to inform you that although the pipes are under inspection the same have not being released for Coating. Almost 400 Pipes with have been inspected have been found satisfactory and meeting the technical parameters as per the PO and also meeting the revised thickness values.

IOCL, site representative have informed that IRN for the inspected pipes may be released after the issue of necessary Change order. This is effecting our coating schedule as well, since we have almost 400 pipes awaiting clearance and ready for coating.

We would like to submit that due to Non-release of IRN we are unable to start the coating activity on those pipes. At the same time, we have the CDD of the coating contract fast approaching.

Therefore, we would request you to kindly issue necessary guidelines for the release of IRN and deputation of IOCL, Representative at our work tomorrow i.e. 14th April 2004 so that the coating activity can be taken up without any delay.

Thanking you.

Yours Truly,

For Man industries (i) Limited.”

5. On 17.04.2004 the appellant proceeded with its supplies and completed it shortly thereafter. After completion of supply of the quantities, on 21.04.2004, it wrote to IOCL stating that 1% discount be made from the price admissible to it, in regard to the defective supplies. This was not accepted; the parties proceeded to the Arbitration. Before the Tribunal, the appellant urged the question with respect to the price differential (1% as opposed to 11% insisted by IOCL); it also raised claims with respect to the amount payable towards access quantities. The Tribunal considered the materials on record and accepted the

appellant contention on both counts. IOCL therefore, petitioned this Court under Section 34 of the Act contending that the award (of the Tribunal) was contrary to the record and evidence; and pointedly referred to the letter dated 13.04.2004 by the appellant which had preceded the supplies and also relied upon its own letter of 05.04.2004 rejecting the counter offer so to say made by the appellant (of 1% cut in the price agreed). The learned Single Judge therefore concluded that the Tribunal acted contrary to the record and therefore, its finding in this regard were vulnerable. Learned Single Judge's findings vis-à-vis the excess quantities and the price therefore, noticing that the Arbitrator apparently confused the issue with respect to the price differential (11% regarding the defective pipes).

6. This Court has considered the appellant's contention; in the appeal it is urged that the learned Single Judge could not have set aside the award except on a finding that it was contrary to public policy or was patently illegal. The appellant relies upon the judgment in the case of '*Associate Builders vs. DDA*', (2015) 3 SCC 49. It is also argued that the learned Single Judge overlooked that the Tribunal had found-based upon his analysis and appreciation of facts that no fresh agreement or amended purchase order was issued by the IOCL and consequently there was no fresh contract with respect to the price cut for 11%. It is also highlighted that a division bench judgment of this Court in '*Himachal Joint Venture vs. Panilpina World Transport (India) Pvt. Ltd.*', 2008 (3) Arb.Lr 497 Delhi (DB) was not considered. It is lastly urged that the learned Single Judge failed to appreciate that against the presumptive delay of 5 months the actual delay (beyond the originally scheduled or agreed date was only 2 months). IOCL had apparently deducted ₹18,21,086/- in terms of the

contract. It was therefore urged that learned single judge could not set aside the findings of the Tribunal and permitted IOCL to retain the additional sum of ₹1,08,11,909/-.

7. This Court has considered the submissions. As regards the first issue i.e. the 11% cut on the agreed amount, the appellant does not dispute that the pipes supplied (1292 pipes) did not conform to the requisite standards; their thickness varied. IOCL agreed to accept them but for a lower consideration-at 11% lower than the agreed amount for the quantities delivered. The appellant initially did not agree-evidenced by its letter dated 30.03.2004. However, IOCL insisted and stated that it would accept the quantities only if the amounts were subjected to 11% reduction. The subsequent letter of 13.04.2004, in these circumstances, developed critical significance. The appellant spoke about all other issues save and accept question of the rate cut. It thereafter, proceeded to complete the supplies. The sum of all these crucial facts especially letter dated 13.04.2004 were ignored by the tribunal. Whilst the formulation of the Supreme Court in *Associate Builder judgment* (supra) no doubt suggests that it is only if the award is patently illegal or contrary to the public policy, the Court can interfere it if there are egregious findings of fact or were contrary to the record. If the Arbitrator presumes a contract-as he had in the present case by stating that the IOCL was found to accept the rate cut of only 1%; the findings are vulnerable, on the ground that they are of such character or nature that no reasonable person or tribunal could have entered such verdict. In these circumstances, the findings rendered by the learned Single Judge both on the issue of 11% rate reduction for 1300 pipes as well as the amounts deducted towards delayed supplied cannot be faulted.

8. The appeal is therefore without any merit and consequently dismissed.

**S. RAVINDRA BHAT
(JUDGE)**

**A. K. CHAWLA
(JUDGE)**

AUGUST 31, 2018
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