IN THE HIGH COURT OF DELHI AT NEW DELHI

% Judgment delivered on: 02.08.2021

\+ **O.M.P. (COMM.) 163/2021 & IA No. 5826/2021**

NTPC VIDYUT VYAPAR NIGAM LIMITED ..... Petitioner

versus

LEXICON VANIJYA PRIVATE LIMITED & ANR. ..... Respondents

Advocates who appeared in this case:

For the Petitioner : Mr Rituraj Biswas and Mr Rituraj Choudhary, Advocates.

For the Respondent : Ms Mamta Tiwari, Ms Swati Sinha, Ms Taruna A. Prasad and Mr Aman Bhatnagar, Advocates.

CORAM
HON'BLE MR JUSTICE VIBHU BAKHRU

JUDGMENT

VIBHU BAKHRU, J

1. NTPC Vidyut Vyapar Nigam Limited (hereinafter 'NVVNL') has filed the present petition under Section 34 of the Arbitration and Conciliation Act, 1996 (hereinafter the 'A&C Act') impugning an arbitral award dated 20.11.2020 (hereinafter 'the impugned award') rendered by an Arbitral Tribunal comprising of Justice (Retired) V.N. Khare, former Chief Justice of India, Mr Ambarish Dave and Justice (Retired) D.P. Wadhwa, former Judge of the Supreme Court of India as the Presiding Arbitrator.

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2. The impugned award was rendered in the context of disputes that had arisen between NVVNL and respondent no.1 (hereafter 'Lexicon') in connection with the Power Purchase Agreement (hereinafter the 'PPA') entered into between NVVNL and Lexicon

3. Essentially, the dispute between NVVNL and Lexicon revolve around the question whether NVVNL was entitled to recover liquidated damages from Lexicon as contemplated under the PPA. NVVNL claimed that it was entitled to recover ₹2,77,27,000/- (Rupees Two Crores Seventy-Seven Lacs and Twenty-Seven Thousand only) as liquidated damages being 10% of the Performance Guarantee furnished by Lexicon, as according to NVVNL, Lexicon had failed to commission the solar power plant for generating 10 MW capacity on or before the scheduled commissioning date.

4. According to NVVNL, Lexicon had commissioned 5 MW capacity on or before 26.02.2013 (the Scheduled Commissioning Date) and had commissioned the balance 5 MW by 01.03.2013, that is, after a delay of three days. NVVNL claimed that it was thus, entitled to recover half of 20% of the Performance Bank Guarantee in terms of Clause 4.6 of the PPA. Lexicon disputed the aforesaid claim as according to Lexicon it had commissioned the solar power generating project before the Scheduled Commissioning Date. It claimed that it had completed and installed 10 MW of solar power generating capacity on 21.02.2013.

5. The Arbitral Tribunal found in favour of Lexicon and accepted

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its contention that it had completed and installed the solar power plant with 10 MW capacity on or before the Scheduled Commissioning Date of 26.02.2013. Accordingly, the Tribunal held that NVVNL was not entitled to recover any liquidated damages. The Arbitral Tribunal further held that not was not established that NVVL had suffered any loss on account of the three days delay in completion of a part of the project. Therefore, in any event, NVVNL could not recover the said damages without establishing that it had suffered any loss.

6. Accordingly, the Arbitral Tribunal directed that the Performance Bank Guarantee furnished by Lexicon be discharged. It also awarded costs of ₹1,08,66,000/- (Rupees One Crore Eight Lacs and Sixty-Six Thousand only) in favour of Lexicon.

7. It is contended on behalf of NVVNL that the impugned award is perverse and is contrary to the terms of the PPA. It is contended on behalf of NVVNL that the impugned award disregards the minutes of the Commissioning Committee of 25.02.2013- 26.02.2013 – which recorded that Lexicon had electrically connected only 7.06 MW capacity as on 25.02.2013 – and therefore, the impugned award is patently illegal and is liable to be set aside.

Factual Background

8. The Government of India launched the Jawaharlal Nehru National Solar Mission (hereinafter 'JNNSM') with the objective to establish India as a global leader in solar energy. The Government of India through the Ministry of New and Renewable Energy (hereinafter

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'MNRE') designated NVVNL as a Nodal Agency for Phase-I of JNNSM.

9. NVVNL was required to purchase solar power from Solar Power Developers (SPDs); bundle it with the power available from coal based plants of NTPC; and sell the bundled power to various Distribution Utilities.

10. On 24.08.2011, NVVNL invited proposals for setting up of Grid Connected Solar PV Project under Phase-I Batch-II of JNNSM for purchase of power. NVVNL issued a Request for Selection (RfS) inviting bids for 350 MW of power. The bidders were to be selected in decreasing order of the discount offered by them over the tariff approved by the Central Electricity Regulatory Commission (CERC).

11. Lexicon submitted its response to the said RfS. Thereafter, it was issued a Request for Proposal (RfP) form. Lexicon submitted the same to NVVNL quoting a discount of 670 paisa per KWh over the CERC applicable tariff.

12. Lexicon was selected as one of the successful bidders and NVVNL issued a Letter of Intent (LOI) dated 28.12.2011 accepting Lexicon's bid and further confirmed its intent to purchase the power generated pursuant to its proposal.

13. In terms of the LOI, Lexicon was required to furnish Bank Guarantee(s) in terms of Article 3.19 of the RfS before signing of the PPA. The Bank Guarantees were required to be valid for a period of

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sixteen months from the effective date of the PPA. Lexicon complied with the said condition and furnished Bank Guarantees aggregating a total sum of ₹27,74,54,000/- (Rupees Twenty-Seven Crores Seventy-Four Lacs and Fifty-Four Thousand only) for securing due performance of its obligations.

14. Thereafter, NVVNL and Lexicon entered into the PPA on 27.01.2012. Under the PPA, the location of the power project was initially at a village in Jaisalmer. The PPA was subsequently amended to change the location of the power project to Village Manchitiya, District Jodhpur, Rajasthan.

15. In terms of the PPA, Lexicon agreed to set up, install and commission a 10 MW capacity grid connected Solar PV Power Project using photo voltaic technology at Village Manchitiya in Jodhpur District of Rajasthan. The power project was required to be designed, constructed, erected and commissioned within a period of thirteen months from the effected date, that is, on or before 26.02.2013 (the Scheduled Commissioning Date).

16. It is relevant to note that in terms of the PPA, the 'Commercial Operation Date' of the project was defined to mean the "*actual commissioning date of respective units of power project whereupon SPD starts injecting power from the power projects to the delivery point*".

17. Lexicon claims that it installed, completed and initialized a solar power plant of 10 MW capacity on 21.02.2013. It also claims

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that its solar power plant was connected to the grid and was successfully generating electricity from 21.02.2013, that is, prior to the Scheduled Commissioning Date.

18. The Commissioning Committee constituted by respondent no.2 inspected Lexicon's solar power plant on 25.02.2013. It verified that Lexicon had set up modules of 10.004 MW capacity. However, it also noted in the Minutes of the Meeting prepared on that date, that 30% of the modules/strings had not been electrically connected. According to the Commissioning Committee, over 7.06 MW capacity had been electrically connected.

19. According to Lexicon, the observations made by the Commissioning Committee were erroneous and it had installed a power plant complete in all respects of the capacity of 10 MW. Lexicon claimed that notwithstanding the above, it connected the balance modules and on 26.02.2013 requested the Commissioning Committee to inspect the same. Lexicon claimed that although the members of the Commissioning Committee were present at site, they declined to accede to its request of re-inspecting the plant. Thereafter, Lexicon sent an email as well as a FAX to respondent no.2 and also served a copy of the same to the members of the Commissioning Committee requesting for an immediate re-inspection on the plant site on 26.02.2013. Lexicon claims that notwithstanding that the conclusion of the Committee was erroneous, it had addressed the observations made by the Commissioning Committee.

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20. It is stated that the Commissioning Committee did not re-inspect the plant site on 26.02.2013 but undertook the inspection on 02.03.2013, that is, after three days.

21. The Commissioning Committee found that Lexicon's Solar Plant was complete in all respect and there is no controversy that as on 01.03.2013, Lexicon had completed its obligations of setting up a solar power plant of 10 MW capacity. However, NVVNL prepared a report dated 25.04.2013 to the effect that only 5 MW capacity had been commissioned by Lexicon on 26.02.2013 and the remaining 5 MW capacity was commissioned on 01.03.2013. Thus, according to NVVNL, Lexicon had defaulted in performance of its obligations inasmuch as it had completed the establishment of 50% of the contracted capacity (50% of 10 MW) after a delay of three days from the Scheduled Commissioning Date.

22. According to NVVNL, it is entitled to claim liquidated damages in terms of Article 4.6 of the PPA and it sought to recover the same by invoking the Performance Bank Guarantees furnished by Lexicon.

23. In the aforesaid backdrop, Lexicon filed a petition under Section 9 of the A&C Act (OMP No. 462/2013) seeking an injunction against NVVNL for invoking the Bank Guarantees.

24. By an *ad interim* order dated 07.05.2013, this court restrained NVVNL from invoking the Bank Guarantees and further directed that *status quo* be maintained till the next date of hearing.

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25. Since NVVNL's case was that Lexicon had delayed completion of the project to the extent of 5 MW, the liquidated damages payable under Article 4.6.1 of the PPA would not exceed 10% of the total Bank Guarantee amount (being in proportion of the capacity that was delayed, that is, 50% of the 20% of the bank guarantee amount that could be enforced for a delay of three days). Accordingly, this Court by an order dated 24.05.2013 directed that the interim order passed earlier (order dated 07.05.2013) interdicting NVVNL from invoking the Bank Guarantee would continue subject to NVVNL keeping alive the Bank Guarantee to the extent of 10% of the total Bank Guarantee amount.

26. In terms of the aforesaid order, Lexicon amended the original Bank Guarantees furnished by it by reducing the amount to ₹2,77,27,000/- (Rupees Two Crores Seventy-Seven Lacs and Twenty Seven Thousand only). The said amended Performance Bank Guarantee (Performance Bank Guarantee No. 05731LG014113 dated 27.05.2013 for a sum of ₹2,77,27,000/- issued by Punjab National Bank, Park Street, Kolkata) was kept alive by Lexicon pending the arbitral proceedings.

27. Lexicon's petition under Section 9 of the A&C Act (OMP No.462/2013) was disposed of by this Court by an order dated 16.10.2014 directing NVVNL to give at least three days clear notice if it chooses to invoke the Bank Guarantee.

28. NVVNL issued a letter dated 20.10.2014 seeking to invoke the

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Bank Guarantee. This led Lexicon to approach the Arbitral Tribunal for seeking interim measures of protection under Section 17 of the A&C Act. The Arbitral Tribunal passed an order dated 30.10.2014 restraining NVVNL from invoking the Bank Guarantee and the said order was extended from time to time.

29. In the aforesaid context, Lexicon filed its Statement of Claims before the Arbitral Tribunal, *inter alia*, praying for a declaration that its solar power plant was commissioned on 26.02.2013 and seeking a direction to respondent no.2 to issue a Commissioning Certificate certifying 26.02.2013 as the date of commissioning of its plant (Claim Nos. 1 and 2). Lexicon further prayed for a direction towards NVVNL for release of its Bank Guarantee (Claim No. 3). Lexicon also sought reimbursement of expenses incurred in keeping the Performance Bank Guarantee alive for the period beyond 16.05.2014 quantified at ₹2,88,290/- (Claim No.4). In addition, Lexicon also claimed ₹20,11,952/- as litigation expenses incurred by it in pursuing OMP No. 462/2013 before this Court (Claim No.5) and costs of the arbitral proceedings (Claim No.6). It also sought *pendente lite* and future interest at the rate of 18% per annum on the amounts claimed.

30. The Arbitral Tribunal considered the rival contentions and delivered the impugned award directing release of the Bank Guarantee and further awarded costs quantified at ₹1,08,66,000/- in favour of Lexicon. The Arbitral Tribunal also directed that NVVNL would pay the awarded amount to Lexicon within a period of four weeks from the receipt of the award failing which NVVNL would pay interest at the

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rate of 9% after the four weeks period till realization of the amount by Lexicon.

Submissions

31. Mr Biswas, learned counsel appearing for NVVNL has assailed the impugned award on, essentially, three fronts. First, he referred to Clause 4.1.1 of the PPA and emphasized that Lexicon was obliged to commence supply of power up to the contracted capacity to NVVNL no later than the Schedule Commissioning Date. He referred to the Minutes of the Meeting of the Commissioning Committee dated 25.02.2013 - 26.02.2013, whereby the Commissioning Committee had observed that "*Modules of only 7.06 mw capacity were electrically connected* …". He submitted that in view of the said report, the decision of the Arbitral Tribunal that Lexicon had performed its obligation and completed a 10 MW plant on or before the Schedule Commissioning Date of 26.02.2013 is patently illegal. He also submitted that Lexicon's witness had admitted that "*few of the strings were not electronically connected on 25.02.2013*" and therefore, the observations made by the Commissioning Committee could not be faulted.

32. Second, he submitted that the Arbitral Tribunal had also grossly erred in holding that liquidated damages were not a matter of right and NVVNL was required to prove that it had suffered a loss. He submitted that electrical power was a public utility and therefore, it was not necessary for NVVNL to prove quantum of damages suffered

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by it with any precision. He referred to the decision of the Supreme Court in ***Construction and Design Services v. Delhi Development Authority: (2015) 14 SCC 263*** and the decisions of this Court in ***NTPC Vidyut Vyapar Nigam Limited v. Saisudhir Energy Limited: FAO (OS) 275 and 281 of 2016, decided on 18.01.2018*** and ***NTPC Vidyut Vyapar Nigam Ltd v. Precision Technik Pvt. Ltd.: 2018 SCC OnLine Del 13102.***

33. Third, he submitted that the award of cost of ₹1,08,66,000/- in favour of Lexicon was without any basis or any material and therefore, it is liable to be set aside.

34. Ms Mamta Tiwari, learned counsel appearing for Lexicon countered the aforesaid submissions. She also referred to an affidavit filed in this Court affirming that on 06.12.2019, Lexicon had forwarded the details of payment made, to the Arbitral Tribunal. This was in context of the costs of the arbitral proceedings claimed by Lexicon. Thereafter, a hard copy of the Statement of Costs was also handed over to the Arbitral Tribunal at the hearing on 21.12.2019. Lexicon claimed that it had incurred costs of ₹1,08,66,600/- as on that date it included arbitration fees of ₹77,50,000/-; travelling expenses of ₹4,91,425/- and legal and consultancy fees of ₹ 26,25,175/-. She states that on that date, the Tribunal passed an order directing the parties to make payments for further four hearings and Lexicon had incurred further costs of ₹8,00,000/- as fees to be paid to the Arbitral Tribunal. She submitted that the Arbitral Tribunal had awarded costs on the basis of the statement handed over on 21.12.2019. She also pointed

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out that the total fees was twice the amount, but had been split between two matters which were being pursued simultaneously.

Reasons and Conclusion

35. The Arbitral Tribunal had considered the pleadings and had framed the following issues for consideration:

> "l. Whether Rajasthan Renewable Energy Corporation Limited (Respondent No.2) is party to the Arbitration?
>
> 2.Whether the solar Power Project was fully completed in all aspects on/before 26.02.2013?
>
> 3. Whether Respondent No.1 has rightly invoked the bank guarantee or should he be directed to release the same?
>
> 4. Whether any actual loss was suffered by Respondent No.1?
>
> 5. Whether Article 4.6 of the PPA is penal or not?
>
> 6. Whether the claimant can be held liable for delay caused due to acts of a third Party?
>
> 7. Whether the Claimant is entitled to receive any amounts as mentioned in its claims?
>
> 8. Whether either Party is entitled to costs of the present Arbitration?"

36. The dispute between the parties, essentially, revolves around Issue No.2. Concededly, if Lexicon had completed the solar power project in all respects on or before 26.02.2013 as claimed by it, the question of NVVNL levying any liquidated damages would not arise.

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37. Whilst Lexicon asserted before the Arbitral Tribunal that it had, in fact, commissioned the power project to the full capacity of over 10 MW by 21.02.2013 and therefore, had fully performed its obligation; NVVNL disputed the same. NVVNL primarily relied upon the Minutes of the Meeting of the Commissioning Committee prepared on 25.02.2013-26.02.2013.

38. Lexicon had countered the aforesaid contention and relied upon the Connectivity Report dated 21.02.2013, which indicated that Lexicon was generating electricity from 21.02.2013. NVVNL contends that the Connectivity Report does not establish commissioning of the project because as per the guidelines issued by MNRE, Lexicon was also required to obtain all consents and approvals. And, the solar plant could be set to be commissioned only after verification by the Commissioning Committee

39. The Arbitral Tribunal had evaluated the material on record and accepted Lexicon's contention that the solar plant established by it was generating electricity and was connected to the grid by 21.02.2013. The Arbitral Tribunal held that the solar plant was complete in all respects in terms of the PPA on 26.02.2013. The relevant extract of the reasoning of the Tribunal is set out below:

> "21. We have carefully considered submissions of both the parties and decide as follows:
>
> It is evident from the connectivity report dated 21.02.2013 that the Solar Plant was generating electricity and was connected to the grid. Even if the alleged incorrect observation by the Commission

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> Committee that 30% of the modules are not connected is deemed to be correct, in order to avoid any confusion and to remove any and all doubts, the modules were once again stringed and connected by the Claimant on 26.02.2013. The delay in certifying on the commissioning date is not attributable to the Claimant but to the Commissioning Committee of which the officers of Respondent No 1 were a part, which refused to re-inspect the plant on 26.02.2013 despite being present on the site, as admitted by the Respondent No. l. The decision of the Commission Committee of not re-inspecting the Plant, even though they were still at the plant, at the requests of the Claimant was wrong and without any valid ground.
>
> 22. Hence, we are deciding this issue in favour of the Claimant and we are, therefore, holding that the solar power plant was complete in all respects, in terms of the PPA, on 26.03.2013 and hereby direct Respondent No. 2 to issue the Commissioning Certificate, certifying 26.02.13 as the date of commissioning of the Solar Power Plant of the Claimant."

40. It is apparent from the above that the decision of the Arbitral Tribunal is based on appreciation of material evidence, which supports such a decision. It is material to note that Mr Rituraj Biswas, learned counsel appearing for NVVNL, did not dispute that in fact Lexicon had requested for re-inspection on 26.02.2013 claiming that it had addressed the observations made by the Commissioning Committee. It is also not disputed that the members of the Commissioning Committee were present at site when such a request was made. Thus, the Commissioning Committee was in a position to immediately verify whether all modules had been electrically collected. Such

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verification took place three days later on 02.03.2013 and the Commissioning Committee had satisfied itself that Lexicon had met all requirement regarding completion and initialization of the solar plant. It is also material to note that even according to the Commissioning Committee, it had duly verified that the solar plant was completed and fully established. During the inspection conducted on 25.02.2013 – 26.02.2013, the Commissioning Committee had noted that certain modules were not electrically connected. According to Lexicon, the said observation was erroneous and the plant was in a condition to generate and push solar pump into the grid to the full extent of its capacity. The Arbitral Tribunal had noted the above and had accepted Lexicon's contention that its plant was fully installed and functional as on 26.02.2013 (the Scheduled Commissioning Date).

41. This Court is unable to concur that the said conclusion is patently illegal or falls foul of the fundamental policy of Indian law. The question whether the solar power plant was complete in all respects on 26.02.2013 is a question of fact. In ***Dyna Technologies Private Limited v. Crompton Greaves Limited: (2019) 20 SCC 1,*** the Supreme Court had held that the courts would not interfere *"unless the Court comes to a conclusion that the perversity of the award goes to the root of the matter without there being a possibility of alternative interpretation which may sustain the arbitral award"*.

42. In view of the aforesaid conclusion, it is not necessary to examine the Arbitral Tribunal's conclusion on the issue whether Article 4.6 of the PPA imposed a levy in the nature of penalty or it

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was a genuine pre-estimate of losses. However, this Court has also considered NVVNL's contention in this regard.

43. It was Lexicon's case before the learned Arbitral Tribunal that the liquidated damages were not a genuine pre-estimate of losses and were in terrorem and in the nature of a penalty. It was also contended on behalf of Lexicon that Rajasthan Rajya Vidyut Prasaran Nigam Limited (the State Transmission Utility to whom the power was to be supplied) was not ready to transmit 40 MW of power (which was agreed to the transmitted by four SPDs including Lexicon). This was so because, the second transformer which was necessary for transmitting the said power was commissioned only on 13.03.2013. NVVNL had not seriously contested Lexicon's claim that the State Transmission Utility was not in a position to accept the solar power contracted to be purchased from the SPDs to the full extent till 13.03.2013.

44. The decision in the case of ***Construction and Design Services v. Delhi Development Authority*** (*supra*) is of little assistance to NVVNL. In that case, the Hon'ble Supreme Court had held that the appellant had failed to execute the work of construction of sewage pumping station within the stipulated time. The Supreme Court observed that the said pumping station was a public utility to maintain and preserve clean environment, the absence of which could result in environmental degradation by stagnation of water in low lying areas. It further found that the delay had resulted in loss of interest on blocked capital. It also concurred with the observations made by the

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High Court in its judgment impugned in that appeal that the delay had also resulted in loss of interest on blocked capital. In the given circumstances, the Supreme Court held that the loss could be assumed even without proof and burden. However, the Supreme Court also observed that in such circumstances, the burden to prove that no loss was caused due to delay would be on the appellant. The relevant extract of the said decision is set out below:-

> "14. There is no dispute that the Appellant failed to execute the work of construction of sewerage pumping station within the stipulated or extended time. The said pumping station certainly was of public utility to maintain and preserve clean environment, absence of which could result in environmental degradation by stagnation of water in low lying areas. Delay also resulted in loss of interest on blocked capital as rightly observed in para 7 of the impugned judgment of the High Court. In these circumstances, loss could be assumed, even without proof and *burden was on the Appellant who committed breach to show that no loss was caused by delay or that the amount stipulated as damages for breach of contract was in the nature of penalty.* Even if technically the time was not of essence, it could not be presumed that delay was of no consequence.
>
> 15. Thus, even if there is no specific evidence of loss suffered by the Respondent-Plaintiff, the observations in the order of the Division Bench that the project being a public utility project, the delay itself can be taken to have resulted in loss in the form of environmental degradation and loss of interest on the capital are not without any basis.
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> 16. Once it is held that even in absence of specific evidence, the Respondent could be held to have

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> suffered loss on account of breach of contract, and it is entitled to compensation to the extent of loss suffered, it is for the Appellant to show that stipulated damages are by way of penalty. In a given case, when highest limit is stipulated instead of a fixed sum, in absence of evidence of loss, part of it can be held to be reasonable, compensation and the remaining by way of penalty. The party complaining of breach can certainly be allowed reasonable compensation out of the said amount if not the entire amount. If the entire amount stipulated is genuine pre-estimate of loss, the actual loss need not be proved. *Burden to prove that no loss was likely to be suffered is on party committing breach, as already observed.*"
>
> [emphasis provided]

45. It is clear from the above that in certain circumstances relating to public utilities, it can be assumed that losses have been suffered on account of breach of contract even though there is no specific evidence to establish the exact quantum of loss suffered by the public agency. In such cases, the burden to prove that no loss has been incurred shifts on the party in breach of the Contract.

46. In this case, it was not disputed that the State Transmission Utility was not in a position to distribute the power generation as the transformer necessary for such transmission was commissioned on 13.03.2013. It is in this context that the Arbitral Tribunal held as under:-

> "……… It can be seen clearly that the only contention that the Respondent No.1 has, to show that he suffered an actual loss was that time was of the essence of the

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> contract, but after looking at the contract and the explanation given by the Claimant and the fact that it has not been refuted by the Respondent , it can be made out that since, Rajasthan Rajya Vidyut Prasaran Nigam Limited which is State Transmission Utility (STU) to whom the power had to be supplied from the Claimant' power plant, was not ready to take the 40MW of power from all the four power plants in the region even as late as 13.03.2013, therefore no actual damages/losses were incurred by the Respondent no.1 resulting from the acts, or lack thereof, of the Claimant. . …"

47. This Court finds no fault in the aforesaid reasoning or the conclusion that NVVNL was not entitled to liquidated damages.

48. Insofar as payment of costs is concerned, the contention that the award of costs is without any basis, is unmerited. The Arbitral Tribunal had accepted the costs, as submitted along with the written submissions. NVVNL does not dispute that at a hearing held on 21.12.2019, a statement was furnished on behalf of the Claimants including Lexicon that a sum of ₹ 1,55,00,000/- (Rupees One Crore Fifty Lakhs) had been paid as arbitration fees, which was equally split among the two claimants pursuing the respective matter, one of them being Lexicon. Thus, Lexicon had incurred costs of ₹77,50,000/- as arbitration fees. In addition, Lexicon also claimed ₹4,91,425/- as travelling expenses and ₹26,25,175/- as a legal and consultancy fees incurred by it. There is no material to indicate that NVVNL had at any stage disputed the aforesaid costs. Since arbitration fees (which form the bulk of the costs awarded to the Lexicon) is a matter of record, the

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same requires no further proof. In the circumstances, this Court does not find that the costs awarded to NVVNL are either unreasonable or warrant any interference by this Court.

49. The petition, is accordingly, dismissed. The pending application is also disposed of.

VIBHU BAKHRU, J

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