

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

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Judgment delivered on: 06.07.2021

+ **O.M.P. (COMM.) 177/2021 and IA No. 7093/2021**

**GAIL (INDIA) LIMITED**

..... Petitioner

versus

**BANSAL INFRA TECH SYNERGIES  
LIMITED**

..... Respondent

**Advocates who appeared in this case:**

For the Petitioner : Mr Ngangam Junior Luwang and  
Mr Mayank Garg, Advocates.

For the Respondent : Mr Divyakant Lahoti and Mr Parikshit  
Ahuja, Advocates.

**CORAM**

**HON'BLE MR JUSTICE VIBHU BAKHRU**

**JUDGMENT**

**VIBHU BAKHRU, J**

1. GAIL (India) Limited (hereinafter 'GAIL') has filed the present petition impugning an arbitral award dated 10.12.2020 (hereinafter 'the impugned award') rendered by an Arbitral Tribunal constituted by Justice (Retd.) Badar Durrez Ahmed as the Sole Arbitrator. The said award was rendered in respect of disputes that had arisen between the parties in connection with the contract for 'Civil and Structural Works-II (OFFSITES)' at GAIL's Petrochemical Complex-II at Pata, Uttar Pradesh (hereinafter 'the Project').

2. GAIL had appointed Engineers India Limited (EIL) as the consultant for implementation of the Project. EIL invited bids for the Project on behalf of GAIL and the respondent had submitted its bid pursuant to the said invitation. The respondent's bid for a contract value of ₹ 67,09,29,050 /- was accepted and the same was communicated to the respondent by a Fax of Acceptance (FAO) on 31.05.2011. Subsequently, on 14.06.2011, a detailed letter of acceptance (DLOA) was issued to the respondent. The works were required to be completed within a period of seventeen months with effect from the date of issuance of the FOA; that is, by 31.10.2012. The time for completing the works was extended and the respondent finally completed the same on 30.06.2014. Thereafter, on 15.06.2015, the respondent submitted its Final Bill to EIL. The Final Bill was forwarded by EIL to GAIL and payments against the same were made on the recommendations of EIL. The last payment was made to the respondent on 04.10.2017.

3. Shortly after receiving the last payment, the respondent invoked the Arbitration Clause and issued a notice dated 12.10.2017. GAIL did not take any steps for either resolving the disputes or constituting the Arbitral Tribunal pursuant to the aforesaid notice, as according to it, there were no disputes between the parties. According to GAIL, the contract stood discharged by accord and satisfaction in view of the No Claim Certificate (hereinafter 'the NCC') issued by the respondent.

4. Since GAIL did not act on the aforementioned notice for arbitration, the respondent filed a petition under Section 11(6) of the A&C Act seeking appointment of an Arbitrator. This Court allowed the

said petition and by an order dated 16.04.2018, appointed the Sole Arbitrator to adjudicate the disputes between the parties.

5. The respondent filed its Statement of Claims before the Arbitral Tribunal, *inter alia*, raising several claims. The same are briefly described below:

5.1 Claim No.1: a sum of ₹31,23,139/- plus interest at the rate of 16% per annum. An amount equivalent to 0.5% of the Running Account (RA) bills submitted by the respondent had been deducted towards water charges. The respondent claimed the said amount on account of sums deducted by GAIL as deduction on account of water charges. The respondent claimed that in fact at the material time, the water networks were either non-existent or were not fully charged and therefore, the respondent could not draw any water from the same. And, since it was not supplied any water for construction, the amounts deducted from its RA bills on account of water charges were liable to be refunded with interest.

5.2 Claim No.2: the respondent claimed reimbursement for structural steel and allied material, which according to the respondent had been treated as scrap. The respondent claimed that it was entitled to 283.157 metric tons of structural steel that was brought at site or payment in lieu thereof. According to the respondent, it had brought 4065.619 MTs of structural steel at site. GAIL/EIL accepted that 3,763.899 MTs of structural steel had been utilized in the Project; 18.564 MTs of steel was not accounted for; and the balance 283.157 MTs of structure steel was

treated as scrap. The respondent claimed that 283.157 MTs of steel was not scrap as claimed by GAIL and it could not retain the same because it was not part of the material that was paid for by GAIL.

5.3 Claim No.3: The respondent claimed a sum of ₹1,00,00,000/- (Rupees One crore) as compensation for extended sale at the site. The respondent claimed that the delay of twenty months in completion of the Project was caused for reasons attributable to GAIL/EIL and the respondent was liable to be compensated for the same. The respondent claimed that in terms of Clause 27 of the Special Conditions of Contract, the respondent was liable to be compensated at the rate of ₹5 lacs per month.

5.4 Claim No.4: Interest on delayed payments. Engineer In-charge had sent the Final Bill amounting to ₹4,78,71,903/- (Rupees four crores, seventy-eight lacs seventy-one thousand nine hundred and three) to GAIL on 09.09.2015 for payment. In terms of Clause 22.3 of the GCC, the payments were required to be made within a period of sixty days from submission of bill on joint measurement, but GAIL did not make any payment against the said Final Bill. The respondent also claimed interest on such delayed payment at the rate of 16% per annum and quantified the same at ₹45,43,366.96/-.

5.5 Claim No.5: The respondent sought reimbursement of legal cost.

6. In addition to the aforesaid claims, the respondent also prayed that the Arbitral Tribunal declare that it had issued the NCC to GAIL under pressure, duress and coercion.

7. GAIL contested the claims raised by the respondent on merits. It also contended that the contract between the parties was fully discharged by accord and satisfaction as the respondent had furnished the NCC. In addition, GAIL claimed that the respondent had submitted the Material Reconciliation Statement (hereinafter 'the MRS') accepting that 283.157 MTs of structural steel was scrap and was deposited with GAIL. According to GAIL, it was not open for the respondent to raise any claims in view of the NCC, as the contract stood fully discharged. Further, in view of the MRS submitted by the respondent, it was not open for the respondent to make any claim in respect of 283.157 MTs of scrap steel, which it had deposited with GAIL.

8. The respondent disputed GAIL's contention that the contract in question was discharged by accord and satisfaction. It claimed that the MRS and the NCC were invalid and had been obtained by coercion and undue influence.

9. The Arbitral Tribunal examined the evidence on record and concluded that the MRS and the NCC were invalid as they were obtained by exerting undue influence and economic coercion. In addition, the Arbitral Tribunal also found in favour of the respondent that GAIL could not rely on the NCC to constitute a waiver on the part of the respondent as it had not complied with the conditions as stated therein. The respondent had issued the NCC, *inter alia*, stating that with the receipt of the aforesaid money (referring to a sum of ₹4,78,71,903/- ) it would have no further claims against GAIL. However, GAIL had

not fulfilled the payment condition. GAIL had paid an aggregate sum of ₹4,38,98,238/- against the aforesaid amount and that too in tranches. ₹1,00,00,000/- (Rupees one crore) had been paid after effecting the recoveries, which were later released to the respondent subsequently. A sum of ₹2,99,07,376/- was released to the respondent on 28.07.2016. The retention amount of ₹39,90,862/- was released on two tranches: ₹30,00,000/- was released on 22.04.2016 and the balance ₹9,90,862/- was released on 04.10.2017. The amount deducted on account of water charges of ₹2,39,330/- was not released.

10. The Arbitral Tribunal found that the amount released by GAIL fell short by ₹39,73,669/-. In terms of the NCC, the claims, dues, disputes and differences between the parties would be fully and finally settled on receipt of the amount of ₹4,78,71,903/-. But as the said amount was not paid in full, the Arbitral Tribunal held that even *de hors* the question of coercion and/or duress, the NCC could not constitute a waiver on the part of the respondent.

11. The Arbitral Tribunal examined the evidence relating to the respondent's claim for refund of water charges to the extent of ₹31,23,139/-. After evaluating the pleadings and the material available on record, the Arbitral Tribunal found that the respondent had constructed a bore and it had drawn water for construction purposes. The Arbitral Tribunal also examined Clause 2.3 of the GCC and Clause 4.0 of the SCC. In terms of Clause 2.3 of the GCC, the respondent was required to make its own arrangements for water supply and GAIL was not obliged to provide the same. However, the said Clause also provided

that GAIL would endeavor to provide water at its own source. Clause 4.00 of SCC modified Clause 2.3 of GCC to the limited extent and provided for supply of water by GAIL on payment of charges as stipulated therein. The Arbitral Tribunal interpreted both the clauses (Clause 2.3 of the GCC and Clause 4.0 of SCC) and held that in terms of Clause 2.3 of the GCC, the respondent was required to make arrangements for its water supply; however, in the event GAIL permitted the respondent to draw water from its network, the respondent would be charged a lumpsum amount at the rate of ½ % (one half percent) of the contract value. The Arbitral Tribunal held that Clause 4.00 of the SCC did not entitle GAIL to charge any amount for supply of water if it had not supplied it. The Arbitral Tribunal found that there was ample evidence to support the respondent's claim that it had not drawn water from the network of GAIL principally for two reasons. First, that the network had not been charged. And second, that even after the network had been charged, GAIL had not specified the point from where water could be drawn.

12. Insofar as the respondent's claim for structural steel is concerned, the Arbitral Tribunal examined the clauses of the contract and found that in terms of Clause 55 of the SCC, the surplus material comprising of sand, bricks, stones, aggregate and other products of dismantling temporary works, would belong to the respondent. However, no other surplus material was permitted to be removed and the same would be deemed to be the property of GAIL. But that did not entitle GAIL to

claim the surplus steel, which was neither paid for nor formed a part of the Schedule of Rates (SoR).

13. The Arbitral Tribunal also noted that in terms of Clause 59.45 of the SCC, full items of works were covered under SoR and no allowances towards wastage/scrap etc. would be accounted for.

14. It was also established from the record that the respondent had brought 4,065.619 MTs of structural steel on the site. GAIL had not paid for SoR Item no. S004.03.03 (incorporating the structural steel) in excess of 3763.898 MTs. Thus, 301.720 MTs of structural steel was required to be accounted for. Out of the said amount, 18.564 MTs of structural steel was unaccountable and the dispute essentially revolved around the remaining 283.157 MTs of structural steel. The Arbitral Tribunal found that since GAIL had not paid for the relevant SoR item in excess of 3763.898 MTs, it could not retain any steel in excess of the said quantity. However, the Arbitral Tribunal also noted that in terms of Clause 59.45 of the SCC, no allowances were permissible towards wastage and scrap. Thus, the respondent's claim for 283.157 MTs was required to be reduced by quantity of scrap, which would have been generated. The said quantity of scrap was determined on the normative basis at 1.5% of the SOR item of 3763.899 MTs. Therefore, a further amount of 56.459 MTs (1.5% of 3763.898 MTs) was required to be adjusted from the remaining quantity of 283.157 MTs of steel. Reducing the aforesaid quantity, the Arbitral Tribunal held that the respondent was entitled for return of 226.698 MTs of structural steel, which admittedly had been deposited with GAIL. GAIL's contention

that the said steel was scrap, was rejected by the Arbitral Tribunal after evaluating the evidence led by both the parties. The Arbitral Tribunal further directed GAIL to return 226.698 MTs of structural steel or pay the value thereof at the market price prevailing on the date of the award.

15. Insofar as the respondent's claim for compensation at the rate of 5,00,000/- per month for extended stay is concerned, the Arbitral Tribunal rejected the same on two grounds. First, the Arbitral Tribunal held that the respondent had waived its right for claiming any compensation. By its letter dated 09.09.2014, the respondent had applied for extension of time up to 30.06.2014 without any "financial implication on either side". The Arbitral Tribunal found that there was no material to establish that the said request was made under coercion or under undue influence. GAIL had acceded to the request for extension of time without the levy of PRS (Price Reduction Schedule) and therefore, it was not open for respondent to now claim compensation on account of extended stay.

16. Second, the Arbitral Tribunal held that compensation for extended stay would be payable in terms of the contract between the parties only if the delay was attributable entirely to EIL/GAIL. The Arbitral Tribunal found that in the facts of the case, the delay in execution of the works was not solely attributable to GAIL and therefore, the respondent was not entitled to the compensation as claimed.

17. The Arbitral Tribunal found that payments to the respondent had been inordinately delayed. The payment under the Final Bill was required to be made within a period of sixty days from its submission. EIL had forwarded the Final Bill to GAIL under the cover of its letter dated 09.09.2015 after certifying the measurements but the payments were made in a piecemeal manner on various dates: ₹1,00,00,000/- was made on 18.02.2016; ₹30,00,000/- was made on 22.04.2016; ₹2,99,07,376/- was made on 28.07.2016 and ₹9,90,862/- was made on 04.10.2017. The Tribunal held that GAIL was liable to pay interest at the rate of 10% per annum on the delayed payment. And, the said amount of interest was quantified at ₹27,35,749/-.

18. In addition to the above, the Arbitral Tribunal also awarded costs in favour of the respondent, which was quantified at ₹18,43,878/-.

19. As is apparent from the plain reading of the impugned award, it is based on pleadings and the evaluation of evidence. As noticed above, the respondent's claim for water charges is based on interpretation of Clause 2.3 of GCC and Clause 4.00 of SCC.

20. Clause 2.3 of GCC and Clause 4.0 of the SCC are set out below:

“2.3 Water Supply: Contractor will have to make his own arrangements for supply of water to his labour camps and for works. All pumping installations, pipe network and distribution system will have to be carried out by the Contractor at his own risk and cost.

Alternatively the Employer at his discretion may endeavour to provide water to the Contractor at the

Employer's source of supply provided the Contractor makes his own arrangements for the water meter which shall be in custody of the Employer and other pipe networks from source of supply and such distribution pipe network shall have prior approval of the Engineer-in-Charge so as not to interfere with the layout and progress of the other construction works. In such case, the rate of water shall be deducted from the running account bills.

However, the Employer does not guarantee the supply of water and this does not relieve the Contractor of his responsibility in making his own arrangement and for the timely completion of the various works as stipulated."

#### "4.0 SUPPLY OF WATER, POWER & OTHER UTILITIES

The scope of supply of water, power and land for Contractor's Office, Ware house, residential accommodation etc. shall be as described in Cl. 2.3 to 2.6 of GCC.

The clause no. Cl. 2.3 and 2.4 of GCC shall stand modified to the following extent only:

Water and power shall be supplied by EMPLOYER to the Contractor on chargeable basis. Lumsum amount @ ½ % of Contract value shall be charged for water supply and Rs. 6.00 per KWH for power supply."

21. Clause 2.3 of the GCC clearly indicates that the respondent was required to make all arrangements for water for the Project. However, it also expressly indicates that GAIL had agreed that it would endeavour

to provide the same from its own network. Clause 4.0 of the SCC provides for the charges to be paid by the respondent for supply of water by GAIL and to that extent it clarifies that the water supplied by GAIL would have to be paid for at the rate of ½ % (one half percent) of the contract value. However, Clause 2.3 of the GCC does not absolve respondent from making the necessary arrangements for supply of water in the event GAIL does not supply the same. This Court concurs with the Arbitral Tribunal's interpretation of Clause 2.3 of the GCC and Clause 4.0 of the SCC and therefore, no interference with the impugned award is warranted on this ground.

22. The Arbitral Tribunal had concluded that GAIL had, in fact, not supplied water to the respondent. During the initial period of the contract, the water network was not charged and even thereafter, GAIL had failed to indicate the point from where respondent could draw any water.

23. The Arbitral Tribunal reasoned that all that was required by GAIL to dispute the above was to provide some evidence to indicate that it had communicated to the respondent the point from where water could be drawn from its network. However, GAIL had failed to do so.

24. This Court finds no infirmity with the finding of the Arbitral Tribunal and its conclusion on facts warrants no interference by this Court.

25. The Arbitral Tribunal's conclusion that GAIL could not appropriate the structural steel that was brought at site and which did

not form a part of the Schedule of Rate (SOR) is based on the interpretation of the Clauses of the contract and this Court finds no infirmity with such interpretation as well. Thus, the conclusion that GAIL was required to return the surplus structural steel or pay the market value thereof, cannot be faulted.

26. In fairness, Mr. Luwang did not attempt to assail the Arbitral Tribunal's award on merits of the aforesaid claim. He confined his arguments principally to assail the conclusion of the Arbitral Tribunal that the MRS and NCC had been secured by coercion. He had contended that EIL could not be faulted for demanding the NCC before processing the Final Bill as the same was a part of the contract between the parties. He had referred to Clause 44.3 of the said contract in question, which reads as under:

“44.3 The final payment shall not become due until the CONTRACTOR delivers to the ENGINEER-IN-CHARGE a complete release or waiver of all liens arising or which may arise out of his agreement or receipt in full or certification by the CONTRACTOR in a form approved by ENGINEER-IN-CHARGE that all invoices for labour, materials, services have been paid in lien thereof and if required by the ENGINEER-IN-CHARGE in any case an affidavit that so far as the CONTRACTOR has knowledge or information the releases and receipts include all the labour and material for which a lien could be filled.”

27. Mr. Luwang submitted that a bald allegation of coercion and undue influence would be insufficient to establish the same. He pointed out that the Final Bill was submitted on 15.06.2015 and the respondent had invoked arbitration by a notice dated 12.10.2017. He submitted that in the present case, the contention that the MRS and NCC had been obtained by undue influence and coercion was raised for the first time in the Statement of Claims, which was filed almost two and a half years after the respondent had submitted its Final Bill and therefore, such a claim could not be accepted.

28. There is no dispute that a bald assertion of coercion or duress without any material substantiating the same would be wholly insufficient to maintain such a claim. The Arbitral Tribunal had referred to the decisions of the Supreme Court in *Union of India v. Master Construction: (2011) 12 SCC 349*; *National Insurance Co. Ltd. v. Boghara Polyfab Pvt. Ltd.: (2009) 1 SCC 267*; and *Oriental Insurance Co. Ltd. v. Dicitex Furnishing Ltd.: 2019 SCC Online 1458* and had observed as under:

“26. From the said decisions it is clear that the issuance of a ‘No Claim Certificate’ does not, by itself, extinguish the rights and claims of the party issuing such a certificate. If the party is able to establish duress or coercion, then the ‘No Claim Certificate’ issued by it would be void and its claims would have to be judged on merits. At the same time, a bald assertion of coercion or duress without any material to back such a plea would not entitle the party who gave the ‘No Claim Certificate’ to renege from it.”

29. After noting the law on the subject, the Arbitral Tribunal had proceeded to examine the evidence placed on record to ascertain whether the respondent's claim that the NCC and MRS had been obtained by coercion and duress was substantiated. The respondent had submitted its Final Bill (RA Bill No. 26) to EIL on 15.06.2015. Fifteen days thereafter, EIL had issued a letter dated 30.06.2015 clearly stating that the Final Bill cannot be processed without the documents mentioned therein. These included a 'No Claim Certificate' and a 'Material Reconciliation Statement'. Thus, admittedly, the petitioner was required to submit the same in order to be paid the admitted amount due under the Final Bill.

30. The Arbitral Tribunal also found that there was substantial amount due to the respondent as EIL had also recommended payment of a sum of ₹4,78,71,903/-. However, EIL/GAIL had refused to process the payment until the respondent submitted the NCC. According to Mr. Luwang, Clause 44.3 of the GCC required the respondent to submit an NCC and MRS as demanded by EIL for the purposes of processing the Final Bill. Thus, concededly, the substantial amount that was admittedly due to the respondent would have been held up on account of its claims for refund of water charges and structural steel. As noticed by the Arbitral Tribunal, the respondent had already waived its right to compensation for extension in time for completing the contract.

31. The Arbitral Tribunal also noted that the language of the NCC was as dictated by EIL/GAIL. It was a one-sided letter and effectively

deprived the respondent from raising any claims. There is also material on record to establish that the respondent was facing a liquidity crunch. The respondent had placed on record several letters seeking release of funds on that ground. It had also requested for release of funds in order to pay its vendors and sub-contractors.

32. The Arbitral Tribunal had evaluated the said material and accepted the respondent's contention that it was economically coerced to issue the NCC and MRS. In view of the substantial material placed on record, there is little doubt that the respondent was compelled to issue the NCC and MRS.

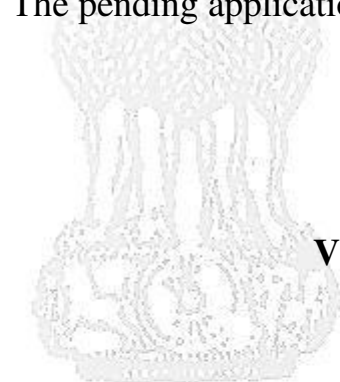
33. The contention that the allegation of coercion is a bald allegation without any substance, is unmerited. There is ample material on record to support the respondent's contention that it was compelled to issue the NCC and MRS. The Arbitral Tribunal had examined and evaluated the same and its conclusion to accept the respondent's claim cannot be stated to be perverse or patently illegal. This Court is not required to re-appreciate or re-evaluate the evidence to examine the Arbitral Tribunal's decision on merits as a first appellate court. As long as the said decision is a plausible one, based on material on record, no interference with the same is warranted. It is settled law that the Arbitral Tribunal is the final arbiter of facts and the court would not supplant its opinion in place of the Arbitral Tribunal's unless the same is found to fall foul of the public policy of India. (See: *Associate Builders v. Delhi Development Authority: (2015) 3 SCC 49*).

34. The contention that the allegation of coercion had been raised at a belated stage is also unmerited. The payments due to the respondent were delayed. The respondent had made its claim shortly after GAIL had released the payments admittedly due to the respondent. Considering that it was the respondent's case that it was compelled to issue the NCC and MRS in order to secure the payments that were admittedly due to it; the question of delay in making such allegation has to be considered not from the date when the Final Bill was submitted but when the admitted payments were received.

35. In view of the above, the present petition is unmerited and is, accordingly, dismissed. The pending application is also disposed of.

**JULY 06, 2021**  
**RK**

**VIBHU BAKHRU, J**



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