

\$~8

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

Date of Decision: 11.05.2021

+ **O.M.P. (COMM) 60/2021 & I.A. 2062/2021 (for stay)**

M/S BRIJ SYSTEMS LIMITED

..... Petitioner

Through: Mr. Surjendu Sankar Das, Ms. Annie Mittal and Mr. Anirveda Sharma, Advocates.

versus

M/S SATSPACE TEL PVT. LTD.

..... Respondent

Through: Ms. Reena Jain Malhotra, Advocate with Mr. Vineet Malhotra, Advocate.

CORAM:

HON'BLE MR. JUSTICE SANJEEV NARULA

JUDGMENT

[VIA VIDEO CONFERENCING]

SANJEEV NARULA, J. (Oral):

1. The present petition under Section 34 of the Arbitration and Conciliation Act, 1996 [*hereinafter 'the Act'*] has been filed seeking setting aside of the Arbitral Award dated 16th October, 2020 [*hereinafter 'impugned award'*], whereby the learned Sole Arbitrator has allowed the claims of STPL (being the Claimant therein) and disallowed the counter-claims of BSL.

BRIEF FACTS:

2. The facts giving rise to the present petition are summarized as follows:

The Contract:

- 2.1. In 2015, BSL was awarded a tender floated by the Directorate of System Applications, Directorate General of Signals, General Staff Branch, Integrated Head Quarter of Ministry of Defence (Army), New Delhi [*hereinafter* ‘**DSA**’] for annual maintenance of LVSAT Ph-II terminals (satellite equipment).
- 2.2. BSL entered into an Annual Maintenance Contract dated 21st December, 2015 [*hereinafter*, ‘**AMC**’] (notarized on 8th June, 2016) with STPL, which was engaged in the work of repair of satellite communications, for providing maintenance services to DSA for the LVSAT equipment throughout India, as mentioned in Appendix A of the AMC. Thereunder, BSL was to make payments amounting to Rs. 5,20,00,000/- over a period of two years.

The Dispute:

- 2.3. STPL contends that they have duly provided the maintenance services to BSL in terms of the AMC, yet, they have failed to receive payment toward their invoices detailed hereinafter. The payment was to be made in advance on quarterly basis, in terms of clause 5.2 of the AMC. BSL did not adhere to said payment terms, and despite several communications, failed to release the payment. On 6th July, 2018, STPL raised a partial proforma invoice for the period of 01st January, 2018 to 30th June, 2018. BSL paid Rs. 50 lakhs and also issued a post-dated cheque (‘PDC’) dated 5th August, 2018 for Rs. 90,00,000/-

towards their admitted liability. Later, STPL issued another partial proforma invoice dated 01st August, 2018 for Rs. 94,14,844/-. Subsequently, the PDC was dishonoured on presentation.

- 2.4. STPL also contends that it received an email from BSL stating that it has received a payment of Rs. 1,99,21,970/- from DSA for the services rendered by STPL under the AMC, and also confirmed that they would make the payment to STPL against the same. However, this promise was never fulfilled. The PDC referred above, on the request and assurance of BSL, was presented again on 28th September, 2018, but was again returned unpaid, this time for the reason “payment stopped by drawer”.
- 2.5. Thereafter, STPL issued a legal notice dated 8th October, 2018 calling upon BSL to make payment of Rs. 90,00,000/-. BSL addressed a reply to the notice on 11th November, 2018 whereby all the claims made by STPL were refuted vehemently. Despite having received the payment from DSA, BSL failed to make the payment. Their conduct makes it evident that they have no intention to make the payment of admitted liability. In this backdrop, STPL invoked arbitration, and inter-alia, sought payment of its outstanding dues.
- 2.6. BSL controverts the above claims, alleging that STPL has failed to abide by the terms of AMC and defaulted in service. The work done by the STPL was not upto the standard accepted by DSA. STPL’s services have not been satisfactory, and due to their inefficiency, DSC has imposed liquid damages upon BSL. Although clause 5.2 of the AMC provides for the payment to be made in advance, but the parties mutually entered into an oral understanding that BSL will make

payment to STPL only when it receives the same from the end user (i.e. DSA). It was further claimed that STPL confirmed the above understanding vide letter dated 03rd February, 2018.

2.7. The AMC concluded in June 2018, and thereafter BSL sent a letter dated 8th September, 2018, intimating STPL of its failure to rectify faulty equipment, specifying a list of faulty links and spares that needed to be repaired and returned to DSA, and informing STPL that the final payment would be released only after written acknowledgement was received from DSA. STPL acknowledged the receipt of the same *vide* email dated 25th September, 2018, but no action was taken by it. On this account DSA delayed the final payment.

2.8. As regards, the payments made to BSL, it was contended that the same do not amount to an admission of liability. The PDC dated 05th August, 2018 was issued as a security, as per standard business practice, and was to be returned on its expiry, to be replaced with a fresh one.

Arbitration:

2.9. In this backdrop, STPL invoked arbitration by way of a letter dated 22nd December, 2018. Thereafter, on a petition filed under section 11 off the Act, this court appointed a Sole Arbitrator to adjudicate the disputes between the parties.¹ The said Arbitrator sought to recuse, and accordingly, (Retd.) Justice Indermeet Kaur Kochhar, was appointed as the substitute sole arbitrator.²

¹ *Vide* order dated 11th July, 2019 in Arb. P. 32/2019.

² *Vide* order dated 23rd December, 2019 in OMP(T)(COMM.) 103/2019.

2.10. STPL (being the Claimant before the learned Sole Arbitrator) made the following claims:

<i>Claim No.</i>	<i>Amount (Rs.)</i>	<i>On Account of</i>
<i>I.</i>	<i>94,14,844/-</i>	<i>towards dues as per Invoice No. 2018-2019/STPL-5 dated 01st August, 2018.</i>
<i>II.</i>	<i>16,92,000/-</i>	<i>towards interest on the due amount @ 18% (from 1st August, 2018 till August, 2019).</i>
<i>III.</i>	<i>3,82,490/-</i>	<i>towards dues as per Invoices dated 3rd October, 2016 for Rs. 1,33,400/-, 3rd October, 2016 for Rs. 82,340/- and 30th January, 2017 for Rs. 1,66,750/-.</i>
<i>IV.</i>	<i>1,94,037/-</i>	<i>towards interest on due amount in the above invoices @ 18% from date of invoice (from 3rd October, 2016 and 20th January, 2017) to August, 2019.</i>
<i>V.</i>	<i>3,00,000/-</i>	<i>towards previous litigations and other expenses.</i>
<i>VI.</i>		<i>Cost of the arbitral proceedings and legal fees.</i>

2.11. BSL contested and denied the claims and filed counter-claims seeking the following reliefs:

- A. Award a sum of Rs 1,25,40,856/- (Rupees One Crore Twenty-Five Lakhs Forty Thousand Eight Hundred and Fifty-six Only) alongwith interest @ 18% per annum till January 2020 date of filling the present Counter Claim along with pendent-lite and future interest at the same rate of 18% per annum from the date till actual payment is received by the Counter Claimant;*
- B. Award amount of Rs 2,00,00,000/- (Rupees Two Crores Only) towards loss of reputation to the Counter Claimant;*
- C. Award the amount towards damages, Litigation Cost to the tune of Rs 6,00,000/- (Rupees Six Lakhs Only) as spent or may have to be spent by the Counter Claimant;*

2.12. On 16th October 2020, the Ld. Sole Arbitrator passed the Impugned Award wherein the claims of STPL were allowed and BSL was directed to make payment of Rs. 94,14,844/- qua Claim at serial no. I and Rs. 3,82,490/- qua Claim at serial no. III, with interest @ 9% per annum from the date of invoices till the date of realization. In respect

of Claim at serial no. VI, STPL was awarded an amount of Rs. 10 lakhs. The Counter-claims of BSL were rejected *in toto*.

CONTENTIONS OF BSL:

3. Mr. Surjendu Sankar Das, learned counsel for BSL, has made the following submissions before the Court:

- 3.1. The impugned award is wholly perverse, irrational and liable to be set aside under Section 34(2) (b) (ii) and (2A) of the Act, on account of being: (A.) contrary to the terms of the AMC; (B.) based on surmises and conjectures; (C.) ignorant of vital evidence on record; and (D.) in contravention with the fundamental policy of Indian law as well as the basic notions of justice.
- 3.2. The Claim at serial no. III towards the three invoices (two dated 03rd October 2016 and the third one dated 09th June 2017), the impugned award is contrary to the following evidence:
 - a. The learned Arbitrator has returned erroneous finding that STPL was entitled to the said claim on the basis of BSL's admission. On the contrary, RW-1 had categorically denied that the three invoices were against the work carried out by STPL against admitted payment terms.
 - b. The learned arbitrator did not consider the correspondence dated 16th January, 2018 which exhibited that no additional amount was payable by BSL to STPL.
 - c. Despite finding a mismatch of the first invoice dated 9th June 2017, in the relevant correspondence, the learned arbitrator

awarded the invoice amount of Rs. 1,66,750/- in favour of STPL. The burden to prove should have fallen on STPL, which was clearly not discharged.

- d. The finding by the learned arbitrator that the services of STPL were satisfactory, is contrary to communications placed on record which clearly reflect that DSA was unsatisfied with poor service offered by STPL.
- e. The learned arbitrator erred in finding that the receipt of the letter dated 8th September, 2018 from BSL to STPL is not proved; whereas the receipt of the alleged “fabricated letter” was duly acknowledged and responded on 25th September 2018.
- f. On the basis of the aforesaid it is manifest that the learned Arbitrator has given an erroneous reasoning and perverse finding that “*the question of return of the equipment would only arise if the Claimant would have received this letter*”.

- 3.3. Qua Cat serial no. I, the finding of the learned Arbitrator, that BSL admitted its liability towards STPL’s invoice dated 1st August, 2018 for an amount of Rs. 94,14,844/- is erroneous, not based upon any evidence.
- 3.4. The learned arbitrator completely ignored the evidence on record viz., letters dated 27th August 2019 and 20th September 2019 wherein DSA repeatedly wrote to BSL for return of the government assets which are presently in possession of STPL.
- 3.5. The Arbitrator has awarded costs towards litigation to the tune of Rs. 10,00,000 without any justification or calculation, which is steep and

in excess of the amount of Rs. 3,00,000/- claimed by STPL under the head of litigation expenses.

- 3.6. BSL's counterclaims for damages were wrongly and mechanically rejected by the Arbitrator as a "*figment of imagination*", without any rationale for the same, on the mere finding that the receipt of the letter dated 08th September 2019 by STPL was not proved by BSL, and it thus "*appeared*" to be unauthenticated and fabricated.
- 3.7. In support of his submissions, reliance has been placed upon the judgments in (i) *Associate Builders v. Delhi Development Authority*,³ (ii) *Prasar Bharati v. Starcon India Limited*,⁴ (iii) *Geoenpro Petroleum Ltd. v. Geophysical Institute of Israel*,⁵ (iv) *Parsa Kente Collieries Limited v. Rajasthan Rajya Vidyuth Utpadan*,⁶ (v) *Ssangyong Engineering & Construction Company Ltd. v. NHAI*,⁷ and (vi) *Patel Engineering Works Limited v. North Eastern Electric Power Corp. Ltd.*⁸

CONTENTIONS OF STPL:

4. Ms. Reena Jain Malhotra, learned counsel for STPL, on the other hand, controverts the submissions on the following grounds:

- 4.1. The present petition has no merits and has been filed with the sole purpose of misusing the judicial process and to buy some more time

³ (2015) 3 SCC 49.

⁴ (2017) SCC Online Del 7856.

⁵ MANU/DE/1122/2020.

⁶ (2019) 7 SCC 236.

⁷ (2019) 15 SCC 131.

⁸ (2020) 7 SCC 167.

to avoid making the payment of the legitimate dues of STPL. BSL has not approached this Court with clean hands and has concealed material facts and the documents.

- 4.2. In the cross-examination dated 15th September, 2020 of BSL, the three invoices were admitted as matching the three purchase orders which were marked as exhibits RW1/RA, RW1/RB, RW1/RC. However, BSL has deliberately not filed the said purchase orders in this Court in order to avoid adverse inference. In view of the admission on the part of BSL, the award of the Arbitrator with respect to the claims at serial Nos. I and III are completely justified and call for no interference.
- 4.3. BSL has failed to prove the letter dated 8th September, 2018 and STPL's acknowledgement to the same dated 25th September, 2018. These documents were also categorically denied by STPL in its cross-examination. Thus, the learned Sole Arbitrator was correct in holding that the same were not proved and could not be relied upon.
- 4.4. Countering the allegation of ignoring the letters dated 27th August 2019 and 20th September 2019, it was urged that the Arbitrator instead considered the cross-examination of RW-1 dated 15th September, 2020 on this aspect. The witness admitted that the 3rd party had released the bank guarantee and full and final payment to BSL. Thus, the alleged letters were issued after the AMC was over and final payment had been received by BSL from DSA.
- 4.5. The counter-claim of BSL was rejected after appreciating the evidence and pleadings on record, and thus it cannot be said that it was rejected mechanically. In support of this contention, reliance was placed upon the cross examination dated 15th September, 2020 to

demonstrate that BSL could not produce any document to prove its counter-claims. In absence of evidence to prove the loss as sought in the counter-claim, the finding of the learned Arbitrator calls for no interference.

- 4.6. The learned sole Arbitrator rightly gave their finding after appreciation of evidence and cross examination of the parties. BSL admitted its liability towards STPL's invoice dated 1st August, 2018. In this regard, attention was drawn to the cross examination dated 14th September, 2020 of BSL's witness (RW-1), during which he categorically admitted the receipt of email dated 10th August, 2018 as well as other emails sent by STPL to BSL.
- 4.7. Regarding litigation cost, it was urged that STPL had to bear the cost of – (a) filing the petition for appointment of Arbitrator before this court, (b) the fee of the Arbitrator for its claim as well as for the counter claim, according to the DIAC rules, which was 5 ½ Lakhs for each party, and (c) fees of the advocate for litigation as well as for arbitration. Thus, the total cost of the litigation borne by STPL stood at Rs. 11 lakhs. Therefore, the award of Rs. 10 lakhs is reasonable and completely justified.
- 4.8. The cost of contesting the present litigation of Rs. 2 lakhs should also be added to the cost awarded to STPL. Furthermore, going by the conduct of BSL of denying payment on frivolous grounds, the court may bear in mind that STPL is likely to be further burdened with the cost of execution of the arbitral award, in the future, even if they succeed in the present petition.

- 4.9. BSL had received the payment from DSA on or about 11th August 2018, yet the payment under the AMC has not been released, constraining STPL to take recourse to legal remedies to recover its dues.
- 4.10. DSA is still using the services of STPL at various sites, apart from this AMC, as STPL enjoys a high reputation and goodwill in the field. Thus, the claim of deficiency in service is untenable.

REJOINDER:

5. In rejoinder submissions, thereto, Mr. Das, counsel for BSL, reiterated BSL's objections. He submitted that BSL's defence with respect to dissatisfactory and faulty service by STPL was wrongly rejected by the Arbitrator, and the findings thereto are contrary to the evidence on record. He further argued that the finding of the learned Arbitrator with respect to letter dated 08th September, 2019, is blatantly wrong in light of STPL's reply dated 25th September 2018 which acknowledged BSL's letter dated 8th September 2019 and both the above communications were brought to evidence by STPL itself, and thus stood admitted by them. On the question of possession of DSA's equipment, Mr. Das highlighted that in the hearing before this Court on 05th May 2021, STPL denied having possession of DSA's equipment as listed in the letter dated 08th September, 2018. However, this stand was not taken by STPL in its earlier letter dated 25th September 2018, which only flagged 'certain discrepancies'. Thus, the possession of DSA's equipment is unequivocally with STPL. In case the impugned award is not struck down by this Court, BSL shall be extremely

prejudiced, as it would not only be disentitled from getting DSA's goods returned from STPL, but instead, it will have to compensate DSA for the goods illegally retained by STPL, without being able to recover the damages from STPL which may become payable to DSA due to faulty service on part of STPL.

ANALYSIS:

6. The Court has considered the rival contentions of the learned counsels for the parties. The contentions urged by Mr. Das, have no merit as none of the grounds urged by BSL call for interference under Section 34 of the Arbitration and Conciliation Act, 1996. It needs no reiteration that the scope of interference by this Court under Section 34 of the Act is restricted and extremely limited. The Court does not sit in appeal against the impugned award and enter into re-appreciation the evidence. Only if there is a patent illegality or perversity in the award, can the Court interfere. None of the grounds urged by Mr. Das attract 34(2)(b)(ii) or (2A) of the Act. To merely contend that the award is perverse and patently illegal, or against public policy, is not enough to invoke the jurisdiction of the court. Rather, the contesting party has to clearly demonstrate and establish the applicability of the above-noted provisions.

7. The Claim at serial No. III for Rs. 3,82,490/- has been awarded to STPL towards three invoices. The findings of the learned Arbitrator on this issue are as follows:

“72. Qua the other 3 invoices totalling a sum of Rs.3,82,490 i.e. the first

invoice in the sum of Rs.1,33,400 dated 3.10.2016; the second invoice in the sum of Rs.82,300 dated 3.10.2016 and the third invoice of Rs.1,66,750 dated 30.6.2017, again the liability of the Respondent to pay this amount to the claimant is clear and unequivocal. This would be discussed in the below noted paras.

73. *The purchase orders qua these three respective amounts have been proved as Ex.RW1/RA, Ex.RW1/RB and Ex.RW1/RC. In his cross examination RW1 admitted that these 3 invoices were against the work carried out by the claimant against admitted payment terms. He admitted that 3 purchase orders Ex.RW1/RA, Ex.RW1/RB and Ex.RW1/RC are against the invoice dated 3.10.2016, 3.10.2016 and 30.6.2017 for Rs. 1,33,400/-, Rs. 82,300/- and Rs. 1,66,750/- respectively. This witness however volunteered to state that these invoices were nullified in terms of the mail dated 27.11.2017 sent by the respondent. This mail dated 27.11.2017 has been filed as an additional document by the Respondent and was a document which had also been placed on record by the claimant. This mail has been scrutinized. Learned counsel for the Respondent has vehemently relied upon this mail to advance his submission that the 3 invoices referred herein above in fact got shot down by this mail.*

74. *Relevant would it be to extract this mail which had been sent by the respondent to the claimant and which inter alia reads here as:*

xx ... xx ... xx

75. (...) *This mail does not come to the aid of the respondent as after this mail of 27.11.2017 there are several other communications exchanged between the parties and which have already been discussed supra particularly the letter dated 16.1.2018 to which a reply had been given by the respondent on 22.2.2018. (...) These payments clearly related to the 3 invoices dated 3.10.2016, 3.10.2016 and 30.6.2017 which were the works carried out by the claimant for the respondent and for which he had not received his long overdue payment for more than one year.*

76. *The fact that the payments were being made inter se the parties on a quarterly basis is clear from the terms of the AMC with particular reference to clause 5.2. This has also been admitted by RW1 in his cross examination. The defence of the respondent is that the parties had by an oral understanding agreed that the payments did not necessarily have to be adhered to on a quarterly basis and would be paid to the claimant as and when the amount is received by the respondent from the third party. This submission has not been substantiated by the respondent. Be that as it may even otherwise RW1 in his cross examination further admitted that full and final payment had been received by the respondent from the their party/Indian Army in August 2018 even as per the stand of the*

respondents stand since he had received complete payment from the Indian Army in August 2018 his liability to release the payments to the claimant within 2-3 business days became clear. (sic)

77. The aforementioned communications thus clearly establish that the payment which had to be released by the Respondent to the claimant in terms of the mails/communications dated 16.1.2018, 3.2.2018, 22.2.2018, 10.8.2018, 16.8.2018 and 18.8.2018 were qua the aforementioned 3 invoices in the sum of Rs. 1,33,400, Rs.88,300 and Rs.1,66,750 total a figure of Rs. 3,82,490/- This amount is also liable to be paid by the Respondent to the claimant."

(emphasis supplied)

8. The aforesaid findings of the learned Arbitrator are purely findings of fact, which have been returned on the basis of evidence led by the parties. The Learned Arbitrator has meticulously examined the documents placed on record, which included the correspondence exchanged between the parties as well as the testimony of the witnesses. The same cannot be reappreciated by this Court at this juncture. BSL's grounds of challenge are based on some selected documents, on the basis whereof it is contended that there is no admission on their part and the findings of the learned Arbitrator are perverse. However, the above extract of the impugned award demonstrates that the findings of the learned Arbitrator, and conclusion drawn by her that there was admission of liability on the part of BSL, are pursuant to a process of reasoning, discussion, analysis and consideration of evidence. This cogent reasoning, based on facts and appreciation of evidence, after consideration of relevant provisions and material on record, calls for no interference.

9. With respect to the Claim at serial No. I awarded towards STPL's invoice dated 1st August, 2018 for an amount of Rs. 94,14,844/-, the findings of the learned Arbitrator are as follows:

"69. On 10.8.2018 the claimant had written a mail to the Respondent

with reference to their outstanding payments and particularly payment against the services rendered for the period 1.1.2018 to 13.6.2018 i.e. against invoice 2018-19/STPL-5. The balance amount of Rs.99,86,000 was claimed. This mail was answered on the same date by Respondent at 21.34 hrs. wherein with reference to this invoice the Respondent informed the claimant that the cheque should be deposited by the claimant only after the payment was received by the Respondent. Relevant at this stage would it be to note that a cheque dated 5.8.2018 had been issued by the Respondent to the claimant in the sum of Rs.90,000. This email reply of the Respondent at 21.34 was obviously in relation to this cheque. On 16.8.2018 the Respondent wrote a mail to the claimant stating that they are in the process of clearing the payments. On 18.8.2018 the claimant clarified to the Respondent that the outstanding payments are still due and payable to the claimant and in case these payments are not made they will go ahead to deposit the cheque and all liability on this count would fall upon the Respondent.

70. *The reference in these aforementioned 3 mails was to the invoice No.2018-19/STPL-5 which was raised by the claimant upon the Respondent in the sum of Rs.94,14,844 dated 1.8.2018. A post dated cheque of Rs.90 lacs for a partial payment had been issued by the claimant to the Respondent dated 5.8.2018 against this amount with the understanding was that this cheque would not be deposited by the claimant as the Respondent was hopeful that as soon as he gets his payments from the Indian Army he would make the payment to the claimant. This is evident from the mail of the Respondent dated (16.8.2018. In the subsequent mail written by the claimant on 18.8.2018 he sought payments which had still not been released by the Respondent to the claimant; claimant informed the Respondent that he would go ahead to deposit this cheque on 28.8.2018 in case his payments are not released for which all liability would have to be borne by the Respondent.*

71. *From the aforementioned correspondence it is clear that the Respondent had admitted his liability qua this invoice dated 1.8.2018 for Rs.94,14,844; he had been requesting for time to make the payment against which he had already issued a PDC for Rs.90 lacs. This PDC had in fact been presented by the claimant to the bank on two occasions but on both the occasions the cheque got dishonoured. The claimant had also sent a notice to the Respondent under Section 138 of the Negotiable Instrument Act. The liability of the Respondent to pay this amount of Rs.94,14,844 against which the invoice dated 1.8.2018 had been issued was clear and unequivocal. This amount is liable to be paid by the Respondent to the claimant."*

10. The learned Arbitrator has analysed the correspondence, and also taken into account the issuance of the post-dated cheque and its dishonour, and come to the conclusion that the liability is clear and unequivocal. It has been pointed out that BSL's witness (RW1), during his cross-examination on 14th September 2020, admitted the receipt of email dated 10th August 2018 sent by STPL to BSL wherein there is clear reference to the invoice qua Claim at serial No. I. On this basis the Learned arbitrator concluded that BSL's liability towards STPL's invoice dated 01st August 2018 amounting to Rs. 94,14,844/- stood admitted. It is well settled in law that Arbitral Tribunal is the master of evidence and the findings of fact arrived at by the Sole Arbitrator on the basis of evidence on record is not to be scrutinised as if the Court were sitting in appeal. Thus, the aforesaid finding of the learned Arbitrator does not call for any interference.

11. This brings us to the controversy revolving around the letter dated 8th September, 2018 on which BSL has laid considerable emphasis. Mr. Das has strongly objected to the findings of the learned Arbitrator regarding the said letter being "*created*", "*not authenticated*" and "*appears to be fabricated*". He asserts that these are contrary to the record. Mr. Das has relied upon the afore-noted letter to advance his defence that till the time STPL returned the equipment to the end customer (DSA), the payments could not be released to them; for the reason that there still remained certain defects which had to be corrected by STPL. He pleaded that BSL is entitled to recover the cost of the equipment which has been wrongly retained by STPL. The learned Arbitrator has rejected this contention on the basis of the evidence on record. Therefore, firstly, in the opinion of the Court, the

analysis of the evidence and the findings returned, do not fall within the domain of this Court for re-consideration under Section 34 of the Act. Secondly, BSL had ample opportunity to prove its case. The cost of the equipment that forms the subject-matter of the letter is part of the counter-claim. In the counter claim, there are no pleadings justifying this head of claim or for that matter, any other claims. BSL has not disclosed the basis for making the claims, except for stating the amount. An attempt was made to elaborate upon the same during the course of trial when the witness of BSL (RW1) filed his affidavit-in-evidence. His break-up of the counter-claims is summarised as follows:

- I. Expenses - alongwith interest @ 18% per annum till January 2020 (date of filing the counter claim) alongwith pendent lite and future interest at the same rate of 18% per annum from the date till actual payment is received by BSL, on account of:

a)	Rs 7,60,500/-	Towards loss of Interest to Petitioner on amount of Rs. 30,00,000/- (paid in advance to BSL)
b)	Rs. 20,57,356/-	Towards liquidated damages as the same forms part of the amount deducted by DSA from the payment due to BSL.
c)	Rs. 5,00,000/-	Towards the rent for utilization of BSL's Guwahati office.
d)	Rs. 15,75,000/-	Towards the cost incurred by BSL for repair of faulty sites.

e)	Rs. 30,88,000/-	Towards the cost incurred for repair work between 1 st July, 2016 to 26 th October, 2016.
f)	Rs. 60,000/-	Towards transport of faulty equipment from Guwahati to Delhi.
g)	Rs. 90,000/-	Towards delivery of UPS to DSA sites for convenience of STPL.
h)	Rs. 45,00,000/-	Towards repair expenses and hiring of experienced professionals for the repairing faulty equipment.

- II. Rs. 2 crores towards loss of reputation to the counter claimant;
- III. Rs. 6 lacs as spent or may have to be spent towards damages, litigation cost.

12. However, besides the afore-tabulated expenses, BSL did not adduce any evidence before the Arbitrator to establish that it was entitled to damages in the counter-claim. BSL also did not bring any material to claim the cost of the equipment, which according to them was wrongly retained by STPL. It is also pertinent to note that counter-claims are premised on the allegation that STPL has not fulfilled its obligations under the AMC and rendered deficient services to DSA. In this regard it is significant to note that BSL had given a performance bank guarantee of 10% of the value of the AMC to DSA as a part of their contract. If the Indian Army was not satisfied with the services of STPL it could have encashed the same. This bank guarantee was, instead, released in favour of BSL. Further, it has been established on record, that BSL has received the payment from DSA. BSL's

witness (RW1) in his cross-examinations dated 14th and 15th September, 2020 has admitted that DSA had not encashed the bank guarantee and had returned the bank guarantee to BSL, and that the letter dated 19th September 2019 was issued by DSA to BSL after the AMC was over and final payment was received by BSL from DSA.

13. The learned Arbitrator has returned a finding that the services rendered by STPL were satisfactory, as is evident from the CCR reports, by observing *“The defence of respondent on this score is unsubstantiated; the claimant per contra has been able to show that the services rendered by him were both satisfactory and all defects stood rectified as and when a complaint was made for which CCR reports (admitted document) have been proved by him”*. In this view of the matter, the contention as sought to be raised by BSL regarding the receipt of the letter has no significance. Learned Arbitrator has rightly rejected the counter claims of BSL after appreciating the evidence and pleadings on record. The findings of the learned Arbitrator are reasonable and completely justified.

14. As regards the cost of litigation, the Court does not find the awarded amount under this head to be unjustified. STPL has admittedly been burdened with the cost of the Arbitrator's fees and other expenses. Having regard to the justification put forth by STPL for the litigation expenses incurred by it, the Court does not find any ground to set aside the same.

15. In view of the above, the present petition is completely devoid of merit, and the same is dismissed with a cost of Rs. 50,000/- to be paid to

STPL. The pending application also stands disposed of.

SANJEEV NARULA, J

MAY 11, 2021

nd

(corrected and released on 26th May, 2021)

