

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

ARBITRATION PETITION NO. 300 OF 2014

Hindustan Petroleum Corporation Ltd. Petitioner

VERSUS

M/s. Nandi Cylinders Pvt. Ltd. Respondent

ALONGWITH

ARBITRATION PETITION NO. 313 OF 2014

Hindustan Petroleum Corporation Ltd. Petitioner

VERSUS

M/s. Hyderabad Cylinders Pvt. Ltd. Respondent

ALONGWITH

ARBITRATION PETITION NO. 981 OF 2014

Hindustan Petroleum Corporation Ltd. Petitioner

VERSUS

M/s. Sanghvi Cylinders Pvt. Ltd. Respondent

ALONGWITH

ARBITRATION PETITION NO. 63 OF 2015

Hindustan Petroleum Corporation Ltd. Petitioner

VERSUS

M/s. NCC Ltd. Respondent

Mr.Minoo Siodia, a/w. Mr.S.R.Page, Ms.Ashiya Shaikh, i/b. M/s.Rustamji & Ginwala for the Petitioner in ARBP/300/2014, ARBP/313/2014, ARBP/981/2014 and ARBP/63/2015.

Mr.Mahesh Chavan, i/b. Mr. Kedar Wagle for the Respondent in ARBP/63/2015.

ALONGWITH

ARBITRATION PETITION NO. 1650 OF 2014

**M/s. Jesmajo Industrial Fabrications
Karnataka Pvt. Ltd.**

..... Petitioner

VERSUS

Hindustan Petroleum Corporation Ltd. & Anr. Respondents

**ALONGWITH
ARBITRATION PETITION NO. 430 OF 2015**

NCC Limited

..... Petitioner

VERSUS

Hindustan Petroleum Corporation Ltd.

..... Respondent

**ALONGWITH
ARBITRATION PETITION NO. 508 OF 2015**

M/s.Karnataka Pressure Vessels Limited

..... Petitioner

VERSUS

**M/s.Hindustan Petroleum Corporation Ltd.
Through ITS DGM (LPG-OPNS) & Anr.**

..... Respondents

**ALONGWITH
ARBITRATION PETITION NO. 527 OF 2015**

M/s.Balaji Pressure Vessels Ltd.

..... Petitioner

VERSUS

**M/s.Hindustan Petroleum Corporation Ltd.
& Anr.**

..... Respondents

**ALONGWITH
ARBITRATION PETITION NO. 633 OF 2015**

M/s.Southern Cylinders Pvt. Ltd.

..... Petitioner

VERSUS

**M/s.Hindustan Petroleum Corporation Ltd.
Through ITS DGM (LPG OPNS) & Anr.**

..... Respondents

ALONGWITH

ARBITRATION PETITION NO. 425 OF 2016

M/s.Prashanth Cylinders Pvt. Ltd. Petitioner

VERSUS

**M/s.Hindustan Petroleum Corporation Ltd.
& Anr. Respondents**

**ALONGWITH
ARBITRATION PETITION NO. 510 OF 2016**

M/s.J.R.Fabricators Ltd. Petitioner

VERSUS

**M/s.Hindustan Petroleum Corporation
& Anr. Respondents**

**ALONGWITH
ARBITRATION PETITION NO. 541 OF 2016**

Super Industries Petitioner

VERSUS

**Hindustan Petroleum Corporation Ltd.
& Anr. Respondents**

**ALONGWITH
ARBITRATION PETITION NO. 546 OF 2016**

M/s.Sarthak Industries Ltd. Petitioner

VERSUS

**M/s.Hindustan Petroleum Corporation Ltd.
& Anr. Respondents**

**ALONGWITH
ARBITRATION PETITION NO. 589 OF 2016**

M/s.Teekay Metals Pvt. Ltd. Petitioner

VERSUS

**Hindustan Petroleum Corporation Ltd.
& Anr. Respondents**

**ALONGWITH
ARBITRATION PETITION NO. 1067 OF 2016**

M/s.ECP Industries Ltd.

..... Petitioner

VERSUS

**M/s.Hindustan Petroleum Corporation Ltd.
& Anr.**

..... Respondents

**ALONGWITH
COMM.ARBITRATION PETITION NO. 383 OF 2017**

**Metalfab Hightech Pvt.Ltd.
(Formerly known as Nagpur Fabriforge
Pvt. Ltd.)**

..... Petitioner

VERSUS

**Hindustan Petroleum Corporation Ltd.
& Anr.**

..... Respondents

Mr.Niranjan C. Parekh, a/w. Mr.Nirav J. Marjadi, i/b. M/s.Mansukhlal Hiralal & Co. for the Petitioners in ARBP/1650/2014, ARBP/508/2015, ARBP/527/2015, ARBP/633/2015, ARBP/425/2016, ARBP/510/2016, ARBP/541/2016, ARBP/546/2016, ARBP/589/2016, ARBP/1067/2016 and ARBP/383/2017.

Mr.Mahesh Chavan, i/b. Mr. Kedar Wagle for the Petitioner in ARBP/430/2015.

Mr.Minoo Siodia, a/w. Mr.S.R.Page, Ms.Ashiya Shaikh, i/b. M/s.Rustamji & Ginwala for the Respondent in ARBP/1650/2014, ARBP/430/2015, ARBP/508/2015, ARBP/527/2015, ARBP/633/2015, ARBP/425/2016, ARBP/510/2016, ARBP/541/2016, ARBP/546/2016, ARBP/589/2016, ARBP/1067/2016 and ARBP/383/2017.

CORAM : R.D. DHANUKA, J.

DATE : 22nd JULY, 2019

P.C.

The Arbitration Petition Nos. 300 of 2014, 313 of 2014, 981 of 2014 and 63 of 2015 are filed by Hindustan Petroleum Corporation Ltd. impugning the arbitral award rendered by the learned arbitrator holding that the price of Rs.645/- finalized by the Hindustan Petroleum Corporation Ltd. as per PWC report cannot be made applicable to the purchase orders as the same was not in line with the terms and conditions of the purchase orders. The learned arbitrator accordingly directed that all the amounts recovered by the Hindustan Petroleum Corporation Ltd. from the suppliers on account of applications of either Rs.645/- per cylinder as final price or the rate finalized in the new tender were not as per the terms of the purchase orders and thus shall refund all such amounts recovered from the suppliers within 45 days of the award.

2. The learned arbitrator also directed the petitioners to re-work out the final basic price of cylinder applicable in respect of both the purchase orders strictly in line with pricing clause terms of the purchase orders including the escalation/de-escalation clause and to calculate the amounts due to the suppliers or recoverable from suppliers and make a final settlement of the account and shall pay interest at the rate of 8% per annum on the final amount due and payable by the petitioner to the suppliers.

3. Insofar as the Arbitration Petition Nos. 1650 of 2014, 430 of 2015, 508 of 2015, 527 of 2015, 633 of 2015, 425 of 2016, 510 of

2016, 541 of 2016, 546 of 2016, 589 of 2016, 1067 of 2016 and 383 of 2017 are concerned, these arbitration petitions are filed under section 34 of the Arbitration and Conciliation Act, 1996 impugning various awards which are identical thereby rejecting the claims made by these petitioners who were suppliers of the gas cylinders to the Hindustan Petroleum Corporation Ltd. By consent of parties, all these petitions were heard together along with the petitions filed by Hindustan Petroleum Corporation Ltd. and are being disposed of by a common order.

4. There is no dispute that the facts in all these petitions are identical. The parties agree that this court need not give detail reasons.

5. In all these petitions which are filed by the Hindustan Petroleum Corporation Ltd., the learned arbitrator has rendered a finding that the application of the revised rate of Rs.645/- per cylinder as recommended by PWC and reviewed by Industry Task Force cannot be binding on the claimant in respect of the POs, as neither the same has been approved by MOPNG nor that it has been established to have been worked out in accordance with the New Pricing Formula providing for revision in prices of steel/WPI. In view of the above, respondent's act of implementing the PWC recommended price of Rs.645/- per cylinder as the Basic cylinder price w.e.f. 1st April, 1999 for supply of cylinders under the two POs is not as per the envisaged or agreed terms and conditions of the POs and hence not corrected.

6. In paragraph 7.1.1 to 7.1.4 of the arbitral award, the learned arbitrator held as under :-

7.1.1 The price for Rs.645/- finalized by respondent as per PWC report cannot be made applicable to both POs, as the same is not in line with terms and conditions of PO.

7.1.2 Price clause in Change PO 8/GM dated 27th March,2001 bringing in applicability of the rates to be finalized under the new tender for supplies made under PO dt. 27.4.2000 is void and the price finalized under the new tender cannot be made applicable to PO dt. 27.4.2000.

7.1.3 Accordingly, all the amounts recovered by Respondent from Claimant on account of application of either Rs.645/ cylinder as Final rates or the rate finalized in the new tender, are not as per the terms of the POs and hence Respondent shall refund all such amounts recovered to claimant within 60 days of the said Award.

7.1.4 Respondent shall re-work out the final basic price of cylinder applicable in respect of both the POs strictly in line with Pricing clause terms of the POs including the escalation/de-escalation clause, and accordingly calculate the amounts due to the Claimant or recoverable from Claimant and make a final settlement of the account within 60 days of the said Award.

7. Insofar as the Arbitration Petition No.1650 of 2014 and other connected petitions filed by the suppliers are concerned, the learned arbitrator held as under :-

16. parties had all along proceeded on the basis of the provisional prices fixed by the Corporation from time to time and, further, that the claimant having made the entire supply on the basis of these provisional prices, without any demur, and moreover, having in the contract conceded to the Corporation the right to determine the final price, the Respondent Corporation was within its rights to fix or revise the provisional prices of the cylinders, I, therefore, hold that both under the contract (as evidenced by the two Purchase Orders and the Change Orders) and as exemplified by the conduct of the parties, the Respondent Corporation was entitled to fix or revise the provisional price of the cylinders.

8. A bunch of appeals filed by some of the suppliers who were aggrieved by the order passed by the learned Single Judge of this court setting aside the arbitral award in identical matters had filed bunch of appeals before the Division Bench of this court. By a judgment dated 15th March, 2019 passed in Appeal No. 246 of 2011 and other connected matters in case of ***Lite Container (P) Ltd. vs. Hindustan Petroleum Corporation Limited and others*** this court rejected all the appeals filed by the suppliers impugning the orders passed by the learned Single Judge allowing the petitions filed by the Hindustan Petroleum Corporation Limited under section 34 of the Arbitration and

Conciliation Act, 1996, and setting aside various arbitral awards allowing the claims for refund of the amount collected by the Hindustan Petroleum Corporation Limited.

9. The Division Bench of this court in the said judgment considered the identical issues which are raised by the suppliers in this bunch of petitions and also by the Hindustan Petroleum Corporation Ltd. in the arbitration petitions referred to aforesaid. This court has categorically held that the price was provisional and the firm price was to be decided by Industry task force. After considering the purchase orders in that bunch of appeals and terms and conditions, the correspondence exchanged between the parties which are identical in these group of matters, the Division Bench held that though the price of cylinder was provisional, it could not be disputed that the price was proposed to be reviewed and the final price was to be determined based upon the decision of the industry task force. On 31st March, 2001 the Cylinder Manufacturers' Association was informed that pricing was under review. The contracting parties were put to notice that there was likely change in pricing. In response to the said communication from HPCL to the suppliers through the Manufacturers Association intimated that excess amount paid were to be recovered. The Manufacturers' Association confirmed and requested the HPCL to make recovery in a phased manner. This court rejected the submissions made by the suppliers' counsel that the cylinder manufacturers were taken by surprise.

10. In paragraph (36) of the judgment of the Division Bench, this

court rejected the request of the suppliers that the matter of price determination be referred to the Ministry and to direct the Ministry to fix the price on the ground that the fact that the bargain between the parties in those set of appeals did not provide for reference to the Ministry, unlike the group of matters pertaining to suppliers made to Indian Oil Corporation Ltd.

11. Mr. Siodia learned counsel appearing for the HPCL in these group of matters would submit that all these issues involved in these group of matters are concluded by the judgment of this court delivered by Division Bench of this court in case of ***Lite Container (P) Ltd.*** (supra).

12. Mr.Parekh, learned counsel for the suppliers in the aforesaid arbitration petitions on the other hand would submit that the price of the cylinders which was fixed as provisional could not have been varied by HPCL by issuing a circular unilaterally. In support of this submission, learned counsel fairly placed reliance on the judgment of Supreme Court dated 8th May, 2019 in case of ***Ssangyong Engineering & Construction Co. Ltd. vs. National Highways Authority of India*** in Civil Appeal No.4779 of 2019 and in particular paragraph 48.

13. Mr.Siodia, learned counsel for the petitioner distinguishes the judgment of the Hon'ble Supreme Court on the ground that in this case before the Hon'ble Supreme Court the price was already fixed in the contract which was unilaterally varied by the National Highways Authority of India and in that context, Hon'ble Supreme Court held that

the price between the parties could not be unilaterally varied by the National Highways Authority of India.

14. Insofar as grounds raised in all these petitions filed by the suppliers and the grounds raised by the Hindustan Petroleum Corporation Ltd. are concerned, the issue involved in these bunch of petitions are clearly covered by the judgment of Division Bench of this court in case of ***Lite Container (P) Ltd.*** (supra). The impugned awards which are subject matter of the petitions filed by the Hindustan Petroleum Corporation Ltd. are passed clearly in violation of principles laid down by the Division Bench of this court in case of ***Lite Container (P) Ltd.*** (supra).

15. Insofar as the awards rendered by the learned arbitrator which are impugned by the suppliers in various petitions referred to aforesaid are concerned, in my view, since the view taken by the learned arbitrator in those group of matters are in my view is contrary to the the view taken by the Division Bench of this court in case of ***Lite Container (P) Ltd.*** (supra) and thus deserve to be set aside. I am bound by the judgment of Division Bench of this court in case of ***Lite Container (P) Ltd.*** (supra).

16. Insofar as judgment in case of ***Ssangyong Engineering & Construction Co. Ltd.*** (supra) relied upon by the learned counsel appearing for the suppliers who are petitioner in some of the arbitration petitions are concerned, a perusal of the said judgment would clearly indicate that the respondents National Highways Authority of India in

that matter had unilaterally issued a circular thereby modifying the final terms of the contract entered into between the parties. In that context, Hon'ble Supreme Court held that by the circular the employer could not have unilaterally modified the terms of the contract.

17. However, in the facts of this case, it was common ground that the price of cylinder fixed by the HPCL was provisional price which was subject to the revision based on certain conditions. Final price was thereafter fixed by the HPCL after obtaining report from the Price Water Coopers and was finalized by the Industry Task Force. The final price was communicated to all the suppliers. The suppliers had acted upon the said final price and had agreed for adjustment to be made by HPCL in case of excess recovery however in phase manner. In my view, the judgment of the Hon'ble Supreme Court in case of ***Ssangyong Engineering & Construction Co. Ltd.*** (supra) thus would not advance the case of the suppliers and is clearly distinguishable in the facts of this case.

18. In my view, in all these matters the issues involved are already concluded by the judgment of Division Bench in case of of ***Lite Container (P) Ltd.*** (supra) against the suppliers and in favour of the HPCL.

19. Insofar as Arbitration Petition Nos. 63 of 2015 and 430 of 2015 are concerned, both the parties have impugned the same arbitral award. The learned arbitrator has rejected the claim made by the suppliers however the learned arbitrator has awarded the claim with regard to tax

and excise duty. I am of the view that the learned arbitrator could not have allowed these two claims in favour of the suppliers though had rightly rejected the other claims. Both these claims were contrary to the terms of the contract. Insofar as the petitions filed by the suppliers are concerned, the issues involved in these petitions are also already concluded by the Division Bench of this court in case of ***Lite Container (P) Ltd.*** (supra) against the suppliers and in favour of the HPCL.

20. I, therefore, pass the following order :-

(a) In Arbitration Petition Nos. 300 of 2014, 313 of 2014, 981 of 2014 and 63 of 2015, the impugned award dated 3rd October, 2013 are quashed and set aside. Arbitration Petition Nos. 300 of 2014, 313 of 2014, 981 of 2014 and 63 of 2015 are allowed.

(b) Arbitration Petition Nos. 1650 of 2014, 430 of 2015, 508 of 2015, 527 of 2015, 633 of 2015, 425 of 2016, 510 of 2016, 541 of 2016, 546 of 2016, 589 of 2016, 1067 of 2016 and 383 of 2017 are dismissed. The arbitral awards are upheld.

(c) No order as to costs.

[R.D.DHANUKA, J.]