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

+ **O.M.P. (COMM) 13/2021 & I.A. 238/2021**

GANNON DUNKERLEY AND CO LTD Petitioner

Through: Ms. Pooja M. Saigal, Mr. Nipun Gupta, Mr. Nikhil Sabri and Mr. Ishank Jha, Advocates.

versus

JINDAL STEEL AND POWER LIMITED Respondent

Through: Mr. Saket Sikri, Mr. Naman Joshi and Mr. Shivam Gera, Advocates.

CORAM:

HON'BLE MR. JUSTICE PRATEEK JALAN

ORDER

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02.05.2024

1. The petitioner has approached this Court, under Section 34 of the Arbitration and Conciliation Act, 1996 [“the Act”], challenging an Award of the Arbitral Tribunal dated 12.09.2020, by which the Tribunal adjudicated the disputes between the parties pursuant to two bid documents dated 15.10.2007 and 10.11.2008. The bid document contains General Conditions of Contract [“GCC”] and Special Conditions of Contract [“SCC”]. The petitioner’s bid was accepted and work orders were issued by the respondent.
2. Disputes having arisen between the parties, a reference was made to arbitration under Clause 48.0 of the GCC.
3. The learned Arbitral Tribunal framed various issues, including the



following:

“Issue 1. Whether the Claimant has filed and submitted a validly executed arbitration agreement whereby he can make a claim against the Respondent?”

4. The other issues arose out of disputes with regard to different aspects of maintainability, and also on the merits of the petitioner’s claims.

5. The principal grievance urged by Ms. Pooja M. Saigal, learned counsel for the petitioner, is that the Tribunal, having come to a conclusion against the petitioner, that the agreements placed before it required stamping and were therefore unenforceable, ought not to have decided the other issues which it has proceeded to decide against the petitioner.

6. Mr. Saket Sikri, learned counsel for the respondent, accepts that the Tribunal’s discussion on the other issues, relating to maintainability (including limitation) and merits of the petitioner’s claims, was in excess of jurisdiction, the Tribunal having come to the conclusion that the agreement could not be taken into evidence at all.

7. The learned Arbitral Tribunal’s discussion on issue No.1 includes consideration as to the question of stamping. The learned Arbitral Tribunal found that *“no agreement was ever signed by either of the parties to the arbitration”*, but that work orders were nevertheless issued under which the petitioner carried out work and delivered the project to the respondent¹. It found that payments were made by the respondent, but did not include VAT/Excise duty, which was the gravamen of the dispute



between the Tribunal. The learned Arbitral Tribunal also found that the agreement was not stamped in accordance with the Indian Stamp Act, 1899 [“the Stamp Act”]. Following the various judgments of the Supreme Court, the Tribunal upheld the objection of the respondent that the documents cannot be acted upon. Whilst doing so, however, the learned Arbitral Tribunal noted that this is a “*curable defect*”, as held by the Supreme Court.

8. The Award, until this point, poses little difficulty, but the problem arises from the fact that the Tribunal has, nevertheless, considered the petitioner’s case on merits and rendered findings against the petitioner.

9. The consequence of non-stamping of an agreement, particularly in the context of arbitral proceedings, has been explained by the Supreme Court in paragraphs 38 to 50 of a seven judge Bench judgment of the Supreme Court dated 13.12.2023 in *In Re: Interplay Between Arbitration Agreements under the Arbitration and Conciliation Act, 1996 and the Indian Stamp Act, 1899*².

10. The consequence of the provision of the Stamp Act, as explained by the Supreme Court, is that the Arbitral Tribunal ought to have impounded the agreements and referred the matter to the Collector of Stamps under the Stamp Act.

11. In view of the above, I accept Ms. Saigal’s contention that the learned Arbitral Tribunal could not have proceeded to work out the claims of the parties on the basis of the agreement, which could not have been taken into evidence at all.

¹ Paragraph C (iv) of the impugned award dated 12.09.2020.

² 2023 SCC OnLine SC 1666.



12. Learned counsel for the parties, therefore, suggest that the appropriate course in the present case would be to set aside the award on all issues except issue No.1, and to leave it to the petitioner to take appropriate steps for stamping of the instruments and raise claims afresh thereafter, if so advised. It is so ordered.

13. The petition, alongwith the pending application, is disposed of with these observations.

14. All rights and contentions of the parties on the questions decided by the learned Arbitral Tribunal are left open. It is made clear that this Court has not examined the findings of the Tribunal on any of the other issues.

PRATEEK JALAN, J

MAY 2, 2024
SS/