In the High Court for the States of Punjab and Haryana at Chandigarh

CR-8527-2016 (O&M)
Date of Decision: May 28, 2019

The Chairman and DGOF, Ordnance Factory Board, Kolkata and another

... Petitioners

Versus

Cable Tech Machines and another

... Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. Alok Kumar Jain, Advocate,
for the petitioners.

Mr. A.P. Bhandari, Advocate,
for respondent No.1.

***Amit Rawal, J.* (Oral)**

Present revision petition is directed against the order dated 21.10.2016 whereby the objection of the petitioners-judgment debtors against the execution of the award dated 16.01.2012, has been dismissed.

Succinctly, the facts which arise for consideration in the present revision petition, the interpretation of the arbitration award aforementioned. As per the supply order issued by the petitioner, the respondent-claimant had manufactured the machine including the spare parts to be supplied to the petitioner-judgment debtor. Certain disputes arose. Since the agreement contained resolution of dispute through Arbitration, the matter was referred to the Arbitrator. During the pendency of the arbitration proceedings, the Arbitrator sought the inspection of the machine through an expert and costs imposed in lieu thereof was received. After receipt, assessed the value of the parts owing to the fact that the claimant-respondent had already manufactured the machine valued at Rs.1,37,00,000/- along with interest @ 9% per annum from 01.03.2009.

Mr. Alok Kumar Jain, learned counsel, appearing on behalf of the petitioners, submitted that against Issue no.1, the paymentof Rs. 1,37,00,000/- was not simpliciter as has been interpreted by the trial Court by holding it to be against the decree as the machine and its parts lying in the premises of the respondent-claimant. No efforts of return was made and therefore, the payment could not have been made, thus, the impugned order is not sustainable in the eyes of law.

Per contra, Mr. A.P. Bhandari, learned counsel appearing on behalf of respondent no.1-claimant submitted that award was passed in the year 2012. Efforts have been made and his bona fide intention is reflected in offering the amount. The interest factor is incurring day by day. The instrumentality of the State should not be indulging into the litigation, rather should endeavour to save the state exchequer. His client is ready to return the machine particularly when Mr. Alok Kumar Jain, learned counsel, during the course of hearing, submitted that if the petitioner is willing to pay the transportation charges and urges for dismissal of the revision petition.

I have heard learned counsel for the parties and appraised the paper-book.

It could be in the fitness of thing to refer the relevant portion of the award under Issue No.1 which is in dispute as parties were *ad idem* owing to the consensus. Relevant portion of the award reads as under:-

> *"As it has been proved that the termination of the contract was illegal, the issue no.1 has been decided in favour of the claimant for the value of the machine parts which are ready in the present condition as determined hereunder:-*

a. As per the monitoring team report signed by both the parties the cost of the investment made by the claimant on procurement of material and equipment including outsourcing as on 08.10.08 was approx. Rs. 105 lakhs (Excluding taxes). It is also mentioned that total investment yet to happen further was Rs.32.00 lakhs approx. excluding taxes and overall work completed was 65%.

b. The machine was found ready in parts as per the inspection report carried out by the Sole Arbitrator in the presence of both the parties on 24.03.2011. The main parts of the machine as per the supply order specification were found complete in finished condition duly assembled as individual parts, fully painted however functionality could not be checked as they need to be assembled (i.e. individual units mentioned above) and tested with power after aligning in one line during inspection and trial as required by supply order terms and conditions. It was also noted in the report that some of the parts like drives, contactor, relay, PLC, motors etc. which were mentioned in the inspection report dated 08.10.2008 as under procurement are now found fully fitted on the machine. It is pertinent to mention here that the cost of above parts after complete assembly as a machine after acceptance in inspection and trial has the basic value of Rs.1,52,50,000/- + Rs.2,00,000/- as basic cost of spare parts as per list at Annexure B.

c. However as the machine is ready only in parts (all as per supply order specification including spare parts) and for completion of the above parts the total investment made by the claimant as assessed by the monitoring team was Rs. 105 lakhs

+ Rs. 32.00 lakhs which was yet to be incurred as on 08.10.2008.

d. As the remaining parts were also found ready during inspection by the Sold Arbitrator, the Sold Arbitrator hereby accepts the total value of investment made by the claimant in getting ready all the parts in the present condition as Rs.105 lakhs + Rs.32.00 lakhs i.e. Rs.137 lakhs + taxes.

e. In view of above, the claimant is entitled for the cost of machine parts ready whose value has been assessed as Rs.137 lakhs based on monitoring team report in the present condition against delivery at firms works. The above cost as assessed and payable to the claimant on delivery of the machine parts including spare parts as per detailed specification Annexure A and B enclosed with the supply order in the present condition is without packing charges and applicable taxes and duties which will be payable as extra as applicable at the time of delivery at firms works. The claimant shall be also entitled to interest on the amount Rs. 137 lakhs at the rate of simple interest of 9% p.a. From 01.03.2009 as the machine was finally ready for inspection as intimated by the claimant by letter dated 05.02.2009 (P-20) and as DP extension was requested upto 28.02.2009."

The pith and substance of the afore-mentioned observation, there is no manner of doubt, the claimant has been held entitled to damages in terms of money for the cost of machine parts ready by assessing value of Rs. 137 lakhs which was placed on the basis of the report of the monitoring team. The supply order dated 03.04.2008 contained the following expression which reads as under:-

> *"This is an acceptance of your quotation No. and date stated below for supply & commissioning of 01 No. Anti Twist Armouring cum laying machine along with spares, as per detailed specifications at Annexure `A' & list of spares at Annexure `B' to this Supply Order (wherever `the firm', 'the contractor' or `the supplier' is mentioned in this Supply Order hereinafter, it may please be read as "M/s Cable Tech Machines, Faridabad)."*

The extraction of the supply order which is now being interpreted in different manner as there is no order of delivery of any machine or spare parts. Be that as it may, Mr. A.P. Bhandari, learned counsel for respondent no.1- claimant has already offered to return the machine and spare parts which the Cable Company is claimed as notified in the inspection report, but it cannot be stated that the petitioners-judgment debtors have made any strenuous efforts in offering the amount in order to curtail recurring interest to protect the interest of the state exchequer. The officer at the helm of affair was not sensitive to the issue as the question of return of machinery could have always be kept open without prejudice the right of offer.

There is another aspect of the matter against the dismissal of the objections, the petitioners have already filed FAO No. 7320 of 2015 which has been dismissed by this Court vide order dated 10.05.2019. The operative portion of the order dated 10.05.2019 reads as under:-

> *"9. During the course of proceedings before this court, on 20.03.2019 an offer had been made that the appellants are ready to still take the machinery subject to the terms that payment would be made of the 90% of the basic value plus 100% taxes and duties after pre-delivery inspection and receipt of machine in good*

> *working condition at the site at Chandigarh and balance 10% of basic value would be paid after 30 days of the successful commissioning of the machinery against the submission of performance security deposit equal to 5% of the value of the contract. This offer had been rejected by learned counsel appearing on behalf of the respondent No.1, who submitted that in case, the appellants herein wanted to take the machine 'as is where is' basis, he was agreeable to the same. Since this offer of 'as is where is' basis was not accepted, this court proceeded to hear the arguments on merits."*

Despite that, no efforts have been made by the petitioners.

In view of above, I do not find any illegality or perversity in the impugned order. Since the claimant-respondent no.1 had already given an offer, present revision petition is dismissed with costs of Rs. 1,00,000/- (Rs. One lakh) to be paid to the claimant-respondent no.1 by the officer responsible for filing the petition. In case, non-failure of costs, liberty is granted to claimant-respondent no.1 to seek implementation of order in accordance with law. It is made clear that the afore-mentioned finding only pertains to Issue No.1 though the award is on the higher amount on different other heads.

May 28, 2019 **(Amit Rawal)**
vkd **Judge**

Whether reasoned / speaking : Yes / No

Whether reportable : Yes / No