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

Date of decision: <u>04.10.2018</u>

\+ OMP (ENF.) (COMM.) 165/2016 & IA 1518/2018

NATIONAL TELECOM OF INDIA LIMITED

..... Decree Holder

Through: Mr.Raman Kapur, Sr. Adv. with Mr.Pramod Singh, Mr.Anmol Stephen, Mr.Sanjay Kumar, Advs.

versus

BHARAT SANCHAR NIGAM LIMITED

..... Judgment Debtor

Through: Mr.Chandan Kumar, Adv.

CORAM:
HON'BLE MR. JUSTICE NAVIN CHAWLA

NAVIN CHAWLA, J. (Oral)

1. The present application bearing No.1518/2018 has arisen due to very peculiar circumstances that have occurred because of the delay in final adjudication of the disputes that had arisen between the parties in relation to the Advance Purchase Order dated 11.12.1996 placed by the respondent on the petitioner. By the said Purchase Order, the respondent had agreed to purchase the following goods from the petitioner:

> *"(i) Subscriber Line Concentrators - 6/15 lines of 266 nos. @ Rs.51,792/- per unit (all inclusive) for a total value of Rs.1,37,76,672/- (Rupees One Crore, Thirty Seven Lacs, Seventy Six Thousand, Six Hundred and*

Seventy Two Only).

(ii) Subscriber Line Concentrators - 16/90 lines of 20 nos. @ Rs.3,75,777/- per unit (all inclusive) for a total value of Rs.75,15,540/- (Rupees Seventy Five Lacs, Fifteen Thousand, Five Hundred and Forty Only).”

2. The dispute between the parties was in relation to the refusal of the respondent to purchase 266 nos. of 6/15 Subscriber line Concentrators from the petitioner on the ground that the same were no longer required in view of the subsequent development of the technology.

3. The Arbitrator by his Award dated 10.07.2007 issued the following directions:

“(i) that the respondent shall pay to the petitioner/claimant a sum of Rs.1,09,00,000/- (Rupees One Crore Nine Lacs only) towards cost of goods (SLC 6/15, numbering 266) fabricated/manufactured by the petitioner/claimant in pursuance of Advance Purchase Order dated 11.12.1996, issued by the respondent together with simple interest @ 12% p.a. on the above amount from 01.04.1997 till actual payment;

(ii) that in addition to (i) above the respondent shall also pay to the petitioner/claimant a sum of Rs.3,46,580/- (Rupees Three Lacs Forty Six Thousand Five Hundred Eighty only) towards the cost of the present proceedings; and

(iii) that on receipt of the payment of the above awarded sum from the respondent, the petitioner/claimant within 15 days from the receipt of such payment shall offer delivery/return of the goods (SLC 6/15, numbering 266) manufactured by the petitioner/claimant in pursuance of APO dated 11.12.1996 to the respondent. In case the respondent,

despite receipt of such a communication, fails to take the delivery/lift the above mentioned goods in question within a period of 30 days from the date of receipt of such communication from the end of the petitioner/claimant, the petitioner/claimant in such an eventuality would be at liberty to dispose of those goods in the manner as may be deemed fit by the petitioner/claimant but after advance notice to the respondent. The proceeds of those goods, so received by the petitioner/claimant, after the disposal of the goods in question, in the manner stated above, shall be paid by the petitioner/claimant to the respondent soon thereafter. This is being ordered keeping in view the equity because after the payment of the awarded amount the goods so manufactured virtually belong to the respondent."

4. The respondent had challenged the said Award by way of a petition under Section 34 of the Arbitration and Conciliation Act, 1996 (hereinafter referred to as the 'Act') being OMP No.525/2007. The same was dismissed by this Court vide order dated 05.01.2016.

5. The respondent challenged the above order by way of an appeal under Section 37 of the Act being FAO(OS) No.102/2017. The same was also dismissed by the Division Bench of this Court vide order dated 10.04.2017.

6. The respondent still not being satisfied, challenged the above order before the Supreme Court by way of SLP(C) No.23955/2017. The same was also dismissed by the Supreme Court vide order dated 15.09.2017.

7. In this manner, the above Award became final. In the

meantime, in the present execution proceeding, pursuant to the order dated 21.03.2017, the respondent deposited a sum of Rs.3,68,61,878/- with the Registry of this Court and the said amount was withdrawn by the petitioner.

8. On the claim of the petitioner that the above amount would not be a complete satisfaction of the Award passed in its favour, the respondent, pursuant to the order dated 08.12.2017 passed by this Court, deposited a further sum of Rs.5,81,333/- with the Registry of this Court.

9. At this stage, the respondent, on 09.01.2018 made a submission that as the entire decretal amount has been deposited, the equipment in terms of the arbitration Award should be directed to be delivered to it.

10. The petitioner has thereafter filed the above application being IA no.1518/2018 contending therein that the factory of the petitioner had been closed in 2003; thereafter, it seems that unknowingly the equipment had been removed by the caretaker of the premises considering it to be scrap. It is submitted that even otherwise, with the passage of time, the equipment had become useless. The petitioner has, therefore, prayed for the following:

> *"a. Direct the Judgment Debtor and the Decree Holder to mutually agree at the present value of the said goods which may be adjusted towards the payment of decretal amount by the Judgment Debtor;*
> *Or in the alternative*
> *Appoint 'Valuer' for arriving at the present value of the said goods manufactured by the Decree Holder in 1997.*

> *b. Allow the Decree Holder to adjust the present value of the said goods either through the 'Valuation Amount' so arrived at mutually or by the valuation done by 'Valuer' towards the payment of decretal amount by the Judgment Debtor; and /or"*

11. Counsel for the respondent, however, relying upon the judgments of the Supreme Court in ***Jai Narain Ram Lundia vs. Kedar Nath Khetan & Ors.*** MANU/SC/0004/1956 and ***Kohinoor Transporters vs. State of Uttar Pradesh*** MANU/SC/0890/2018, submits that this Court would not have jurisdiction to modify the Decree/Award and as the Award directs that upon payment of money directed therein, the equipment has to be returned to the respondent, incase the petitioner is not able to return the said equipment, it must return the entire amount received by it in terms of the Award.

12. I have considered the submissions made by the counsels for the parties. In the present case, as noted above, the Purchase Order in question had been issued by the respondent in favour of the petitioner in 1996. The Award had been passed in 2007 and the final payment was made by the respondent to the petitioner only in 2017.

13. It is not denied that before the Arbitrator, the goods had been duly inspected through a Local Commissioner. The Arbitral Award in its direction allowed the respondent to take away the goods only 'keeping in view the equity'. Such equity would certainly change with the passage of time for which the

respondent alone is to be blamed. The respondent has delayed the enforcement of the Award by a period of almost ten years. It is not as if, in the Award, the respondent was to further pay or has infact paid any storage charges to the petitioner. The Award in direction (iii) quoted hereinabove merely required the petitioner to offer delivery /return of the goods to the respondent and infact also stated that incase the respondent fails to take the delivery/lift the same within 30 days from the date of receipt of this communication, the petitioner shall be at liberty to dispose of these goods in the manner as it may be deemed fit. The respondent, never offered to take delivery of these goods and it is only on the deposit of the full amount, that too was deposited pursuant to the orders being passed against it in the present enforcement petition, the respondent finally woke up after a period of ten years to claim these goods. The Court accepts the explanation given by the petitioner that in the interregnum, the factory of the petitioner had to be closed down and the equipment, due to some inadvertence, has been sold as scrap. The petitioner, therefore, cannot be denied the fruits of the Arbitral Award only because it is not in a position any longer to return these goods. Because of the abovementioned peculiar facts in hand, the judgments of the Supreme Court that have been referred to by the counsel for the respondent, in my opinion, would not be of any help to the respondent.

14. At the same time, the respondent has to be compensated

for the value of these goods. The respondent has not placed on record any material to show the value of these goods as on today. The petitioner has also not placed on record the amount received by the petitioner on selling of these goods.

15. In view of the above situation, while allowing the respondent to withdraw the amount of Rs. 5,81,333/- alongwith interest accrued thereon from the Registry of this Court, it is further directed that the petitioner shall pay a further amount of Rs.10 lacs to the respondent within a period of four weeks from today.

16. The petition is disposed of with the above directions, with no order as to cost.

NAVIN CHAWLA, J

OCTOBER 04, 2018
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