

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION**

ARBITRATION PETITION NO.706 OF 2017

Union of India,
through Chief Electrical Distribution
Engineer, Western Railway

... Petitioner

Vs.

M/s Shreem Electric Limited

... Respondent

Mr. Indu Prakash a/w Ms. Bhagyashri Gawas I/by Mr. I.K. Tripathi for the
Petitioner.

Mr. Sameer Pandit a/w Ms. Sarrah Khambati i/by M/s Wadia Ghandy & Co.
for the Respondent.

CORAM : R.D. DHANUKA, J.
DATE : 16th JULY, 2018

P.C.:

1 By this petition filed under Section 34 of the Arbitration and Conciliation Act, 1996, the petitioner has impugned the arbitral award dated 21st April 2017 passed by the learned Arbitrator allowing the claim made by the respondent and rejecting the counter claims filed by the petitioner. By consent of the parties, the petition is heard finally at the stage of admission.

2 The petitioner has awarded the contract to the respondent-claimant for providing Dynamic VAR Compensation at Maksi and

Mohammed Kheda traction sub-station site on the terms and conditions recorded in the Letter of Acceptance dated 18th August 2005. There was substantial delay in execution of the work, as a result of which the contract period was extended by the petitioner. The dispute between the parties was referred to the Arbitral Tribunal. The respondent filed the Statement of Claim, whereas the petitioner filed counter-claim. The Arbitral Tribunal made an arbitral award allowing some of the claims made by the respondent-claimant and rejected the counter claim.

3 Mr. Tripathi, learned counsel for the petitioner tenders a Chart showing the claims awarded by the learned Arbitral Tribunal inclusive of interest. It is submitted by the learned counsel that though there was no claim made by the respondent for security deposit and performance bank guarantee, the learned Arbitrator directed the petitioner to pay Rs. 9,11,672/- towards refund of security deposit and Rs.18,23,352/- towards refund of performance bank guarantee in the arbitral award.

4 Learned counsel for the respondent on the other hand in so far as these two claims are concerned invited my attention to part of the arbitral award and submitted that his client had specifically made such

claims in the statement of claim and have been considered by the Arbitral Tribunal. The petitioner did not dispute that such security deposit was made by the respondent with the petitioner and also that the performance bank guarantee was submitted by the respondent.

5 Learned counsel for the respondent submits that the Arbitral Tribunal rendered findings of fact including the finding that there was gross delay by the petitioner in performing their part of obligation under the terms of contract. In my view, there is no substance in the argument of Mr. Tripathi, learned counsel for the petitioner that none of these two claims were made by the respondent. I am not inclined to interfere with the findings of fact rendered by the Arbitral Tribunal. However, in so far as the rate of interest awarded by the Arbitral Tribunal is concerned, in my view the interest @18% per annum awarded by the Tribunal is exorbitant and thus is reduced to 10% per annum.

6 In so far as Claim No. 11 is concerned, the Arbitral Tribunal has awarded a sum of Rs.15,00,000/-. Learned counsel for the respondent states that his client would not press for the claim of Rs.15,00,000/- awarded by the Arbitral Tribunal and has no objection if that part of the

award is set aside. Statement is accepted. Award in respect of Claim no. 11 in the sum of Rs.15,00,000/- is accordingly set aside.

7 In so far as Claim no. 12 is concerned, the learned counsel for the petitioner states that no such claim for interest was made by the respondent in statement of claim and in any event the interest could not have been awarded @ 18% per annum. In my view, there is no substance in this submission of the learned counsel for the petitioner that no such claim was made by the respondent. However, since the interest awarded @18% per annum is exorbitant, I reduce the claim of interest @ 10% per annum.

8 In so far as the claim for balance payment of risk cost of tender at Mohammed Kheda is concerned, the Arbitral Tribunal has rendered findings of fact against the petitioner about the gross delay and has rightly awarded the said amount. I am not inclined to interfere with the findings of fact rendered by the Arbitral Tribunal. However, since the interest @18% per annum is exorbitant, I reduce the rate of interest to 10% per annum.

9 In so far as the claim for cost of litigation is concerned, it is the case of the petitioner that though the amount claimed by the respondent was at Rs.5,00,000/-, the Arbitral Tribunal has awarded the sum of Rs.7,50,000/-. I have perused the records. Learned Arbitral Tribunal has recorded various reasons while awarding claim of Rs.7,50,000/-. However, since the claim made by the respondent was in the sum of Rs.5,00,000/-, learned counsel for the respondent states that the claim may be reduced to Rs.5,00,000/-. The statement is accepted. The claim no. 13 is accordingly reduced to Rs.5,00,000/-. No other submissions are advanced by the learned counsel appearing for the petitioner. I, therefore, pass following order :

ORDER

- (I) Award in respect of refund of security deposit and performance bank guarantee is upheld.
- (II) Claim No. 11 in respect of loss of business opportunities is set aside.
- (III) Claim No. 12, which is for payment of interest is reduced to 10%.
- (IV) Claim in respect of balance payment Risk cost tender at Mohammed Kheda in the sum of Rs.85,71,947/- is upheld.

- (V) Cost of litigation awarded under Claim No.13 is reduced to Rs.5,00,000/-.
- (VI) Rate of interest awarded at 18% per annum is reduced to 10% per annum.
- (VII) Award is partly set aside to the aforesaid extent.
- (VIII) Arbitration Petition is partly made absolute.
- (IX) No order as to costs.

(R.D. DHANUKA, J.)