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

+ **FAO(OS) (COMM) 66/2019**

NATIONAL RESEARCH DEVELOPMENT CORPORATION

..... Appellant

Through: Mr. J.M.Kalia & Ms. Bhawana Garg,
Advocates

versus

HINDUSTAN LATEX LTD & ANR

..... Respondents

Through: None

CORAM:

JUSTICE S.MURALIDHAR

JUSTICE I.S.MEHTA

ORDER

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03.04.2019

CM Appl.Nos. 15435-436/2019 (Exemption)

1. Exemption allowed, subject to all just exceptions.

CM Appl.No. 15434/2019 (Delay)

2. For the reasons stated in the application, the delay of 32 days in filing the appeal is condoned and the application is disposed of.

FAO (OS) (COMM) 66/2019

3. The present appeal is directed against the judgment dated 5th December, 2018 passed by the learned Single Judge allowing the Respondents OMP No. 592/2011 and setting aside the Award dated 23rd April, 2011 passed by the sole Arbitrator whereby the Appellant herein was awarded a sum of Rs. 11,83,530/- and costs of Rs. 15,000/-.

4. The reasons that weighed with the learned Single Judge to set aside the Award, which was essentially dealing with the claim by the present Appellant for interest arising from a Technological Transfer Licence Agreement entered into by the Appellant with the Respondent were as under:

i) The arbitrator held the last effective hearing in the arbitration proceedings on 26th August, 2009. However, the Award was passed almost almost 20 months later i.e. 23rd April, 2011. Following the judgment of this Court in ***Harji Engineering Works Pvt. Ltd. v. Bharat Heavy Electricals Limited 2008 DLT (153) 489*** the learned Single Judge was of the view that this delay was unreasonable;

ii) A perusal of the award showed that the learned Arbitrator had made some fundamental errors. Although Article 25 of the Limitation Act was referred to and relied upon by counsel for the Respondent herein, the learned Arbitrator extracted Article 26 of the Limitation Act which had no application;

iii) There was no discussion as to how the limitation period was calculated and in respect of which instalments. This was with reference to a chart placed by the present Appellant before the learned Arbitrator claiming interest for various periods arising from the delay in payments of royalty amounts to the Appellant by the Respondent.

iv) The Arbitrator gave no reasons for the arriving at the figure of Rs.

11,83,530/-. There was no calculation set out in the impugned Award.

5. Having heard learned counsel for the Appellant, the Court is not persuaded to interfere with the impugned judgment of the learned Single Judge. Indeed the errors pointed out by the learned Single Judge are fundamental and vitiate the impugned Award. Interestingly, in the table set out in the impugned order of the learned Single Judge the total interest payments claimed by the present Appellant worked out to Rs. 11,59,884/-. It is a mystery how the learned Arbitrator arrived at sum of Rs. 11,83,530/-. The Court further notes that this crucial figure in the impugned Award has been corrected by hand in two places by the learned Arbitrator without even explaining how he arrived at this calculation.

6. The Court concurs with the learned Single Judge that since there was a delay of 20 months in delivering the Award and since the basic provisions of law were wrongly quoted by the Arbitrator and discussion with respect to interest was found lacking, the Award was not legally sustainable. The learned Single Judge correctly held that while dealing with the validity of an Award all the relevant factors are to be kept in view.

7. Learned counsel for the Appellant argued that the mentioning of the wrong provision of the Limitation Act in the impugned award was a mere ‘typographical error’. This Court is unable to agree with this contention. The plea of limitation having been raised by the Respondent, was central to the determination of its claim and an error of this nature vitiates the entire Award.

8. For the aforementioned reasons, the Court finds no ground to interfere with the impugned Award of the learned Single Judge.

9. Learned counsel for the Appellant submitted that the Appellant would be disadvantaged in having to go for a fresh arbitration. His attention has been drawn to Section 43(4) of the Arbitration and Conciliation Act, 1996 which accounts for the period spent in the previous arbitration proceedings resulting in the setting aside of the Award.

10. The appeal is accordingly dismissed.

S. MURALIDHAR, J.

I.S. MEHTA, J.

APRIL 03, 2019

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