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

+ O.M.P. (COMM) 344/2016

MMTC LTD

..... Petitioner

Through: Mr.Ravi Gupta, Mr.Akhil Sachar,
Ms.Sunanda Tulayan, Mr.Japneet
Singh Chhabra & Mr.Sachin Jain,
Advocates with Mr.Sachin Singh,
Sr.Manager (Law)

versus

GIAN GUPTA

..... Respondent

Through: Mr.Ajay Kohli & Ms.Astha Garg,
Advocates

CORAM:

HON'BLE MR. JUSTICE PRATEEK JALAN

ORDER

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26.02.2020

1. The challenge in the present petition, under Section 34 of the Arbitration & Conciliation Act, 1996 [hereinafter, "the Act"], is to an award dated 20.12.2013, passed by a three member Arbitral Tribunal. The disputes between the parties in the present proceedings arise out of a contract dated 17.11.1995, by which the petitioner-MMTC Ltd., awarded a tender to the respondent for supply of rice.
2. The principal argument of Mr Ravi Gupta, learned Senior Counsel for the petitioner, is that the award is vitiated by inordinate delay in its pronouncement.
3. The relevant facts are not in dispute. Hearing was concluded before the Arbitral Tribunal on 08.12.2010, and the award was reserved. Written submissions were to be filed by 10.01.2011. By a communication dated 23.09.2011, the parties were directed to appear before the Arbitral

circumstances of each case. In the present case, there is little explanation for the delay of six years. The grounds cited in the last two paragraphs of the majority award (extracted above) do not justify the delay. The award was ultimately published on the stamp paper purchased 11 months prior and could have been pronounced much earlier.

17. I am also drawn to this conclusion on the fact of this case by reason of the infructuous clarificatory hearing. If the Tribunal had scheduled hearings for clarification, it must be assumed that there was some issue on which it required further hearing. The fact that the award was pronounced without clarifications in fact being obtained leaves a doubt in the mind about the procedure adopted. The inevitable conclusion is that the award was pronounced without hearings being conducted to the satisfaction of the Tribunal itself. The Act, in Section 18 vests considerable discretion to the Tribunal in determining its own procedure but subject to each party being given “a full opportunity to present his case”. If the Tribunal called for clarifications but ultimately pronounced the award without giving an opportunity to parties to clarify, the requirements of Section 18 cannot be said to have been fulfilled. As in Harji Engineering (paragraph 21), I am of the view that such an award is contrary to the principles of fair play and justice.

xxxx xxxx xxxx”

6. The operative order in that case was as follows:

“xxxx xxxx xxxx

19. O.M.P.(COMM)355/2016 is therefore allowed, and the impugned award dated 20.12.2013 is set aside. Following paragraph 15 of BWL Ltd., the proceedings will be conducted before a new Arbitral Tribunal with reference to the existing pleadings and evidence. The parties are directed to nominate one arbitrator each within four weeks from the date of this judgment, and the arbitrators so appointed will appoint the third arbitrator in terms of Section 11 of the Act. The newly constituted Tribunal will hear arguments on the existing pleadings and evidence, and pronounce the award preferably within six months of its constitution.

xxxx xxxx xxxx”

7. Mr. Ravi Gupta and Mr. Ajay Kohli, learned counsel for the respondent, submit that the present petition may also be disposed of with a similar order.

8. In view of the aforesaid, the present petition is allowed, and the impugned award dated 20.12.2013 is set aside. In terms of paragraph 15 of the order of the Division Bench in of *BWL Limited vs. Union of India 2012 SCC OnLine Del 5873* [FAO(OS) 398/2012, decided on 26.11.2012], proceedings will be conducted before a new Arbitral Tribunal with reference to the existing pleadings and evidence. The parties are directed to nominate one arbitrator each within four weeks from the date of this judgment, and the arbitrators so appointed will appoint the third arbitrator in terms of Section 11 of the Act. The newly constituted Arbitral Tribunal will hear arguments on the existing pleadings and evidence, and pronounce the award preferably within six months of its constitution.

9. Upon the constitution of the Arbitral Tribunal, learned counsel for the petitioner herein will inform the Registry and the Registry will hand over the arbitral record to him, to be placed before the newly constituted Arbitral Tribunal.

10. The petition is disposed of in these terms.

PRATEEK JALAN, J

FEBRUARY 26, 2020

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