



2024: DHC: 3025



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

*Decided on: 15.04.2024*

+ O.M.P. (COMM) 165/2024

**BENARA SOLAR PRIVATE LIMITED**

..... Petitioner

Through: Mr. Pragyan Pradip Sharma, Mr.  
Anirudh Ramanathan, Mr. Anoop  
George, Mr. Hardik Jain,  
Advocates.

versus

**SOLAR ENERGY CORPORATION  
OF INDIA LIMITED & ANR.**

..... Respondents

Through: Ms. Mani Gupta, Mr. Aman  
Chaoudhary, Advocates for R-1.  
Ms. Shivangi Kumar, Advocate for  
R-2.

**CORAM:**

**HON'BLE MR. JUSTICE PRATEEK JALAN**

**PRATEEK JALAN, J. (ORAL)**

**I.A. 8333/2024 (for exemption)**

Exemption allowed, subject to all just exceptions.

The application stands disposed of.

**I.A. 8332/2024 (for condonation of delay)**

This is an application for condonation of 28 days' delay in filing of the petition.

One of the reasons given is that the authorized representative of the petitioner was preoccupied with the illness of his father. There also appears to have been a dispute with counsel who was entrusted with the

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task of preparation of the petition.

In view of the aforesaid reasons, and the fact that the period of delay is within the maximum condonable period of thirty days under the proviso of 34(3) of the Arbitration and Conciliation Act, 1996, the application is allowed.

**O.M.P. (COMM) 165/2024**

1. By way of this petition under Section 34 of the Arbitration and Conciliation Act, 1996 [“the Act”], the petitioner assails an arbitral award dated 02.12.2023, by which an Arbitral Tribunal has adjudicated disputes between the parties under a contract for installation of rooftop solar panels, to the extent that the learned Arbitral Tribunal has rejected the petitioner’s claim for ‘*incentive*’ under the contract at the rate of Rs.18,750/- per kW.
2. The Ministry of New and Renewable Energy [“MNRE”] floated a scheme for installation of rooftop solar panels. Respondent No.2 – Municipal Corporation of Delhi [“MCD”] was one of the agencies which participated in the scheme. On its behalf, the Solar Energy Corporation of India Ltd. [respondent No.1] was entrusted with the task of identification of implementing partners.
3. Respondent No.1 issued a tender on 08.07.2016 entitled ‘*Request for Selection (RFS) of Bidders*’ [“RFS”]. The petitioner participated in the tender and was issued a Letter of Allocation [“LoA”] dated 06.12.2016 for installation of panels at identified locations.
4. The dispute between the parties arises from provisions in the RFS and LoA for incentives to be provided to the implementing partner.
5. Clause 11 of the RFS document reads as follows:



***“11. LIQUIDATED DAMAGES (LD) FOR DELAY IN PROJECT IMPLEMENTATION***

***11.1 SECI will issue the sanction letter(s) for the Project(s) indicating the Incentive amount(s) which will be disbursed in line with the provisions of the RFS document. The Bidder shall complete “submission of project sanction documents as per the requirement of SECI Engineer-In-Charge”, Design, Engineering, Manufacture, Supply, storage, civil work, erection, testing & commissioning of project within 6 months from the date of issue of Allocation letter.***

***11.2 If the bidder fails to commission the sanctioned project within specified/sanctioned time and even delays further period of six months of sanctioned period of completion, no incentive shall be provided to the bidder. However, bidder shall be allowed to execute the project without incentive for further period of six months, and Liquidated Damages on per day basis calculated for the Performance Security on a 6 months period would be levied for further delays. After 6 months of commencement of LD period (12 months after sanctioned period is over) the project will get cancelled and the total PBG amount would be forfeited.***

*Ex: If a period of 1 MWp in General category state is delayed by (180+36) days from sanctioned period (-here it is 6 months) then*

*(1) After 6 months + 180 days – NO INCENTIVE SHALL BE GIVEN*

*(2) The Liquidated Damages will be levied as given below.*

*Liquidated Damages = ((Performance Security)/180 days)\*delayed days i.e, (18,75,000/180)\*36 = Rs.3,75,000.”<sup>1</sup>*

6. In the RFS, as amended on 21.09.2016, the amount of incentive was stated to be ₹18,750/- per kW.

7. In the LoA dated 06.12.2016, similar provisions were inserted in Clause 4.0 and 6.0 which are reproduced below:

***“4.0 INCENTIVE DISBURSEMENT:***

*The subsidy shall be disbursed as follows:*

***a) INCENTIVE DISBURSEMENT:***

***4.1 For CAPEX Model***

*The Incentive for the project shall be disbursed as follows:-*

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<sup>1</sup> Emphasis supplied.



**“Incentives” available from SECI under CAPEX MODEL shall be Rs.18,750/- per kW.**

*For Delhi state the Rs.12,500/- per kWp (2/3 of the amount mentioned above) incentive shall be disbursed after Successful Commissioning and acceptance of project and balance Rs.6,250/- (1/3 of the amount mentioned above) incentive after completion of first year of successful O&M, if project is commissioned in sanctioned time (as per clause of 3.4 of LOA)*

xxxx

xxxx

xxxx

**6.0 LIQUIDATED DAMAGES (LD'S) FOR DELAY IN PROJECT IMPLEMENTATION**

**6.1 SECI will issue the sanction letter(s) for the Project(s) indicating the Incentive amount(s) which will be disbursed in line with the provisions of the RFS document.** The Bidder shall complete “submission of project sanction documents as per the requirement of SECI Engineer-in-Chief”, Design, Engineering, Manufacture, Supply, storage, civil work, erection, testing & commissioning of project within 6 months from the date of issue of Allocation letter.

**6.2 If the bidder fails to commission the sanctioned project within specific/sanctioned time (six months from date of LOA) and delays further, no incentive shall be provided to the bidder. However, bidder shall be allowed to execute the project without incentive for further period of three months, and Liquidated Damages on per day basis calculated for the Performance Security on a 3 months period would be levied for further delays.** After 3 months of commencement of LD period (9 months after date of issue of LOA) the project will get cancelled and the total PBG amount would be forfeited.”<sup>2</sup>

8. It is the admitted position that the installation of the panels was not completed within six months. However, the petitioner claimed the incentive amount on the basis that the delays were not attributable to it. After some correspondence between the parties, respondent No.1 forwarded a communication dated 22.07.2019 to the petitioner, stating that the petitioner was ineligible for the incentive under the RFS as the project was not completed within six months. However, it was stated that

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<sup>2</sup> Emphasis supplied.



the petitioner's project was covered under an incentive scheme entitled 'Achievement Linked Incentive Scheme dated 30.03.2017' issued by MNRE under which incentive at the rate of 25% of the total project cost i.e., Rs.11,523.75/- per kW would be admissible to the petitioner.

9. It appears from the record that this offer was made by respondent No.1 pursuant to a request sent by respondent No.1 to the MNRE dated 05.12.2018 for sanction of the benefit of the scheme dated 30.03.2017 to the petitioner, despite the fact that the subject agreement was prior to the notification dated 30.03.2017.

10. The petitioner complied with the request and submitted a letter of undertaking in the terms required by respondent No.1 on 08.08.2019. By an e-mail of the said date, it requested respondent No.1 to release the funds as per the letter attached. The attached undertaking reads as follows:

*"This has reference to LoA Number SECI/Cont./02/2016/2.5/10486 dated 06-12-2016 awarded to M/s Benara Solar Pvt. Ltd.*

**We would like to submit that with our all efforts we could not complete the project within 6 months from the date of above mentioned LOA. Due to this, the incentives at Rs.18750 per kW as per RFS is not admissible due to revision in the benchmark cost of MNRE.**

**We are aware that due to the revision in benchmark cost and out LOA being covered in MNRE's Achievement Linked Incentive scheme dated 30.03.2017", the incentive @ 25% of total project cost i.e. Rs.11523.75 per kW will be admissible to us.**

**SECI is requested to release the incentive to us as per the above.**"<sup>3</sup>

11. In terms of the undertaking, the petitioner has admittedly received the incentive amount at the rate of Rs.11,523.75/- per kW in two tranches, on 07.08.2019 and 31.12.2019.



12. It thereafter issued a communication dated 06.01.2020 to the respondent No.1 claiming subsidy at the rate provided in the LOA. The said communication makes no reference to the undertaking.

13. In view of the refusal of respondent No.1 to release the balance of the incentive as claimed by the petitioner, arbitral proceedings were instituted, which have been adjudicated by a three-member arbitral tribunal.

14. The learned Arbitral Tribunal framed the following issues:

*“i. Whether the Claimant or the Respondent No. 1 or the Respondent No. 2 was responsible for obtaining the net metering permission, line augmentation works and availability of roofs on which solar panels would be located?*

*ii. Whether the delay in completion of the project as per the Letter of Allocation dated 06 December 2016 (“LOA”) is attributable to the Claimant or to the Respondents or for reasons beyond the control of the Claimant?*

*iii. Whether the LOA or other Contract documents allow for time extension to the Claimant for performance of its obligations under the contract? If no, whether the Claimant was under facts or under law entitled to time extension for completion of works?*

*iv. Whether the Respondent No. 2 had the authority to grant the Claimant time extension for completion of the works or such authority was vested with the Respondent No. 1 only? If such authority for grant of time extension was only with the Respondent No. 1 alone, then whether any time extension granted by the Respondent No. 2 to the Claimant, as per the relationship between the Respondent No. 1 and the Respondent No. 2, would be a valid time extension.*

*v. Whether the Claimant failed to fulfil all its obligations and complete the work under the LOA dated 06.12.2016 within the time stipulated under clause 7 read with RFS dated 08.07.2016 clause 11.3 or time extension was granted to the Claimant for completion. That would entitle the Claimant for incentive as per the LOA?*

*vi. Whether the undertaking dated 08.08.2019 given by the Claimant to Respondent No. 1 was issued by the Claimant under any duress or*

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<sup>3</sup> Emphasis supplied.



*coercion rendering the same null and void?*

*vii. Whether the Respondent No. 1, in terms of Disclaimer No. 2 at Pg. 24 of the RFS document was entitled to and unilaterally revised, modified, amended or supplemented the RFS document? If so, can Respondent No. 1 rely on such clause for revising the incentive amount payable to the Claimant?*

*viii. Whether the Invoice dated 28.06.2017 raised by the Claimant on Respondent No. 2 was in terms of Clause 4 of the LOA?*

*ix. Whether the MNRE's notification no. 03/88/2015-16/GCRT dated 30 March 2017 is applicable to the present contract? If yes, whether the MNRE/ Respondent No. 1 did and could unilaterally and ex post facto revise the incentive amount payable to the Claimant by way of its notification no. 03/88/2015-16/GCRT dated 30 March 2017?*

*x. Whether the Claimant raised any objection to the amendment to the notification referred in issue no. ix, at any stage before the present dispute arose?*

*xi. Whether the Claimant is entitled to raise further claims against Respondent No. 2 despite having acknowledged and accepted the measurements and running bills from time to time pursuant to which all due payments were released by Respondent No. 2 to the Claimant?*

*xii. Whether the Claimant was entitled to be paid by the Respondent No. 2 at Rs. 46,095/- per KWp on the basis of the installed capacity of the solar plants or on the basis of measurement recorded in the Measurement Books (i.e., basis actual output of the solar plants) as maintained by the Respondent No. 2? If the Claimant was entitled to payments at Rs. 46,095/- per KWp as recorded in the measurement books, whether the notings in the measurement books were accurate and can be relied upon by the Respondent No. 2 to entitle the Respondent No. 2 for making deductions from the Claimant's invoice and deny the Claimant the monies it was otherwise entitled to under the LOA?*

*xiii. Whether the Claimant is entitled to a sum of Rs. 1,80,65,625/- plus interest from the Respondent towards unpaid incentive under the LOA/ other contract documents?*

*xiv. Whether the Claimant is entitled to pre-reference and pendent lite interest and if so for which period and what rate?*

*xv. Which party is entitled to the costs of arbitration and to what extent?"*

15. The learned Arbitral Tribunal, by majority, has declined the



aforesaid claim of the petitioner. A separate claim for balance of certain contractual dues due to the petitioner from respondent No.2 has been allowed.

16. I have heard learned counsel for the parties.

17. As noted above, the petitioner's challenge is with regard to the learned Arbitral Tribunal's decision declining its claim for the balance amount of the incentive.

18. At the outset, it may be noted that the learned Arbitral Tribunal has accepted the petitioner's position that the delay in completion of the project was not attributable to it. The findings of the learned Arbitral Tribunal are that the delays were neither attributable to the petitioner nor to the respondents, but were beyond the control of the parties<sup>4</sup>. It has also accepted the position that the contract documents provided for extension of time to be granted by respondent No.1, subject to the maximum period provided in the contract, and noted that no liquidated damages have been claimed by the respondents<sup>5</sup>.

19. Despite the aforesaid findings, however, the learned Arbitral Tribunal has declined the subject claim on the ground that the petitioner was not entitled to the contractual incentive, as the project was not completed within six months of issuance of the LoA, and in view of the fact that the petitioner had undertaken to accept the amount of incentive computed under the MNRE notification dated 30.03.2017. It has rejected the petitioner's contention that the undertaking was vitiated by coercion or duress.

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<sup>4</sup> Decision on issue Nos. 1 and 2 in the impugned award dated 02.12.2023.

<sup>5</sup> Decision on issue Nos. 4 and 5 in the impugned award dated 02.12.2023.



20. While examining the findings of the learned Arbitral Tribunal on these points, the Court exercises limited jurisdiction, and may interfere with construction of a contract or appreciation of evidence, only in cases of patent illegality, which go to the root of the matter. This has been explained to include cases of perversity, arbitrariness or irrationality, which returns a finding that no reasonable Tribunal could have reached.<sup>6</sup>

21. In the present award, on the first aspect, the learned Arbitral Tribunal has noted that the provision for completion of the project beyond the period of six months, was expressly without payment of any incentive to the claimant. The interpretation of the relevant contractual clauses is contained in paragraph 12.5 of the award in the following terms:

*“It is a fact that though the Claimant could not complete the work in time, the delay was not attributable to the Claimant. **A plain reading of the above provisions makes it clear that, no incentive will be granted if the commissioning of the Project is not completed within 6 months of issuance of the LOA and there is no ambiguity whatsoever in the language of the contract, in this regard.** The contract also provides for delayed completion of the project, but without any incentive to the Claimant i.e., the work could be completed even after the original period and during delay of further six months of sanctioned period of completion, but no incentives will be given. There was no formal grant of extension of time in this contract. The communication between the Respondent No. 2 and the Respondent No. 1, shows the Respondent No. 2 might have extended the time by one month, but there is no record of the actual time extension document before the AT. May it be so, there was abnormal delay in commissioning of the project and this delay has not been attributed to the Claimant either by the Respondent 1 or the Respondent 2, contemporaneously. **It is held by the AT that the delay was not attributable to the Claimant. It is also held that the time is deemed to be extended by conduct of the parties. It is also noted that no***

<sup>6</sup> Reference, for example, may be made to the judgment of the Supreme Court in *Reliance Infrastructure Ltd. vs. State of Goa*, (2024) 1 SCC 479, *PSA Sical Terminals (P) Ltd. vs. V.O. Chidambranar Port Trust*, (2023) 15 SCC 781, and *Associate Builders vs. DDA*, (2015) 3 SCC 49.



**liquidated damages have been imposed on the Claimant alleging delay on its part, rather the Respondent No. 1 did pay incentive to the Claimant, albeit under the revised scheme.**

The contract does not specify the delay events which shall entitle the Claimant to extension of time. Clause 11 of the RFS, in which time extension provision is incorporated, is primarily a liquidated damages clause and not a time extension clause. Clause 11.1 of the RFS requires completion including commissioning of project within 6 months from the date of issue of Allocation letter. Clause 11.2 provides if the bidder fails to commission the sanctioned project within specified/sanctioned time and even delays for further period of six months of sanctioned period of completion, no incentive shall be provided to the bidder, though the Claimant would be allowed to execute the work in such additional six months. Liquidated damages would be levied for further delays i.e., for execution of work after six months the sanctioned completion date (after 12 months from date of commencement) and the Claimant could be allowed for further six months with liquidated damages i.e., for the period of 12 months to 18 months from the date of commencement (referred as 12 months after the sanctioned period of six months is over). After this period 18 months from the date of commencement, the project will get cancelled and the total PBG amount would be forfeited. In fact, the work was executed beyond such period of total 18 months for delay in commissioning and neither any liquidated damages were imposed nor the PBG was forfeited.

**Clause 6.0 of the LOA is similar to the Clause 11 of the RFS, but with some inconsistency in the language between the RFS & the LOA. Whereas, the provision of no incentive for any delay in completion of the project including commissioning remains intact, the period of further six months for completion of work beyond the original six months provided in the RFS without any incentive, is modified to three months in the LOA and with liquidated damages.** Further, the project would be cancelled and PBG forfeited, if the work is not completed in total 9 months from the date of issuance of LOA.

May it be so, the contract does not expressly provide for time extension beyond such additional period of either 12 months or 3 months; whereas the contract has been performed beyond such time, without an express time extension, without any liquidated damages imposed or without cancelling the contract, as required under the LOA as well as the RFS. Would this mean the time of 6 months provided in the LOA is deemed to be modified till the actual commissioning of the facility, for the purpose of getting the incentive or to entitle the incentive money?

The question that is raised by the Respondent No. 1 is that the claim of



incentive is de hors the contract, as the RFS as well as the LOA is categorical about this and both prohibit any incentive if the work is not completed including commissioning within the six months' period.

It is found that the Claimant's contention of deemed extension of time **is not sufficient to claim incentive, when the clear language in the RFS as well as the LOA, prohibits incentive for performance of the Contract beyond the 6-month stipulated, which allows time extension beyond the initial 6 month's period, but disallows incentive in case of such delay in completion.** There is nothing in the contract that if the time is extended or is deemed to be extended, for reasons not attributable to the Claimant, the incentive shall be payable. Such a stipulation cannot be implied, when the contract prohibits incentive in case performance is accepted after the sanctioned time of 6 months. **Hence, claiming incentive by the Claimant on the plea of deemed extension of time is contrary to the contract.** The Claimant has primarily pleaded for incentive on the plea of deemed extension of time and not based on breach of contract by the Respondents or on prevention principle. Also, the delay could not be attributed to the Respondents.

Hence, the claim of the incentive money for extension of time by conduct, is contrary to express terms of the contract, when the RFS and LOA expressly provides that "If the bidder fails to commission the sanctioned project within specified/sanctioned time (six month from date of LOA) and delays further, no incentive shall be provided to the bidder."

**Thus, there is nothing to interpret or construct in the said language that if time is extended, be it for reasons not attributable to the Claimant, incentive shall be payable.** Doing so, shall be in violation of section 28(3) of the A & C Act, 1996. The AT cannot re-write the Contract and insert a provision that is not agreed by the parties. The contract does not provide that if the time is extended for reasons not attributable to the Claimant and without liquidated damages, then incentive shall be applicable, even if the work is completed after 6-month period stipulated. Rather, the Contract provides such incentive and provides no incentive shall be payable if the work is not completed in 6-month period; while completion means and includes commissioning of the work and not mere installation.

**The AT has also considered the facilitative intent of the incentive scheme, as argued by the Claimant, but the AT is bound by the express terms of the contract.** The case law of Sun Renewable RT Private Limited Vs. Ministry of New and Renewable Energy, UOI (2023 SCC Online Del 466) relied upon by the Claimant is on different facts, as in that case part of the site concerned for setting up the solar



*panel was deleted by agreement between the parties due to not being available and therefore the Hon'ble High Court observed that the non-availability of the said site was not due to the SPD and therefore the incentive due to the SPD could not be reduced. In the present case there is no such reduction of site or any other action taken by SECI or MNRE to reduce the scope of the work.”<sup>7</sup>*

22. The learned Arbitral Tribunal, thus, found the claim for contractual incentive to be contrary to the express terms of the contract and held that there was no contractual provision for payment of incentive beyond the period of six months, even if the reasons for delay were not attributable to the petitioner. I do not find any perversity or arbitrariness in this interpretation of the contract. The learned Arbitral Tribunal has proceeded on the express words of the contractual document set out above, and no provision to the contrary has been placed by Mr. Pragyan Pradip Sharma, learned counsel for the petitioner. No clause of the contract has been pointed out to me to suggest that incentive was payable to the petitioner, even if performance was delayed for reasons beyond its control. In accepting such an interpretation, it is also noted that the incentive provision was in addition to the bid price, which has admittedly been paid to the petitioner.

23. Mr. Sharma refers to a communication of respondent No.2 dated 05.10.2018, addressed to respondent No.1, which stated that the delay is not on the part of the contractor and recommended that respondent No.1 release the incentive amount to the petitioner under RFS terms and conditions. However, he accepts that the contract was between the petitioner and respondent No.1, although respondent No.1 was acting on behalf of respondent No.2, and that the petitioner's claim for incentive

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<sup>7</sup> Emphasis supplied.



was against respondent No.1. The learned Arbitral Tribunal has interpreted the contractual documents and appreciated the evidence, as noted above. I do not find this recommendation by MCD to be a document which goes to the root of the award<sup>8</sup>, and renders it susceptible to interference, particularly when the petitioner itself had subsequently issued the undertaking dated 08.08.2019, as discussed below.

24. Mr. Sharma relies upon a judgment of a Coordinate Bench dated 27.01.2023 in *Sun Renewables RT Pvt. Ltd. vs. Ministry of New and Renewable Energy, Union of India & anr.*<sup>9</sup> [“Sun Renewables”], to submit that the grant of incentive under the scheme is for a public objective, which ought to be granted to eligible entities, rather than denied for technical reasons.

25. The said judgment was rendered in a petition under Article 226 of the Constitution, and sought release of incentive in terms of the MNRE scheme dated 30.03.2017. The incentive had been declined to the petitioner therein on the ground that execution of only a part of the allocated amount had been undertaken by the petitioner therein. The Court found that the project had been completed within the time prescribed in the RFS in that case, and that the change in the sanctioned capacity was undisputed. It is in this context that the respondents were directed to release the incentive amount on the finding that a pragmatic approach ought to be adopted in construction of the incentive scheme.

26. I am of the view that the judgment is distinguishable from the facts of the present case, most significantly because the learned Arbitral

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<sup>8</sup> *Dyna Technologies (P) Ltd. vs. Crompton Greaves Ltd.*, (2019) 20 SCC 1.

<sup>9</sup> 2023 SCC Online Del 466.



Tribunal has arrived at a finding that the project was not completed within the period which would have entitled the petitioner to the contractual incentive. In any event, the judgment concerns the grant of incentive under the scheme dated 31.03.2017, which has admittedly been granted to the petitioner also. The petitioner's claim in the present case was for an amount beyond what is permissible under the Scheme, on the strength of the contractual conditions, which the learned Arbitral Tribunal has, in my view, rightly rejected.

27. The learned Arbitral Tribunal has also considered the petitioner's submission in the statement of claim that the undertaking given by it on 08.08.2019 was issued under duress or coercion and is, therefore, null and void. Upon consideration of the documentary and oral evidence led before it, the learned Arbitral Tribunal has found no evidence in support of this contention. The relevant observation of the learned Arbitral Tribunal are as follows:

*"This issue is relevant, only if the Claimant is entitled to the contractual incentive and not otherwise. It is already decided in Issue no. 5 that the Claimant is not entitled to the incentive as per LOA/RFS.*

*The fact that the Respondent No. 1 has allowed some incentive to the Claimant is no justification to claim the contractual incentive, unless the incentive as per the terms of the Contract becomes admissible.*

*While the finding is as mentioned above, the issue of duress or coercion is decided as under-*

*1. The Claimant has pleaded that the undertaking dated 08.08.2019 by the Claimant to Respondent No. 1 was issued by the Claimant under duress and coercion. The Respondent No. 1 has denied any coercion or duress on the Claimant in giving the undertaking.*

***ii. The Claimant has relied on various correspondence vide which the Claimant had made the incentive claim and that the undertaking had been signed by the Claimant as drafted and issued by the Respondent 1, word by word, hence allegedly not voluntarily. The Claimant has also***



**relied upon subsequent correspondence after the said undertaking, vide which it made this claim.** The Claimant has given affidavit of CW- 1 on this aspect.

iii. The CW-1 in Affidavit of Evidence in Para-No. 9 stated that it objected to the revision of the incentive amount and in Para-No. 14 stated that undertaking submitted was incorrect.

iv. **However, in cross-examination, the CW-1 gave following answers to the questions-**

“[Shown paragraph 9 of the affidavit]

**Q. 1 Did you by any correspondence on that time when you had this meeting on 15/16.07.2019, did you communicate to the Respondent No. 1 or 2 your objection to the alleged revision in the incentive scheme on or about the said dates?**

**Ans. I do not remember.**

[Shown paragraph 14 of the affidavit]

**Q.2 Did you inform Respondent No. 1 by any correspondence that the undertaking submitted by you as mentioned in para no. 14 of your affidavit was incorrect?**

**Ans. No.”**

v. **The above deposition before the AT by the CW-1 do not substantiate the theory of duress or coercion.** The burden to prove duress or coercion was on the Claimant and the same is not proved. Though the Claimant in the Affidavit of Evidence of CW-1, stated the undertaking dated 08.08.2019 given by the Claimant accepting the revised Incentives as per MNRE's revised Incentive Scheme to be under coercion and duress in view of the distressed financial health of the Claimant, but in the Cross-examination held on 22.02.2023, CW-1 could not corroborate the same statement.

vi. So, the AT finds that the Claimant was not able to prove that the undertaking dated 08.08.2019 issued by the Claimant was under any duress or coercion, rendering the same null and void.

### **Decision**

The undertaking dated 08.08.2019 given by the Claimant to Respondent No. 1 issued by the Claimant is not proved to be under any duress or coercion rendering the same null and void.”<sup>10</sup>

28. The learned Arbitral Tribunal has rightly relied, for this purpose,

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<sup>10</sup> Emphasis supplied.



upon the oral evidence, in which it was admitted that no correspondence was addressed by the petitioner to respondent No.1 to this effect. It, therefore, held that the petitioner had failed to discharge its burden of proof in respect of his plea of economic duress or coercion. I do not find the conclusion to be perverse or arbitrary in any way.

29. Mr. Sharma submits that the dissenting arbitrator has come to a contrary conclusion, relying upon communications addressed by the petitioner to respondent No.1, both before and after submission of the undertaking dated 08.08.2019. The correspondence relied upon were letters dated 06.09.2017, 23.10.2019, 08.12.2017, 02.11.2018, by which the petitioner merely sought release of the incentive amount due to its poor financial condition. Mr. Sharma, however, submits that immediately after the release of the amounts in terms of the undertaking, the petitioner did address a communication dated 06.01.2020, again claiming the balance amount. In the said letter also, however, there is no mention of economic duress or coercion which led to issuance of the undertaking by the petitioner. In fact, there is no mention of the said undertaking at all. In these circumstances, I am unable to find any perversity in the finding of the majority that the petitioner had failed to prove duress or coercion in arriving at the conclusion on issue No. 6.

30. The consequence of the aforesaid discussion is that the learned Arbitral Tribunal's findings, both on the point that the petitioner was not entitled to the contractual incentive, and on the validity of its undertaking dated 08.08.2018, are not susceptible to interference of this Court under Section 34 of the Act. That being the position, there is no infirmity in the impugned award to the extent that it declines the balance of incentive to



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the petitioner.

31. The petition is, therefore, rejected but with no order as to costs.

**PRATEEK JALAN, J**

**APRIL 15, 2024**

*'Bhupi'/Adhiraj/*

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