

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 22.07.2019

CORAM

THE HONOURABLE MR. JUSTICE N. SATHISH KUMAR

Original Petition No.107 of 2008

M/s.Bharat Heavy Electricals Limited,
Having its Office at
Power Sector-Southern Region,
474, Anna Salai, Nandanam,
Chennai-600 035.
Represented by its Additional General Manager
T.K.Kasinathan

... Petitioner

Vs.

1. M/s.Delkon (India) Private Ltd.,
Rep.by its Managing Director,
Mr.G.S.Singhal,
Having its Registered Office at
240, 2nd Floor,
25-A, Park Street,
Kolkatta-700 016.

2. Justice A.Ramamurthy (Retd)
Sole Arbitrator,
Plot No.9, Third Main Road,
Mogappair, West Garden,
Chennai-600 037.

... Respondents

Petition filed under Section 34 (1) of the Arbitration and Conciliation Act, 1996, praying to set aside the Order dated 30.01.2007 and subsequently modified on 25.04.2007 passed by the second Respondent.

For Petitioner : Mr.M.P.Senthil Kumar
For Respondents : Mr.S.S.Rajesh
for Mr.S.K.Ragunathan

ORDER

This petition has been filed challenging the award passed by the learned Arbitrator dated 30.01.2007 and subsequently modified on 25.04.2007 directing the petitioner to pay a sum of Rs.8,74,686/- under claim No.1 and a sum of Rs.4,20,000/- under claim No.2 with interest at 18% per annum for these amounts from 04.03.1997 till date of payment.

2. The claimant is engaged in the business of Engineering contractor for testing and commissioning of boilers and other auxiliaries among other things including particularly Electro Static Precipitators. As dispute arose between them, the matter is referred to arbitration and the respondents also filed their claim petition.

3. The learned Arbitrator has allowed the claim Nos.1 and 2 vide award dated 30.01.2007 and the claim No.3 of the respondent and the counter claim raised by the petitioner herein were rejected. There were some clerical errors, which were rectified in the modified award dated 25.04.2007. The said award has been challenged in this petition.

4. Subsequent to the filing of the claim petition, there was a meeting between the petitioner and the first respondent and the minutes dated 17.09.1999 have been reached between the parties. In-respect of the claim Nos. 11, 12, 13 and the respondent has agreed to pay the amount to the tune of Rs.4,74,462/-, Rs.34,600/- and Rs.68,291.50. Therefore, the main contention of the petitioner is that having agreed to pay the amount in the minutes signed by the parties, the first respondent has to pay the amount. However, the learned counsel for the first respondent contended that though minutes have been reached between the parties, It has not been concluded.

5. The minutes have been signed by both the parties. It is subsequent to the reference. Though Item Nos. 1 to 10, 14 and 15 have not been agreed , but, for Item Nos.11,12 and 13, the parties have fully agreed. But, now it is claimed that the first respondent has not agreed for the above amount.

6. When parties have agreed to certain terms, they ought to have taken note by the Arbitrator the same certainly amounts to illegality. When the parties themselves agreed to certain claims and entered in the written minutes, the Arbitrator ought to have taken note of the same. The amount agreed namely Rs.4,74,462/-, Rs.34,600/- and Rs.68,291.50/- totalling to

Rs.5,77,353.50 shall be set off and the remaining amount shall carry interest at the rate of 18% p.a from 04.03.1997 till the date of realization.

7. Further, the counter claim has been dismissed by the Arbitrator on the ground that there is no positive evidence in support of the counter claim.

8. Accordingly, the sum of Rs.5,77,354/- shall be given credit in the award amount of Rs.12,94,686/- and the remaining amount of Rs.7,17,332/- shall carry interest at 18% from 04.03.1997 till the date of realization.

9. With the above modification, the original petition is partly allowed.

No costs.

22.07.2019

Index:Yes/No
Internet:Yes/No
vv

To

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N.SATHISH KUMAR, J.

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