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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
 + **FAO(OS) (COMM) 138/2021 & CM APPLs. 39516/2021 & 39517/2021**

STEEL AUTHORITY OF INDIA LTD

..... Appellant

Through: Mr. Parag Tripathi, Senior Advocate
 with Ms. Anjali Sharma, Ms. Ragini
 Vинаик and Mr. Srinivasan Ramaswamy,
 Advocates.

versus

M/S LARSEN AND TOUBRO LTD & ANR. Respondents

Through: Mr. Sameer Parekh with Ms. Swati
 Bhardwaj, Advocates.

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Date of Decision: 24th July, 2023

CORAM:

HON'BLE MR. JUSTICE MANMOHAN

HON'BLE MS. JUSTICE MINI PUSHKARNA

J U D G M E N T

MINI PUSHKARNA, J: (ORAL)

1. The present appeal has been filed under Section 37(1)(c) of the Arbitration and Conciliation Act, 1996 ("Arbitration Act") read with Section 13 of the Commercial Courts Act, 2015 challenging the impugned judgment dated 17th August, 2021 passed by the learned Single Judge in *O.M.P. (COMM) No. 506/2020*. By way of the impugned judgment, the learned Single Judge has dismissed the petition of appellant herein under Section 34 of the Arbitration Act.

2. The first objection raised on behalf of appellant is with respect to finding of the learned Single Judge wherein, the objection of appellant pertaining to withholding of amount by it of sum of Rs. 2,49,74,638/- from the amounts claimed by respondent, was rejected. Mr. Parag Tripathi,



learned senior Advocate appearing on behalf of appellant has strenuously argued that the learned Single Judge failed to consider that the aforesaid amount was rightly withheld by appellant since respondent was obliged to comply with the requirements under The Building and Other Construction Workers (Regulation of Employment and Conditions of Service) Act, 1996 (“BOCW Act”). It is further contended that while the learned Arbitrator held that respondent herein was not liable to make any payment under the BOCW Act, the learned Single Judge has erred in not giving any finding as to whether the decision of the learned Arbitrator in this regard was correct. It is contended that the learned Single Judge did not examine the said question and upheld the award on that account on some different reasoning by holding that appellant herein had not incurred any liability or made any payment towards alleged dues under the BOCW Act. It is, thus, contended that finding of the learned Single Judge on this account is liable to be set aside.

3. It is next contended on behalf of appellant that the learned Single Judge failed to consider that in terms of Clause 9.3.7 of the contract dated 16.03.2009 between the parties, appellant was to receive the necessary and correct documents to enable it to realise Central Value Added Tax (CENVAT) and Value Added Tax (VAT) credit payment from the appropriate authority, and the shortfall, if any, was to be realised by appellant from respondent. Respondent had supplied documents for realisation of Rs. 8,36,36,168/- only towards CENVAT and VAT credit from the appropriate authority, therefore, appellant was entitled to recover the shortfall of the remaining guaranteed CENVAT and VAT credit from respondent.



4. The third contention raised on behalf of appellant is with respect to finding of the learned Single Judge whereby the submission of appellant that the agreement between the parties prohibited grant of any price variation, was rejected as being without any merit. Learned senior counsel for appellant has relied upon Clause 1.1 of Appendix 4 of the contract in order to contend that no price adjustment ought to have been allowed. However, the learned Single Judge failed to consider the criteria laid down for grant of price variation under the contract.

5. Per contra, learned counsel appearing for respondent has justified the impugned judgment passed by the learned Single Judge.

6. We have heard learned counsel for the parties and have perused the record.

7. The first contention raised on behalf of appellant pertains to the finding that respondent herein was not liable for any payment under the BOCW Act. While dealing with the said aspect, the learned Arbitral Tribunal had held as follows:-

“23. The Respondent has argued that in accordance with the clause 39 of the Special Conditions of Contract (SCC) the claimant is responsible for the implementation of all statutory rules and regulations including the Building and Other Conditions of the Contract Act, 1966 (BOCW Act), if applicable, and the claimant was required to quote the price accordingly. The Respondent has withheld an amount of Rs.2,49,74,638/- on this account. In response the claimant stated that the amount has been wrongly withheld. Clause 39 of the Special Conditions of the Contract reads as follows:-

“Contractor shall also be responsible for implementation of all statutory rules and regulations including the Building and Other Conditions of



Contract Act, 1956 (if applicable) and the cess Act, 1996 and they shall quote their price accordingly.”

The claimant submitted that clause 17.3 of the GCC enlists 12 legislation under which contractor’s liability has been fixed for compliance with relevant statutes/regulations. It is asserted that the list does not include BOCW Act. As we can see there is a conflict between clause 39 of the SCC and clause 17.3 of the GCC. The preamble of the special conditions of the contract reads as follows:-

“The following special conditions of contract shall supplement the general conditions of contract whenever there is a conflict, the provisions herein shall prevail over those in the GCC.”

The preamble is, therefore, clear about what will prevail in a situation of conflict. In the given situation clause 39 of the SCC will prevail. The question then is whether the BOCW Act was applicable or not and, therefore, was its compliance mandatory. The Claimant argued that in view of clause 17.3 of GCC the BOCW Act was not applicable to the premises, if scope for the work fell within the existing factory boundary which is covered by the Factories Act, 1948 and any amendment thereof. Therefore, withholding of any amount from the legitimate dues of the claimant for an indefinite period of time by the Respondent is erroneous. During the course of their oral submission as also in a statement marked R-2 provided by the Respondent, it was stated that a dispute on the relevant interpretations is sub judice and, therefore, the Respondent was justified in withholding the payment. However, the Respondent has neither presented any judicial decision, any bilateral understanding nor any other evidence to show that such act on its part was justified. We, therefore, cannot give the benefit of such claim of legitimacy to the Respondent. There is no justification to the withholding of an amount of Rs.2,49,74,638/-.”



8. While upholding the arbitral award, learned Single Judge dealt with the said issue as follows:-

“21. According to L&T, it had incurred no liability under the said Act as the works executed by it fell within the confines of an existing factory covered under the Factories Act, 1948. SAIL disputes the same. However, it is not necessary to examine this question as concededly, there is no provision in the Agreement, which entitles SAIL to withhold any amount on account of the alleged dues payable under the Building and Other Conditions of the Contract Act, 1996. In the event L&T was liable to pay any amount under the said Act, the same would be recovered from L&T under the provisions of that Act. Concededly, SAIL had not been called upon to pay any amount under the said Act on account of any alleged default on the part of L&T. SAIL has neither incurred any liability nor made any payment towards alleged dues under the Buildings and Others Conditions of Contract Act, 1996. Therefore, in any event it could have not withheld any payment due to L&T on that ground. It is in this context that the Arbitral Tribunal held that SAIL had neither presented any judicial decision nor any bilateral understanding or any other evidence, to show that the said sum withheld by it was justified. This Court finds no infirmity in the aforesaid decision.”

9. Reading of the aforesaid clearly shows that the learned Single Judge has given a categorical finding that it found no infirmity in the finding of the Arbitral Tribunal on the aspect that respondent herein was not liable to make any payment under the BOCW Act. The contention of appellant that the learned Single Judge has substituted his own reasoning with that of the Arbitral Tribunal, is found without any merit. Appellant has not been able to point out any infirmity in the award passed by the Arbitral Tribunal or the order passed by the learned Single Judge on this aspect. The Arbitral Tribunal has given detailed and proper justification in support of its



findings, which has been duly upheld by the learned Single Judge. Thus, there is no occasion for this Court to interfere in the concurrent findings as given by the Arbitral Tribunal and learned Single Judge.

10. As regards, the second contention raised on behalf of appellant regarding its entitlement to deduct sum of Rs. 7,60,97,027/- payable by respondent on account of CENVAT and VAT on works contract, this Court finds no merit in the same. On the said aspect, Arbitral Tribunal has held as follows:

“20. The Claimant in his written submissions argued that input credit related rules in respect to the two indirect taxes were changed on a few occasions and input credit on VAT on WCT was not available. A combined reading of invitation for bid, the contract agreement including the technical specifications, the GCC and the SCC shows that amounts guaranteed towards CENVAT etc. were the commitment of the claimant. Further, Respondent was entitled to claim a credit against these payments made by the claimant on their behalf. Guaranteed CENVAT etc. were irrespective of final value of the contract on account of any variations due to items or their rates and that the shortfall in credit could be deducted. However, it is clear from the documents made available which have not been contested by the Respondent that payment of Rs. 16.46 crores has been made towards this particular item as against the minimum guarantee of Rs. 15,97,29,195/- on the revised contract. It is also notable that claiming of input credit is the responsibility of the employer in accordance with the extant regulations. It is further notable that input credit on VAT paid on Works contract was not available under the relevant regulations. This argument on behalf of the Claimant was not challenged by the Respondent. Even from the language of clause 19.1.h of the invitation for Bid it can be seen that availability of input credit on VAT on WCT was uncertain as is indicated by the use of phrase if any in the second line of the clause as reproduced in para 14 above,



therefore the Respondent could not have held unavailability of Input credit against the claimant. We are, therefore, inclined to accept the arguments tendered by the claimant and do not accept the argument of the Respondent that an amount of Rs. 7,60,97,027/- was due from the claimant because neither the Respondent has proved as to which documents had not been made available by the claimant because of which Respondent was prevented from claiming the input credit for remaining amount nor the Respondent has been able to deny the fact that an amount of Rs. 16.46 crores had been paid by the claimant towards this item. According to the statement made available by the claimant to the tribunal their payments towards these indirect taxes have been as follows:-

Sl. No.	Particulars	Revised Amount of Taxes as per final value of executed contract	Actual amount of Taxes Paid
1	Minimum Guaranteed CENVAT	10,28,95,508/-	9,64,09,031/-
2	Minimum Guaranteed VAT on WCT	5,68,33,687/-	6,82,26,657/-
		15,97,29,195/-	16,46,35,688/-

These facts have not been contested by the Respondent. It is therefore clear that claimant has discharged its aggregate responsibility in this respect though it deposited Rs. 64,86,477/- less against the CENVAT head. However, since the commitment is towards filling up the shortfall, the commitment has been more than fulfilled by paying excess against VAT on WCT.”

11. Upholding the award on the aforesaid aspect, learned Single Judge has held as follows:-

“19. It is SAIL’s grievance that although it had availed of CENVAT credit in the sum of Rs. 8,36,32,168/-, it could not avail the balance. Accordingly, SAIL claimed that L&T was



liable to pay a sum of Rs. 7,60,97,027/- as a shortfall of the minimum guarantee credit on account of CENVAT and VAT on WCT. The Arbitral Tribunal found that in fact, L&T had paid actual taxes amounting to Rs. 16,46,35,688/- and therefore, CENVAT and VAT on WTC was available to SAIL to the aforesaid extent. The fact that SAIL did not or could not avail of the credit, does not in any manner, lead to the conclusion that L&T had defaulted in its obligations. L&T's obligations extended to paying actual taxes so that the credit on account of CENVAT, VAT and VAT on Works Contract Credit was passed on to SAIL. Since it was found that L&T had in fact paid taxes amounting to Rs. 16,46,35,688/- and a credit to the aforesaid extent was available to SAIL, L&T had performed its obligations. In view of the above, the Arbitral Tribunal rejected SAIL's counter claim and rightly so. The contention that the impugned award is perverse or patently erroneous on this ground, is without any merit."

12. Perusal of the aforesaid shows that the award has been passed by the Arbitral Tribunal on the basis of evaluation of the evidence and material on record, which the learned Single Judge has found to be justified. "A possible view by the arbitrator on facts has necessarily to pass muster as the Arbitrator is the ultimate master of the quantity and quality of evidence to be relied upon when he delivers his arbitral award." (see: *Associate Builders Vs. DDA (2015) 3 SCC 49*). It has been held time and again by courts in a catena of judgments that when there are concurrent findings by the Arbitral Tribunal and the Court in proceedings under Section 34 of the Arbitration Act, then a Court dealing with an appeal under Section 37 of the Arbitration Act ought to be slow in interfering with such findings, unless there is any apparent perversity in the arbitral award that goes to the root of the case. In the present case, appellant has not been able to point to any apparent perversity.



13. The third contention raised on behalf of appellant regarding price variation is again found without any merit. On the said aspect, learned Single Judge has held as follows:-

“22. The last aspect to be considered is whether the impugned award is patently erroneous to the extent that it accepts L&T’s claim for price adjustment (escalation). Mr. Tripathi, had contended that the same was contrary to the express terms of the Agreement between the parties. He relied on Sub-Clause (a) of Clause 1.1 of Appendix – 4 of the Contract Agreement to submit that award of any price variation/escalation was contrary to the express terms of the Agreement between the parties.

23. Sub-Clause (a) of Clause 1.1 of Appendix – 4 to the Agreement reads as under:-

"(a) Price adjustment be applicable for contracts with completion period of 12 months and more, with the condition that where the invitation for Bids provides that the "Time for Completion" does not exceed 12 months, but the contract is finally entered with "Time of Completion" of more 12 months, no price adjustment shall be allowed."

24. In the present case, the Notice Inviting Tender dated 10.01.2009 issued by SAIL had specified the completion schedule as “12 (Twelve) months from effective date of Contract”. Thus, the stipulated time period for completion of the contract under the Agreement could not be construed as less than twelve months. As is apparent from the plain language of Sub-clause (a) as set out above, price variation would be applicable for contracts where the time for completion is twelve months or more. Since in the present case, the time for completion of the Contract was stipulated as twelve months, the said clause applied. The second limb of Sub-clause (a), is applicable only in cases where the time for completion as stipulated in the Notice Inviting Tender does not



exceed twelve months but the contract finally entered into provides for more than twelve months to complete the contract. Since in the present case, the time for completion under the Agreement did not exceed twelve months, the second limb of Sub-clause (a) is not applicable.

25. In this view the contention that the Agreement between the parties prohibited grant of any price variation and the impugned award is liable to be set aside as being contrary to the express terms of the Contract, is also without any merit.”

14. Perusal of the aforesaid manifests that the learned Single Judge has upheld the interpretation of the contract as given by the Arbitral Tribunal. The finding as given by the Arbitral Tribunal cannot be said to be perverse or unreasonable and the learned Single Judge has rightly upheld the same. It is settled law that an Arbitral Tribunal is master of the facts. Interpretation of contract as given by Arbitral Tribunal is to be accepted, if the same is a plausible interpretation. If two views are possible, then the Court will not substitute its views merely because another view or interpretation is possible. The interpretation of contract as given by the Arbitral Tribunal is a plausible one. Therefore, there is no occasion for this Court to interfere in the findings of the learned Single Judge on this aspect also.

15. No merit is found in the present appeal. The same along with pending applications is accordingly dismissed.

MINI PUSHKARNA, J

MANMOHAN, J

JULY 24, 2023/c