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IN THE HIGH COURT OF DELHI AT NEW DELHI

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ARB.P. 115/2024

M/S VARDHMAN PRECISION PROFILES AND TUBES PVT.
LTD.Petitioner

Through: Mr. Anurag Ojha, Mr. DN
Chaturvedi, Mr. Deepak Somani, Mr.
Vipul Kumar, Mr. Subham Kumar,
Advs.

Versus

BHARAT HEAVY ELECTRICALS LIMITEDRespondent

Through: Ms. Mani Gupta, Mr. Aman
Choudhary, Ms. Sonali Jain, Advs.

CORAM:

HON'BLE MR. JUSTICE JASMEET SINGH

ORDER

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02.09.2024

1. This is a petition filed under section 11(6) of the Arbitration and Conciliation Act, 1996 seeking appointment of a Sole Arbitrator to adjudicate the disputes between the parties.
2. The facts are that the respondent floated a tender dated 19.07.2012 for construction of Halls made up of Pre-Engineered steel structures Building including associated work required for HVDC Project at Agra in Uttar Pradesh ("project"). The said project was divided in 2 parts i.e. Supply part and Erection part, however a single tender was floated for the execution of the project as both the parts were interrelated. .
3. The petitioner qualified the pre-qualification technical bid criteria and being the lowest bidder was awarded the said project and in this regard, the respondent issued 2 separate Letter of Intents ("LoI") in favour of the petitioner for the supply part and the erection part.
4. Subsequently, 2 work orders were issued, both dated 21.09.2013 i.e.



(i) TBSM/AGRA-HVDC/PEB/PKG-111/SUPPLY/W0/31/13-14 for the Supply part and (ii) TBSM/AGRA-HVDC/PEB/PKG-111/ERECTION/W0/31/13-14 for the erection part. Later on, the entire contract was terminated by the respondent on 30.09.2015 and since certain disputes arose between the parties, the petitioner invoked arbitration on 05.10.2016. However, since the respondent did not respond to the letter invoking arbitration, the petitioner filed a petition filed under section 11 of the Arbitration and Conciliation Act, 1996 and *vide* order dated 20.11.2018 passed in Arb. P. 614/2018, a sole arbitrator was appointed to adjudicate the dispute between the parties.

5. Since the arbitral proceedings did not complete on time, the petitioner filed an application under section 29A of the Arbitration and Conciliation Act, 1996 seeking extension of time for a period of 1 year to conclude the arbitral proceedings and the parties at joint request also made a request for a substitute arbitrator and Justice Indu Malhotra (Retd.) was appointed as the substitute arbitrator.

6. During the pendency of the arbitral proceedings, the parties attempted to amicable resolve the disputes arisen by way of conciliation and a committee came to be constituted by the respondent and in this regard, the representatives of the petitioner had meetings with the said committee on 02.07.2021, 07.10.2021 and 22.02.2022. Furthermore, the parties agreed that if the disputes between the parties are not settled another arbitrator shall be appointed. Thereafter, with consent the earlier Arbitrator was substituted by another Arbitrator.

7. Since the conciliation could not fructify, Mr. Justice Zaki Ulah Khan, (Retd.), Allahabad High Court was appointed as an Arbitrator.



8. It is stated that the respondent had informed the petitioner that an official appointment letter dated 19.08.2023 had been issued by the respondent to the appointed arbitrator, wherein the arbitrator only scheduled the arbitral meetings with respect to the work order pertaining to the supply part and not the erection part. Hence, the dispute in the present petition only pertains to the whether the dispute under the work order regarding the erection part can be referred to the Arbitrator.

9. Ms. Gupta, learned counsel for the respondent states that the claim for erection part has expired by efflux of time and hence are *ex-facie* barred by limitation.

10. In this regard, learned counsel relies upon para 4 of the application filed by the petitioner under Section 29(A) of the Arbitration and Conciliation Act, 1996 which reads as under:

“4. Thus at the time of issuing the letter of intent, the work was divided into 2 parts, one is supply part and the other is erection part and as such 2 separate Letter of Intents were issued for both the works. The present Petition is concerned with the Supply Part and the Letter of Intent dated 26.10.2012 was issued to the Petitioner for the Supply Part of the tender for a total consideration of ₹ 39,62,17,876/- including taxes & duties as per the items with the bill of quantities. The salient features of the agreement were as under:-

- (i) *Name of work : Design, Engineering, Supply, Fabrication, shipment to job site, erection, and commissioning of DC Hall-Pre Engineered Building including associated work required for +/-800KV NE-Agra HVDC Project at Agra.*



- (ii) 19.07.2012 : NIT Published by the Respondent
- (iii) Total tender amount
After Rebate : ₹ 39,62,17,876/-
- (iv) Date of Agreement : 13.02.2014
- (v) Stipulated dates of Completion (Hall Wise)
- | | | |
|-----------|---|------------|
| DC Hall 1 | : | 20.02.2013 |
| DC Hall 2 | : | 20.06.2013 |
| DC Hall 3 | : | 20.11.2013 |
| DC Hall 4 | : | 20.02.2014 |
- (vi) Actual date of Completion: N/A=work rescinded on 30.09.2015”

11. She states that the petitioner in his application filed under Section 29(A) of the Arbitration and Conciliation Act, 1996 only sought extension of the mandate of the Arbitrator for the supply part.

12. She further states that the submission of the petitioner that a fresh cause of action has arisen for both the supply part and the erection part is misconceived as the conduct of the petitioner itself shows that it has abandoned the claim *vis-a-vis* the erection part and as far as the claim of the supply part is concerned, it is the case of the petitioner that a fresh cause of action has arisen.

13. She states that in view of the facts recorded hereinabove, it is clear that the claim arising out of the erection part of the contract has lapsed by limitation.

14. I have heard learned counsel for the parties.

15. In the present case, the minutes of the meeting dated 02.07.2021,



07.10.2021 and 22.02.2022 are relevant and the same reads as under:

Date: 02.07.2021

Minutes of Meeting between BHEL & M/s Vardhman Precision Profiles & Tubes Private Limited regarding conciliation of the disputes in NE- Agra – PEB (Supply & Erection) packages

BHEL	M/s Vardhman
1. Mrs. Meena Kesri- GM(Engineering)	1. Mr. Harsh Jain
2. Mr. Vipin Minocha- GM/ TBMM & SM	2. Mr. Nitin Chaudhary
3. Mr. Sandeep Kumar- AGM/Finance	
4. Mr. M. K. Hadda – Manager/ Law	
5. Mr. Mukesh Paswan – AGM/ TBSM	

Ms. Durre Shahwar could not sign, since she was on leave

Purchase Order Ref. No.: TBSM/AGRA-HVDC/PEB/PKG-III/SUPPLY/PO/30/13-14, dated 21.09.2013 (Supply)

Work Order Ref. No.: TBSM/AGRA-HVDC/PEB/PKG-III/ERECTION/WO/31/13-14, dated 21.09.2013 (Erection)

- The work for "Design, Engineering, Supply, Fabrication, Shipment to job site, Erection and Commissioning of DC Hall Pre- Engineered Building including associated work required for +/- 800kV NE-Agra HVDC Project at Agra in Uttar Pradesh" was awarded to M/s Vardhman Precision Profiles & Tubes Pvt. Ltd vide above mentioned work orders. The scheduled completion time was DC Hall-1- 20 Feb' 2013, DC Hall-2- 20 Jun' 2013, DC Hall-3- 20 Nov' 2013, DC Hall-4- 20 Feb' 2014 (for supply) & DC Hall-1- 20 March'13, DC Hall-2- 20 July'13, DC Hall-3- 20 Dec'13, DC Hall-4- 20 March'14 (for erection).
- Subsequently, For Supply contract: Time extension granted till 31.05.2015 for DC Hall- 1 and till 30.09.2015 for DC Hall-3 and for Erection contract time extension granted till 30.06.2015 for DC Hall-1 and till 31.12.2015 for DC Hall-3.
- During execution of the contract, the risk & Cost was invoked vide letter ref no. TBSM/NEA/Supply & ETC/15/30 & 31/KSS/03 Dated 30.09.2015 by BHEL.
- Further the contract was awarded to M/s Zamil Steel Buildings India Pvt. Ltd on risk & cost basis at comparatively lower rates. That there is no Counter Claim amount by BHEL arising out of the same.
- As on date all the DC Hall work has been completed in HVDC- NEA Site.
- Hon'ble High Court of Delhi vide order dated 20.11.2018 had appointed Justice Mr. Jagannadha Rao, former Judge of Supreme Court as Arbitrator in the matter.
- M/s Vardhman Precision Profiles & Tubes Pvt. Ltd had filed his Statement of Claim before the Arbitrator. The total Claim amount of M/s Vardhman is Rs. 60,08,81,123/- plus interest at rate of 27% per annum on the claim amount from the date of amount getting due vide statement claim Dated 06.12.2019

02/7/21 *Shankar 3/7/21* *27/7/21* *12/8/21*

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- The Statement of Defence is under preparation and yet to be filed by BHEL through the BHEL appointed Counsel. Also, it is observed that there is no Counter Claim Amount by BHEL in subject arbitration matter.
- In the meantime, M/s Vardhman Precision Profiles & Tubes Pvt. Ltd has claimed their company as MSME. Further vide email dated 24.05.2021 (attached) requested to BHEL for release of payments for undisputed & admitted amounts payable to M/s Vardhman by BHEL.
- There is a "Dispute and Arbitration Award Evaluation Committee" exist in TBG. The aim of the guideline is mainly to reduce the arbitration/ litigation in BHEL. Hence the matter was put before the Committee. M/s Vardhman also shown interest for an amicable conciliation in the said matter. Upon the consensus of BHEL & M/s Vardhman a meeting was scheduled on 02.07.2021
- The meeting between BHEL Committee Members and M/s Vardhman was held on 02.07.2021
- Considering the cost involved and the time taken by arbitration process and other legal proceedings both M/s BHEL & M/s Vardhman decided to make a final attempt to resolve the pending issues through the process of reconciliation.
- The issue of discussion has two parts:
 - 1) First Part: - Undisputed Amount payable to M/s Vardhman as per the MB records
 - 2) Second Part: - Disputed claims raised by M/s Vardhman
- The committee was of the opinion that, the undisputed amount payable to M/s Vardhman as per the MB records may be processed for payment to M/s Vardhman after sign of contractor in MB and due verification & certification of the MB records by Sector Finance. That M/s Vardhman intimated the committee, that signing of the MB will be without prejudice to the rights, contentions and claims of M/s Vardhman pending adjudication before Arbitral Tribunal.
- Committee also recommended, formation of a working committee in BHEL comprising of members from Construction, Engineering, Subcontracting and Finance and meeting shall be conducted by the working committee members once in a week. If required M/s Vardhman representative will also called for the meeting. Efforts shall be made to resolve all the disputed claims/issues within a time frame of two (02) months from the date of its inception.
- BHEL & M/s Vardhman shall make sincere efforts to resolve the pending issues in an amicable manner. That only if the parties reach to an amicable agreement/ conclusion towards the pending issues/ disputes between them; both the parties shall not pursue Arbitration and the same may be withdrawn.

[Handwritten signatures and dates]
02/07/21 02/07/21 02/07/21 02/07/21



Date: 07.10.2021

Minutes of Meeting between BHEL & M/s Vardhman Precision Profiles & Tubes Private Limited regarding conciliation of the disputes in NE- Agra – PEB (Supply & Erection) packages

BHEL	M/s Vardhman
1. Mr. Vipin Minocha- GM/ TBMM & SM	1. Mr. Harsh Jain
2. Mr. Sandeep Kumar- AGM/Finance	2. Mr. Nitin Chaudhary
3. Mr. Mukesh Paswan – AGM/ TBSM	

1. Order dated 11.08.2021 passed by the Hon'ble High Court in O.M.P (MISC.) (COMM.) 11/2020.
2. Design, Engineering, Supply, Fabrication, Shipment to Job Site, Erection and Commissioning of DC Hall Pre-Engineered Building Including Associated Work Required for +/- 800KV NE Agra HVDC Project at Agra in Uttar Pradesh- Supply Part. Purchase Order Ref. No.: - TBSM/AGRA-HVDC/PEB/PKG-III/SUPPLY/PO/30/13-14, dated 21.09.2013 (Supply) & Work Order Ref. No.: - TBSM/AGRA-HVDC/PEB/PKG-III/ERECTION/WO/31/13-14, dated 21.09.2013 (Erection)
3. MOM Dated 02.07.2021 executed between the parties towards attempt to resolve the disputes through conciliation.
 - The work for "Design, Engineering, Supply, Fabrication, Shipment to job site, Erection and Commissioning of DC Hall Pre- Engineered Building including associated work required for +/- 800kv NE-Agra HVDC Project at Agra in Uttar Pradesh" was awarded to M/s Vardhman Precision Profiles & Tubes Pvt. Ltd vide above mentioned work orders. The scheduled completion time was DC Hall-1- 20 Feb' 2013, DC Hall-2- 20 Jun' 2013, DC Hall-3- 20 Nov' 2013, DC Hall-4- 20 Feb' 2014 (for supply) & DC Hall-1- 20 March'13, DC Hall-2- 20 July'13, DC Hall-3- 20 Dec'13, DC Hall-4- 20 March'14 (for erection).
 - Hon'ble High Court of Delhi vide order dated 09.08.21 while extending the time line under section 29A of the Arbitration and Conciliation Act, 1996 by one (01) year, appointed Justice (Retd.) Ms. Indu Malhotra in place of Justice (Retd.) Mr. M. Jagannadha Rao to adjudicate the dispute between the parties.
 - Considering the ongoing settlement negotiations undergoing between Vardhman Precision Profiles and Tubes Pvt. Ltd (Referred to VPPT herein after) and BHEL, the parties wish to propose termination of mandate of Justice (Retd.) Indu Malhotra under section 15(1)(b) of the Arbitration and Conciliation Act, 1996. For substitution of the sole Arbitrator as prescribed under section 15(2) of the Arbitration and Conciliation Act, 1996, parties are agreeable to appointment of sole arbitrator from the complete list of empanelled arbitrators maintained by BHEL in terms with Clause 25 (Supply Contract) & Clause 27(Erection Contract) of the agreement. It is agreed M/s VPPT shall give their consent for any one (sole) technical arbitrator from the list of panel arbitrators to be given to them after having obtained the approval from the competent authority as per the BHEL Arbitration Guidelines 2018.

TRUE COPY
Vardhman
ADVOCATE



- It is clarified that this MOM is drawn without any pressure, threat, coercion, any undue influence and out of its volition. Further for the appointment of the substitute arbitrator M/s VPPT hereby waive the applicability of the section 12(5) of the Arbitration and Conciliation Act, 1996 in accordance with the scheme of Arbitration and Conciliation Act, 1996.

carp *Sharma* *Harsh* *M* *ufu*

Date: 22.02.2022

Minutes of Meeting between BHEL & M/s Vardhman Precision Profiles & Tubes Private Limited regarding conciliation of the disputes in NE- Agra – PEB (Supply & Erection) packages

BHEL	M/s Vardhman
1. Mr. Vipin Minocha- GM/ TBMM & SM	1. Mr. Harsh Jain
2. Mr. Sandeep Kumar- AGM/Finance	2. Mr. Nitin Chaudhary
3. Ms. Aruna Gulati- AGM/TBEM	
4. Ms. Durre Shahwar – Sr. DGM/HR & Law	
5. Mr. M.K. Hadda – Manager/ Law	
6. Mr. Mukesh Paswan – AGM/ TBSM	

Purchase Order ref. no.: - TBSM/AGRA-HVDC/PEB/PKG-III/SUPPLY/PO/30/13-14 dated 21.09.2013 (Supply)

Work Order ref. no.: - TBSM/AGRA-HVDC/PEB/PKG-III/ERECTION/VO/31/13-14 dated 21.09.2013 (Erection)

- Further to MOM dated 02.07.2021, M/s BHEL & M/s Vardhman had made a final attempt to resolve the pending issues through the process of reconciliation.
- As per the MOM dated 02.07.2021, a working committee was formed.
- The working committee had several internal meetings for conciliation and whenever it was felt that M/s Vardhman's presence was required, M/s Vardhman was also called & present in the reconciliation meeting.
- The working committee has submitted its report (attached as Annexure-I & Annexure-II). After submission of report by the working committee, a meeting has been held between BHEL Dispute Evaluation Committee and M/s Vardhman on 22.02.2022.
- BHEL informed M/s Vardhman that the due payments for Supply and Erection contract has been released to M/s Vardhman as per the Measurement Book and after due verification by Finance.
- Further BHEL intimated M/s Vardhman that based on the various provision of the contract and the available documents, out of all the claims raised by the contractor, the Claim no. 04 (Rs. 20.19) Lakh of the supply contract may be admissible as per approved drawing and for the Claim 3F – Gutter Material extra item may be considered through raising SAR. Apart from the above no other claims are admissible.
- M/s Vardhman has not agreed with the BHEL Committee.
- BHEL & M/s Vardhman had made sincere efforts to resolve the pending issues in an amicable manner, however no amicable agreement/ conclusion has been arrived at.
- M/s Vardhman has requested BHEL for appointment of arbitrator from the list of BHEL panel of arbitrators.



16. A perusal of the aforesaid minutes of the meeting indicate that the correspondence between the parties were pertaining to both the supply part and the erection part.

17. It is pertinent to mention that the parties themselves terminated the mandate of Justice Indu Malhotra (Retd.) in order to amicably resolve the disputes by way of conciliation and in this view, a committee was formed by the respondent which held meetings with the petitioner.

18. To my mind, if the disputes were only pertaining to the supply part, then there was no requirement for the parties to have correspondence pertaining to both the supply and erection part in the minutes of the meeting. Moreover, in the minutes of meeting the very fact that the parties were trying to settle the disputes both arising out of supply and erection part show that the claims were subsisting and alive.

19. The Court at this stage in view of law laid down by the Hon'ble Supreme Court in ***SBI General Insurance Co. Ltd vs Krish Spinning*** 2024 SCC OnLine SC 1754 is not required to minutely decide the issues raised by the parties as they would be within the domain of the learned Sole Arbitrator including disputes pertaining to the question of limitation.

20. This court under Section 11 of the Arbitration and Conciliation Act, 1996 is only to see the prima facie existence of the arbitration agreement and in view of the facts narrated above, it cannot be said today that the claims under the erection part have been abandoned or have been given up. However, the respondent is at liberty to agitate these issues and the learned Arbitrator shall decide the same uninfluenced by the observations made hereinabove as the same are only for the purposes of deciding the



application under Section 11 of the Arbitration and Conciliation Act, 1996.

In view of this matter, the following directions are issued:-

- vii) Ms. Justice Hima Kohli (Retd.) (Mob. No. 9871300036) is appointed as a Sole Arbitrator to adjudicate the disputes between the parties.
- viii) The arbitration will be held under the aegis of the Delhi International Arbitration Centre, Delhi High Court, Sher Shah Road, New Delhi hereinafter, referred to as the 'DIAC'). The remuneration of the learned Arbitrator shall be in terms of the Delhi International Arbitration Centre (Administrative Cost and Arbitrator's Fees) Rules, 2018.
- ix) The learned Arbitrator is requested to furnish a declaration in terms of Section 12 of the Act prior to entering into the reference.
- x) It is made clear that all the rights and contentions of the parties, including as to the arbitrability of any of the claim, any other preliminary objection, as well as claims on merits of the dispute of either of the parties, including the issue of limitation are left open for adjudication by the learned arbitrator.
- xi) The parties shall approach the learned Arbitrator within two weeks from today.

JASMEET SINGH, J

SEPTEMBER 2, 2024/DM

[Click here to check corrigendum, if any](#)