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

Date of Decision: 11th July, 2019

\+ **O.M.P. 1616/2014**

VISHNU AGGARWAL ..... Petitioner

Through: Dr. Kedar Nath Tripathy, Advocate (M: 8368263016).

versus

HINDUSTAN PETROLEUM CORPORATION LTD ..... Respondent

Through: Mr. Rikesh Singh, Advocate (M: 9999797898).

CORAM:
JUSTICE PRATHIBA M. SINGH

<u>Prathiba M. Singh, J.</u> (Oral)

1. The present petition under Section 34 of the Arbitration and Conciliation Act, 1996 has been filed challenging the award dated 5th September, 2014 passed by the learned Sole Arbitrator. The Respondent, Hindustan Petroleum Corporation Limited *(hereinafter, 'HPCL'),* had issued a tender on 12th August, 2009 and awarded a letter of intent on 25th September, 2009 to one M/s. Space Furniture Systems, which is a sole proprietary concern of Mr. Vishnu Aggarwal *(hereinafter, 'Contractor').* The Contractor was to execute interior works in the office of HPCL at HPCL Exploration and Production Department, third floor, UCO Bank Building, New Delhi-110001. The contract which was awarded on 25th September, 2009 was suspended on 7th October, 2010 leading to disputes between the parties.

2. HPCL had appointed a Sole Arbitrator to adjudicate the disputes who has rendered the impugned award.

3. The submission of ld. Counsel for the Contractor is that the Arbitrator has not given any specific findings in respect of any of the claims, the amounts have also not been awarded and the operative portion of the award is very vague. He therefore submits that the award is unreasoned and is liable to be set aside. Ld. Counsel for the HPCL submits that HPCL had also raised various counter-claims which have been allowed in his favour and, accordingly, no money is payable to the Contractor.

4. A perusal of the discussion by the ld. Arbitrator in the impugned award shows that some of the claims of the Contractor have, in fact, been considered and allowed by the Arbitrator.

5. Claim No. 1 was towards unpaid amounts of the RA bills (1 to 9) wherein the Contractor alleged that there was a short payment of Rs. 1,08,70,299/-. In respect of this claim, the Arbitrator observes as under:-

> *"During the proceedings it, was informed by Claimant that they submitted RA bill no. 9 to the mail section of respondent instead of submitting to Respondent Project Engineer because Respondent was not ready to accept the bill however no such evidence was produced by the claimant. <u>In light of the pending RA Bill Respondent is advised to review/certify the bill no. 9 of the Claimant and after certification due amount to Claimant should be worked out</u>.*
> *<u>However, payment if any to the claimant should be released after adjusting counter claim amount of Respondent as mentioned in point no. 20 of award</u>.*
> *Hence, Claim no. i is decided in favour of Claimant and against Respondent to the extent mentioned above."*

6. A perusal of the above shows that the ld. Arbitrator did not decide as to what amount was payable under RA bill no. 9 and if so, how it is to be

adjusted against HPCL's counter-claim. The above finding of the Arbitrator also does not fix any timeline for HPCL to review/certify RA bill no 9. Thus, the findings are extremely vague and ambiguous without any amounts being specified and without any timeline being given for compliance.

7. As regards Claim No. 2, the Arbitrator has held that once RA bill no. 9 amount is worked out, since the bill has to be paid within 90 days, if there is more than 90 days delay in working out payment of RA bill no. 9, then 13.6% per annum simple interest would be attracted.

8. Claim Nos. 3, 4, 5 and 6 are denied.

9. In so far as Claim No. 7, which was refund of security deposit and refund of EMD is concerned, the Arbitrator held as under:-

> *"Security Deposit and EMD should be refunded to Claimant. However, payment should be released after adjusting counter claim amount of Respondent as mentioned in point no. 20 of award. Hence, this claim is decided in favour of Claimant to the extent mentioned above."*

10. When a question was put to ld. counsel for HPCL if any amount was repaid to the Contractor, he submits that the same has been adjusted towards the counter-claim but no details or particulars are forthcoming.

11. Claim No.8 is denied.

12. Claim No.9, related to loss of opportunity of business for losing various tenders, has been computed by the Contractor as Rs. 467.50 lakhs. The Arbitrator does not give any reason for the rejection of the claim, the only finding of the Arbitrator is as under:-

> *"This claim is denied and decided in favour of respondent because claim submitted by Claimant is not in line with PO terms & Conditions."*

13. Claim No. 10 was a claim for Rs. 2 crores for wrongful termination of contract which was rejected.

14. Claim No. 11 was for Rs. 63,60,000 towards discount offered to HPCL as a goodwill gesture. The same was rejected on the ground that no discount was ever offered to HPCL.

15. Claim No. 12 was a loss of profit claim, the same has been denied with the following reasons:-

> *"This claim is denied and decided in favour of respondent because claim submitted by Claimant is not in line with PO terms & Conditions. Moreover, Respondent gave enough opportunities to Claimant to improve the job progress and complete the job as per PO terms and conditions."*

16. Claim Nos. 13 to 17 were towards legal expenses, arbitration expenses and other expenses, all of which have either been denied or no order has been passed with respect to the said claims.

17. Claim No. 18 was towards mental agony which has been denied.

18. Claim No. 19 was for idle machinery and labour which has been rejected.

19. Claim No. 20 was towards advances paid by the Contractor to various vendors which is denied.

20. Claim No 21 was towards wastage of material. This claim has been awarded in favour of the Claimant but the same is to be paid only after adjusting the amount granted to HPCL in the counter-claim as under:-

> *"Respondent made changes during job execution and even though Claimant has not provided break up of this amount, <u>this claim decided in favour of Claimant.</u> However, <u>payment if any should be released after</u>*

> *adjusting counter claim amount as mentioned in point no. 20 of award."*

21. Claim No. 22 which related to dismantled material has been denied.

22. Claim No. 23 was towards shifting of HPCL materials which has been denied.

23. Claim No. 24 was towards ill health which has been denied.

24. Claim No 25 was towards money borrowed on interest, which has been denied.

25. Claim No. 26 was towards other expenses, which has been denied.

26. Claim No. 27 was towards charges for clearing the site, which has been denied.

27. Claim No. 28 was towards adverse effect on other projects, which has been denied.

28. A perusal of the claims above shows that a large number of claims are overlapping. However, the Arbitrator was bound to consider and determine the amount payable under RA bill no. 9 which was not done. The other claim which the Arbitrator had to consider and give findings on was in respect of Claim no. 12 which was the loss of profits claim. Since there are no reasons for denying these claims, the award in respect of claims 9 and 12 is set aside.

29. In so far as the counter-claims are concerned, the ld. Arbitrator has simply held as under:-

> *"Matter was reviewed as per PO terms and conditions and after review it is found that Respondent got job completed at the risk and cost of Claimant after PO placed on Claimant was terminated after giving ample opportunity and time to claimant to complete the*

tender work. This claim is decided in favour of respondent to the extent mentioned below:

1) As per PO terms and conditions schedule of rates of the contract will be applicable for variations upto plus or minus 25% of the contract value. If claim is not in line with this clause of purchase order respondent is advised to rework counter claim.

Moreover, Respondent to consider only those items which were part of original PO placed on M/s Space for risk and cost. No new item should be considered.

2. The revised amount to be deducted from the amount due to Claimant and if due amount is not sufficient money should be recovered from the Security Deposit and EMD because claimant did not complete the job and Respondent got job completed through third party at the risk and cost of Claimant.

3) Interest on above amount is denied."

30. A perusal of the manner in which the counter-claim has been allowed shows that while giving a finding in favour of HPCL that HPCL got the job completed at the risk and cost of the Contractor, the Arbitrator has directed that the counter-claim would have to be re-worked by HPCL. Therefore, no amount, in effect, has been awarded in favour of HPCL also. The reasons are absolutely vague and ambiguous and almost incomprehensible. There is no clarity as to in what manner the counter claim is to be worked out, how the amounts awarded to the contractor are to be adjusted, what is the amount payable under RA Bill no.9 etc., Awards have to not only be reasoned but have to be specific and amounts ought to be determined. By passing an award that the parties are to again re-work the amounts leaves the award in the realm of uncertainty. Arbitral awards are meant to give finality to

disputes – failing which the process will be totally inefficient and will defeat the purpose. Accordingly, the award in respect of the counter-claim is also set aside.

31. The question whether termination was lawful or not is to be determined. Thus, Claims 9, 10 and 12 of the Contactor and the counterclaim of HPCL are remanded for reconsideration to Justice G.P. Mittal (Retd.) who will decide the claims remanded on the basis of the pleadings and evidence on record. On the basis of the decision in the counter claim the Ld. Arbitrator would also determine whether the security deposit directed to be refunded under Claim no.7 is to be agreed to or rejected. The amount to be paid under Claim No.21 shall also be determined. The amount of interest to be awarded shall also be determined by the Ld. Arbitrator. The Arbitration in respect of only these claims shall be concluded within a period of six months. The remaining award is upheld. The ld. Arbitrator shall be paid a sum of Rs. 2,00,000/- lump sum which shall be equally shared by both the parties.

32. The original arbitral record be sent to the ld. Arbitrator along with a copy of the present order. Parties would make submissions before the ld. Arbitrator on the basis of the existing record itself.

33. The OMP is disposed of.

PRATHIBA M. SINGH
JUDGE

JULY 11, 2019
MR