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

% *Date of Decision: 23.04.2024*

+ **FAO(OS) (COMM) 78/2024, CM Nos.23333/2024 & 23334/2024**

MEIDEN T AND D INDIA LIMITED

(FORMELY PRIME MEIDEN LIMITED)

..... Appellant

Through: Mr. P.S. Bindra, Sr. Adv. with Mr.
Raghu Tandon & Ms. Divya Bansal,
Advs.

Versus

PCI LIMITED

..... Respondent

Through: Mr. Darpan Wadhwa, Mr. Arindam
Ghose, Mr. Upinder Singh & Mr.
Sharanya Bhatnagar, Advs.

CORAM:

HON'BLE MR. JUSTICE VIBHU BAKHRU

HON'BLE MS. JUSTICE TARA VITASTA GANJU

VIBHU BAKHRU, J.

1. The appellant (hereafter also referred to as *Meiden*) has filed the present appeal under Section 37(1)(c) of the Arbitration and Conciliation Act, 1996 (hereafter *the A&C Act*) impugning a judgment dated 12.02.2024 (hereafter *the impugned judgment*) whereby, the learned Single Judge of this Court had rejected the appellant's petition being OMP (COMM) 513/2022 captioned *Meiden T&D India Limited v. PCI Limited*.

2. Meiden had filed the aforementioned petition [OMP (COMM) 513/2022] under Section 34 of the A&C Act impugning an arbitral award dated 11.07.2022 as corrected by an award dated 31.08.2022, under Section 33 of the A&C Act (hereafter *the impugned award*), delivered by the Arbitral Tribunal comprising of a Sole Arbitrator (hereafter *the Arbitral Tribunal*).



3. The Arbitral Tribunal had awarded a sum of ₹1,95,48,107/- along with interest in favour of the respondent (hereafter *PCI*), which was the claimant before the Arbitral Tribunal. *PCI* had, *inter alia*, claimed a sum of ₹2,29,11,625/- as service charges and utility charges payable under the Service Facility Agreement (hereafter *SFA*) entered into between the parties on 01.06.2016 in respect of premises comprising of an area of 5892 square feet forming a part of Prime Towers 287-288, Phase-II, Udyog Vihar, Gurgaon, part of it was located on the Ground Floor, while parts of the same were located at the Sixth Floor and Seventh Floor. The said premises was hereafter referred to as *the Licensed Premises*.

4. There is no dispute that Meiden was liable to pay service charges under the *SFA*, however, Meiden claimed a set off of two debit notes raised by it relating to bank guarantees, which Meiden claims were wrongfully, invoked by *PCI*. Meiden also claimed that it was prevented from accessing the Licensed Premises and therefore, was not obliged to pay the service charges for use of those premises.

5. *PCI* disputes that it is liable to pay any amount as claimed by Meiden under the debit notes and that the arrangement/contracts in furtherance of which the Bank Guarantees were issued are not related to the *SFA* and therefore, Meiden's claim of set off was not tenable. Meiden claimed that as *PCI* was disputing its liability under the two debit notes – a dispute not covered under the Arbitration Agreement included in the *SFA* – *PCI*'s amounts due under the *SFA* were not arbitrable. On merits, Meiden claimed that the amount as claimed by *PCI* was not payable as Meiden was entitled to a set off of the amounts as specified in the two debit notes in question.



6. The Arbitral Tribunal had rejected the contention that the disputes were not arbitrable. The claims raised by PCI had arisen in connection with the SFA, which included an arbitration clause. Insofar as the merits of the dispute is concerned, the Arbitral Tribunal rejected Meiden's contention that it was entitled to claim a set off. The Arbitral Tribunal held that since Meiden's claim arose in respect of a separate and distinct transaction, it could not raise the same as a legal set off on the principles of Order VIII Rule 6 of the Code of Civil Procedure, 1908 (hereafter *CPC*).

7. Meiden challenged the impugned award, essentially, on the ground that it is vitiated by patent illegality and is in conflict with the public policy of India. However, the learned Single Judge rejected Meiden's petition to set aside the impugned award.

8. Mr Bindra, learned senior counsel appearing for Meiden has earnestly contended that the question whether Meiden was entitled to set off was required to be examined keeping in view the other agreements entered into between the parties. He contended that Meiden was incorporated on 09.09.2008 as a wholly owned subsidiary of PCI. It was then known as Prime Electric Ltd. Meidensha Corporation had made initial corporation for the purposes of collaboration with Prime Group of entities. It had, subsequently, acquired control of Meiden. Since Meiden's office was located in the premises owned by PCI, parties had entered into the SFA. He contended that taking overall view of the arrangement was essential for adjudication of the disputes.



FACTUAL MATRIX

9. Factual background as alluded to by Mr Bindra is briefly set out below:

10. Meiden was incorporated on 09.09.2008 as “Prima Electric Limited” under the Companies Act, 1956 as a subsidiary of PCI. Its name was, subsequently, changed on 22.05.2014 to “Prime Meiden Ltd.”. PCI and other Group Companies are engaged in the business of manufacturing high quality power transformers and managing Engineering, Procurement and Construction projects for electrical sub-stations.

11. On 31.03.2014, Meidensha Corporation, a company incorporated under the laws of Japan, entered into an Investment Agreement with Meiden (then known as *Prime Electric Ltd.*) and its shareholders including PCI, whereby Meidensha Corporation acquired a minority equity stake of 23% in Meiden by subscribing to 2,80,74,115 equity shares of ₹10/- each. Additionally, Meidensha Corporation also subscribed to one compulsorily convertible debenture with a face value of ₹95 crores. On the same date, Meidensha Corporation also entered into a Technical Transfer Agreement dated 31.03.2014 with Meiden (then known as *Prime Electric Ltd.*) and agreed to license and provide proprietary technical information relating to design, manufacture, assembling, testing and sale of oil immersed power transformers for Railway facilities. As noted above, Meiden was then known as *Prime Electric Ltd.* and after the Investment Agreement, it was changed to *Prime Meiden Ltd.*

12. On 01.06.2016, Meidensha Corporation, Meiden (then known as *Prime Meiden Ltd.*) and its other shareholders entered into a share purchase and



shareholders agreement (hereafter *SHA*) whereby, Meidensha Corporation increased its shareholding in Meiden from 23% to 60%. It acquired 4,28,82,171 shares of a face value of ₹10/- from PCI and other shareholders of Meiden. In addition, Meidensha Corporation also agreed to purchase the remaining 40% shareholding in five transactions from the year 2017 to 2021. Thus, in terms of the *SHA*, Meiden became the subsidiary of Meidensha Corporation. The office of Meiden was located at the Licensed Premises owned by PCI. Thus, on 01.06.2016, Meiden and PCI also entered into the *SFA*, whereby PCI granted a license to Meiden to use the Licensed Premises.

13. In terms of the *SFA*, it was agreed that Meiden would pay the service charges of ₹5,50,000/- per month on or before 7th day of every English Calendar month in advance and that the service charge would be increased by 30% to a sum of ₹7,15,000/- from 01.10.2018 onwards. It was also agreed that monthly charges related to electricity, power backup and telecommunication charges would be paid by Meiden. The *SFA* was initially valid for a period of 72 months, which could be extended with the mutual consent of the parties in writing. It also contained an arbitration clause whereby it was agreed that in the event of disputes between the parties in connection with the *SFA*, the same shall be referred to a Sole Arbitrator to be appointed mutually by both the parties.

14. It is PCI's case that the possession of the Licensed Premises was handed over to Meiden on 01.06.2016 and the service charges for the licensed premises were duly paid by Meiden from the said period till 30.09.2018. In terms of the *SFA*, Meiden was required to pay the enhanced service charges from 01.10.2018 but it had remitted the same rate of ₹5,50,000/- for the



month of October, 2018. Thereafter, Meiden defaulted in paying the entire service charges, and also failed to pay the utility charges from February, 2020 onwards.

15. The dispute between the parties essentially relates to the non-payment of charges in terms of the SFA and invocation of Bank Guarantees by PCI.

Arrangement for Execution of the Contracts with DHBVN/UHBVN

16. Prior to the Investment Agreement dated 31.03.2014, Meiden (then known as *Prime Electric Ltd.*) and PCI had entered into a contract/understanding, whereby PCI had submitted a bid for the projects of Dakshin Haryana Bijli Vitran Nigam (DHBVN) and Uttar Haryana Bijli Vitran Nigam (UHBVN) on behalf of Prime Electric Ltd. (Meiden). Pursuant to the said bids, contracts were awarded to PCI for which PCI had issued bank guarantees in favour of DHBVN and UHBVN. PCI sub-contracted some of the works of the aforesaid contracts to Meiden for which Meiden had issued back-to-back guarantees to PCI.

17. PCI failed to pay the bank charges for keeping the bank guarantees furnished to DHBVN/ UHBVN alive. Consequently, the said bank guarantees were invoked by DHBVN/UHBVN. In turn, PCI invoked the bank guarantees furnished by Meiden.

18. It is Meiden's case that PCI had wrongfully invoked the bank guarantees as there was no default on its part. In this regard, Meiden issued two debit notes dated 10.10.2018 to PCI debiting an aggregating amount of ₹2,53,02,446/- on account of loss suffered.



THE DISPUTE

19. Meiden did not pay the service charges payable under the SFA. On 04.01.2021, PCI served a legal notice to Meiden for recovery of an amount of ₹2,90,93,527/- on account of unpaid service charges and utility charges. Since Meiden did not pay the amount as claimed, PCI issued a notice dated 25.01.2021 invoking the arbitration agreement. The parties failed to appoint an Arbitrator and consequently, PCI filed an application under Section 11 of the A&C Act. The same was allowed and by an order dated 24.03.2021, this Court appointed a Sole Arbitrator for adjudication of the disputes between the parties.

20. PCI also claimed that it was covered under the Micro Small Medium Enterprises Development Act, 2006 (hereafter *the MSMED Act*) and therefore, was entitled to a higher rate of interest in terms of the MSMED Act, for the period commencing after forty-five days of amounts being due and payable.

21. PCI had filed the Statement of Claims before the Arbitral Tribunal raising the following claims:

“S.No.	Particulars	Amount (in ₹)
1.	Service Charges for providing fully furnished 5892, sq. ft. area with facility such as office space, infrastructure, maintenance, security, parking, reception, cafeteria, and other common areas at the leased premises, for the period of 01.10.2018 to 31.03.2021. (Rent Amount+ GST)	2,29,11,625
2.	Simple Interest at 18% p.a. (No.2)	50,17,445
3.	GST on Simple Interest at 18% p.a. (No.3)	9,03,140

Signature Not Verified

Digitally Signed
By: DUSHYANT
RAWAL
Signing Date: 06.05.2024



4.	Total amount of service charges due and payable for providing fully furnished 5892 sq. ft area with facilities. (Nos. 1+ 2 + 3)	2,88,32,210
5.	Utility charges for providing power; including backup, telecommunications services, including lease lines to PML Gurgaon for the period of 01.02.2020 - 15.03.2021 (Service Charges+ GST)	10,11,715
6.	Simple Interest at 18% p.a.	92,658
7.	GST on Simple Interest at 18% p.a.	16,678
8.	Total amount on service charges due and payable for providing power, including back, telecommunications. Services, etc. (Nos. 5 + 6 + 7)	11,21,051
9.	Total amount due and payable by the Respondent company to the Claimant Company. (Nos 4+ 8)	2,99,53,261”

22. In addition to the aforesaid claims, PCI had claimed post award interest at the rate of 27% per annum from the date of the arbitral award till the date of its payment and cost of the arbitral proceeding along with the cost incurred in the institution of the Proceedings.

23. As noted at the outset, Meiden contested the claims raised by PCI on the maintainability as well as on merits. Meiden contended that the claims were not arbitrable as the key dispute between the parties was regarding payment of the two debit notes aggregating ₹2,53,02,446/-. According to Meiden, it was entitled to set off in respect of the amount claimed under the debit notes, which was disputed by PCI. Thus, the claims related to the arrangement/agreements for execution of the contracts entered into with DHBVN and UHBVN were not covered under the Arbitration Agreement (Arbitration Clause) as invoked by PCI.



24. Meiden also raised a defense on merits. It claimed that PCI had breached the terms of the SFA and had denied access to the Licensed Premises after 18.05.2020. It also claimed that the Managing Directors of PCI had obstructed Meiden from shifting its corporate office from the Licensed Premises and insisted to pay the rent prior to removal of its assets from the Licensed Premises. However, Meiden's principal defence was that it was entitled to claim a set off in respect of debit notes dated 10.10.2018, which was raised as PCI had wrongfully invoked to bank guarantees furnished by Meiden.

THE IMPUGNED AWARD

25. The Arbitral Tribunal framed various issues for its consideration including the following three issues:

- “(i) Whether the Sole Arbitrator has no jurisdiction to try, entertain and decide the issue relating to purported non-payment of service charges under the Service Facility Agreement in view of proceedings filed by the Respondent before the Delhi High Court seeking declaration to declare the action of the Respondent lawful whereby Respondent has set off the outstanding service charges for the period from October, 2018 to May, 2020 against the two Debit Notes dated 10.10.2018? (OPR)
- (ii) Whether the dispute raised by the Claimant in the present arbitration proceedings is beyond the scope of the arbitration clause in the Service Facility Agreement in view of right exercised by the Respondent to set off the outstanding service charges against two Debit Notes dated 10.10.2018 issued by the Respondent? (OPR).
- (iii) Whether the Claimant is entitled to payment of entire outstanding service charges from the Respondent from the period October, 2018 to March, 2021 in terms of prayer para 73



(Sl. No. 1) of Statement of Claim? (OPC)”

26. The Arbitral Tribunal referred to the communication between the parties and found that PCI had contested Meiden’s claim for a set off including on the ground that the matter pertaining to invocation of the bank guarantees in respect of projects of DHBVN and UHBVN did not have any connection with regard to contractual and financial obligations of the parties under the SFA.

27. Meiden had also filed a suit for recovery of a sum of ₹17,59,45,656/- against PCI as amounts outstanding in respect of the contracts entered into for commission of facilities for the works awarded by DHBVN and UHBVN. Meiden had prayed for a decree of a sum of ₹2,53,02,446/- (Rupees Two crores Fifty-Three lakhs Two thousand Four hundred and Forty-Six only). Additionally, Meiden had also sought a decree declaring set off of the two debit notes (debit notes dated 10.10.2018) for amounts of ₹1,22,78,028/- and ₹1,30,24,418/- respectively, on account of wrongful invocation of the bank guarantees.

28. The Arbitral Tribunal did not accept that the institution of the aforesaid suit or the fact that the claim of set off was raised, excluded PCI’s claim as non-arbitrable. The Arbitral Tribunal found that PCI’s claim fell squarely within the scope of the Arbitration Clause, which formed a part of the SFA and, accordingly, rejected Meiden’s claim that the Arbitral Tribunal had no jurisdiction to adjudicate the claims raised by PCI. The first two issues were decided accordingly.

29. The Arbitral Tribunal also held that applying the fundamental



principles of Order VIII Rule 6 of the CPC, Meiden's claim for set off was not available.

30. The Arbitral Tribunal relied on the decision of the Supreme Court in *Jitendra Kumar Khan & Ors. v. Peerless General Finance and Investments Company Limited & Ors.*: (2013) 8 SCC 769 and the decision in *Raja Bhupendera Narain Singha Bahadur v. Maharaj Bahadur Singh and Others*: (1952) 1 SCC 436 and held that neither the legal set off under Order VIII Rule 6 of the CPC nor an equitable set off was available to Meiden as the same did not arise from the same transaction. The Arbitral Tribunal held that the set off is available only in cases where cross demands arise from the same transaction. And, it did not accept that the claims for set off arose from the same transaction or were connected.

31. The Arbitral Tribunal also rejected the defense that PCI had not taken steps for mitigation of damages. The Arbitral Tribunal held that Meiden was liable to pay service charges at the rate of ₹7,15,000/- with effect from November 2018 to May 2020 and the differential amount of ₹1,65,000/- for the month of October 2018.

32. However, the Arbitral Tribunal accepted Meiden's contention that PCI had denied Meiden, the access to the Licensed Premises for the period after 18.05.2020 till the termination of the SFA on 31.03.2021. The Arbitral Tribunal also rejected PCI's claim for interest on the GST payable.

33. Insofar as the utility charges are concerned, the Arbitral Tribunal accepted PCI's claim for the period from 01.02.2020 to 17.05.2020, but rejected its claim for the period between 18.05.2020 to 31.03.2021 on the



ground that PCI had denied access to the Licensed Premises.

34. The Arbitral Tribunal accepted PCI's claim that Meiden was in breach of the SFA and PCI's termination of the SFA was legal.

35. Insofar as PCI's claim for higher interest at the rate of 27% on the ground that it was covered under the MSMED Act is concerned, the Arbitral Tribunal rejected the same as the reference to the arbitration was not under the MSMED Act. The Arbitral Tribunal also awarded costs in favour of PCI.

36. Paragraph 141 of the impugned award is corrected by order dated 31.08.2022 passed by the Arbitral Tribunal that summarizes the decision of the Arbitral Tribunal on various issues as framed, is reproduced below:

“Issue Nos. (i) and (ii) (i) Whether the Sole Arbitrator has no jurisdiction to try, entertain and decide the issue relating to purported non-payment of service charges under the Service Facility Agreement in view of proceedings filed by the Respondent before the Delhi High Court seeking declaration to declare the action of the Respondent lawful whereby Respondent has set off the outstanding service charges for the period from October, 2018 to May, 2020 against the two Debit Notes dated 10.10.2018? (OPR) (ii) Whether the dispute raised by the Claimant in the present arbitration proceedings is beyond the scope of the arbitration clause in the Service Facility Agreement in view of right	The Issue Nos. (i) and (ii) are decided in favour of Claimant and against the Respondent. (Para 53)
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exercised by the Respondent to set off the outstanding service charges against two Debit Notes dated 10.10.2018 issued by the Respondent? (OPR).	
Issue No. (iii) Whether the Claimant is entitled to payment of entire outstanding service charges from the Respondent from the period October, 2018 to March, 2021 in terms of prayer para 73 (Sl. No. 1) of Statement of Claim? (OPC)	Issue No. (iii) is partly allowed in favour of the Claimant and against the Respondent. The Respondent is held liable to pay the monthly license fee @ Rs.7,15,000/- (Rupees Seven Lakhs Fifteen Thousand Only), w.e.f. November, 2018 to 17 th May, 2020 and the differential amount of Rs. 1,65,000/- for the month of October, 2018. (Paras 70 to 75)
Issue No. (iv) Whether the Claimant is entitled to grant of interest on the alleged outstanding amount of service charges @ 18% per annum in terms of prayer para 73 (Sl. No. 2) of Statement of Claim, if so, at what rate and for what period? (OPC)	The Tribunal has awarded interest @ 9% per annum from the date of cause of action i.e. service of legal notice dated 04.01.2021 till the date of the award on the total outstanding amount of service charges which remained unpaid by the Respondent for the period w.e.f. October, 2018 (on the deficient amount of Rs.1,65,000/- for this month) and @ Rs.7,15,000/- (Rupees Seven Lakhs Fifteen Thousand Only), per month from November, 2018 till 17 th May, 2020. The Issue No. (iv) is partly allowed in favour of the Claimant and against the Respondent. (Para 103)
Issue No. (v) Whether the Claimant is entitled to the grant of GST on the outstanding amount of service charges @ 18% per annum in terms of prayer para 73 (Sl. No. 3) of Statement of Claim? (OPC)	The Respondent is held liable to pay the amount of Rs.13,16,700/- (Rupees Thirteen Lakhs Sixteen Thousand Seven Hundred Only), to the Claimant towards GST charges for the period w.e.f. October, 2018



	till August, 2019. The issue No. (v) is partly allowed in favour of the Claimant and against the Respondent. (Paras 107-110)
Issue No. (vi) Whether the Claimant is entitled to claim the utility charges under the Service Facility Agreement from the Respondent for the period commencing from 01.02.2020 till 15.03.2021 along with simple rate on the amount of interest @ 18% per annum, GST charges and other charges for providing power including back, telecom communication centre etc. in terms of prayer para 73 (Sl. Nos. 5 to 7) of the Statement of Claim? (OPC)	The Claimant is not entitled to the utility charges (except for the period w.e.f. 01.02.2020 till 17.05.2020), and the grant of interest at any rate on the amount of utility charges. Issue No. (vi) is accordingly decided in favour of the Respondent and against the Claimant. (Paras 114 - 116)
Issue No. (vii) Whether the Respondent Company is in breach of terms and conditions of the Service Facility Agreement on account of purported non-payment of service charges and utility charges? (OPC)	The Respondent was in breach of terms and conditions of the Service Facility Agreement for the period w.e.f. October, 2018 (differential charges) till 17 th May, 2020. Issue No. (vii) is partly decided in favour of the Claimant and against the Respondent. (Paras 118-120)
Issue No.(viii) Whether the termination letter dated 31.03.2021 issued by the Respondent Company thereby terminating the Facility Agreement is legal, valid and has a binding effect on the parties? (OPR)	The Termination letter sent by the Respondent to the Claimant is legal, valid and has binding effect on the parties. The Issue No. (viii) is accordingly decided in favour of the Respondent and against the Claimant. (Paras 126-127)
Issue No.(ix) Whether the Claimant had denied access to the licensed premises to the Respondent due to the alleged breach	The Respondent is legally entitled for suspension of rent for the period w.e.f. 18 th May, 2020 to 31 st March, 2021.



of the Service Facility Agreement from May, 2018 till 31.03.2021, if so, its effect? (OPR)	The Issue No. (ix) is decided in favour of the Respondent and against the Claimant. (Paras 94-95)
Issue No.(x) Whether Claimant is entitled to the award of pendent-lite interest, if so, at what rate of interest?	The pendente-lite interest till realisation is awarded @ 9% per annum on the award amount in favour of the Claimant and against the Respondent. (Para 129)
Issue No.(xi) Whether the Claimant being a MSME registered Company is entitled to post award interest @ 27% per annum on the award amount from the date of the award till the date of payment by the Respondent? (OPC)	The Claimant is not entitled to 27% per annum on the award amount from the date of award till the date of payment of the Respondent as none of the provisions of the MSMED Act were invoked by the Claimant. The issue No. (xi) is decided against the Claimant and in favour of the Respondent. (Paras 136-137)
Issue No.(xii) Whether the Claimant / Respondent are entitled to award of costs and if so, to what extent?	The cost for a sum of Rs.25,00,000/- (Rupees Twenty Five Lakhs only) is awarded in favour of the Claimant and against the Respondent. (Para 139)”

REASONS AND CONCLUSION

37. As noted at the outset, Mr Bindra, learned senior counsel appearing for Meiden, had challenged the impugned award as well as the impugned judgment on the ground that the Arbitral Tribunal had failed to appreciate that Meiden was entitled to an equitable set off. He also contended that the transactions giving rise to Meiden’s claim for set off were connected to the SFA. He contended that Meiden had entered into the SFA simultaneously with the control of Meiden being transferred to Meidensha Corporation as a



result of increase in its shareholding in Meiden. He submitted that prior to Meidensha Corporation acquiring stake in Meiden, it was one of the group companies of PCI and therefore, its occupation of the Licensed Premises was an internal matter within the group. Meidensha Corporation had invested into the Meiden in respect of its business, which included execution of the contracts awarded in respect of DHBVN and UHBVN. As a consequence of Meidensha Corporation increasing its control in Meiden, it was also required to enter into a separate arrangement for occupying the Licensed Premises. He submitted that the two transactions, thus, were not unconnected.

38. The aforesaid contention is unpersuasive. The Arbitral Tribunal had examined the controversies between the parties and had concluded that the transactions, in respect of which two debit notes aggregating to ₹2,53,02,446/- were raised, were not connected with the rights and obligations of the parties under the SFA.

39. Plainly, the aforesaid said view is plausible if not the correct view and thus, no interference with the same is warranted in proceedings under Section 34 of the A&C Act.

40. We find no fault with the conclusion of the Arbitral Tribunal. It is apparent that under the principles of legal set off as set out in Order VIII Rule 6 of the CPC, Meiden's claim for set off was not tenable. It is apparent that the claim of set off did not arise from the same transaction as Meiden's obligation to pay license fee. The SFA was confined to the transaction whereby Meiden was permitted to use of the Licensed Premises against payment of consideration. PCI's claim was confined seeking enforcement of



those obligations under the SFA. The issue of wrongful invocation of the bank guarantees relates to a completely different transaction whereby, certain works were sub-contracted by PCI to Meiden. There may be some merit that the SFA was entered into a backdrop of Meidensha Corporation acquiring the equity and control of Meiden (formerly known as Prime Electric Ltd./Prime Meiden Ltd.), however, that does not mean that the transactions entered into by Meiden with PCI regarding execution of contracts are connected or formed a part of the singular transaction that included entering into the SFA. The rights and obligations of the parties in respect of the arrangement for execution of the works relating to the contracts with DHBVN/UHBVN are unconnected with the rights and obligations of the parties under the SFA. The SFA is a completely different and distinct agreement and the same would continue to be operative notwithstanding any contract that Meiden may enter into for carrying on its business.

41. We find no infirmity with the decision of the Arbitral Tribunal in rejecting the Meiden's claim for set off in connection with an amount claimed on account of alleged wrongful invocation of the bank guarantees by PCI.

42. The principles of equitable set off are also not applicable. Moreover, it is also important to note that the question of equitable set off is a matter of discretion. In addition, it is also material to note that PCI does not admit that the amounts covered under the debit notes in question as raised by Meiden, are payable by it. PCI disputed the contention that the bank guarantees were wrongfully invoked. PCI has claimed that Meiden was required to pay the bank charges for keeping the bank guarantee furnished by PCI alive and therefore, Meiden is responsible for its bank guarantees being invoked by



DHBVN and UHBVN. PCI claims that in the given circumstances, it was entitled to invoke the back-to-back bank guarantees that were furnished by Meiden.

43. In the given circumstances, the Arbitral Tribunal's decision to reject Meiden's claim for set off cannot be faulted.

44. It is also noted that the Arbitral Tribunal had rejected PCI's claim for higher interest on the ground that reference had not been made under MSMED Act. PCI has not impugned the arbitral award and therefore, it is not necessary for this Court to examine this issue.

45. The learned Single Judge has rightly rejected Meiden's application under Section 34 of the A&C Act, to set aside the impugned award. The present appeal is unmerited and accordingly, dismissed. All pending applications are also disposed of.

VIBHU BAKHRU, J

TARA VITASTA GANJU, J

APRIL 23, 2024
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