



2024-DHC-1753



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IN THE HIGH COURT OF DELHI AT NEW DELHI**Date of Decision: 19th February 2024**

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O.M.P. (COMM) 216/2021 and I.A. 9446/2021

GENERAL MOTORS INDIA PVT. LTD.

..... Petitioner

Through: Mr. Palzer Moktan and Ms. Mehar
Bedi, Advocates.

versus

GPR POWER SOLUTIONS PVT. LTD.

..... Respondent

Through: Mr. Sumit Kumar, Advocate.

HON'BLE MR. JUSTICE ANUP JAIRAM BHAMBHANI**J U D G M E N T****ANUP JAIRAM BHAMBHANI J.**

By way of the present petition filed under section 34 of the Arbitration & Conciliation Act 1996 ('A&C Act'), the petitioner/non-claimant impugns arbitral award dated 22.09.2018 rendered by the learned Sole Arbitrator in disputes between the parties arising from a tender/contract relating to "*Design & build of Fire Protection & Mechanical Utility for proposed Body + Press Shop Expansion at GM Talegaon Plant.*"

2. Notice on this petition was issued on 03.08.2021.
3. The court has heard Mr. Palzer Moktan, learned counsel for the petitioner; and Mr. Sumit Kumar, learned counsel for the respondent, at length.
4. Both parties have also filed written synopses of their respective submissions in the matter.



5. Mr. Motkan submits that his essential grievance is that the learned Sole Arbitrator has awarded a sum of Rs. 42,10,656/- towards a claim that was never made by the respondent in the statement of claim. It is submitted that the said claim has been awarded only on the basis of certain statements made in the statement of defence and in the affidavit of evidence.
6. Mr. Motkan has drawn attention of this court to notice dated 25.02.2016, whereby the petitioner, being the non-claimant in the arbitral proceedings, had terminated the contract with the respondent, which led to the respondent setting-out their claims by way of demand notice dated 21.04.2016, under various heads of claim, aggregating to Rs. 4,38,03,899/-.
7. Counsel submits that in response to demand notice dated 21.04.2016, the petitioner sent reply dated 01.08.2016, in which it honestly admitted that the sums of Rs. 14,90,472/- and Rs. 20,69,280/- were due and payable to the respondent, while disputing the other claims made by way of the demand notice.
8. It is submitted that the said sum of money of about Rs. 35.59 lacs (Rs.14,90,472/- + Rs.20,69,280/-), was in fact duly paid by the petitioner to the respondent, as recorded in orders dated 12.07.2018 and 21.07.2018 made by the learned Sole Arbitrator (though with some discrepancy in the exact amounts paid).
9. Counsel submits however, that the learned Sole Arbitrator erred in reading the contents of reply dated 01.08.2016, issued by the petitioner, to conclude that the sums mentioned in the said notice (other than the sum of Rs. 14,90,472/- and Rs. 20,69,280/-) were also



admitted by the petitioner as being payable to the respondent, which was not the case. In this behalf, counsel draws attention to para 3 and the subsequent paras of reply dated 01.08.2016.

10. In view of the above, Mr. Moktan contends that the arbitral award suffers from complete non-application of mind inasmuch as it proceeds to award sums of money which were never demanded in the statement of claim; and proceeds on a complete misreading of the documents on record.
11. On the other hand, Mr. Kumar argues that regardless of what was stated by the petitioner in reply dated 01.08.2016, what the petitioner stated in their statement of defence dated 10.04.2017 and in their affidavit of evidence dated 12.04.2018 contained a clear admission as to the amount due to the respondent; and that the award justifiably proceeds on such admission.
12. In this regard counsel for the respondent draws attention to the following portions of the statement of defence and of the affidavit in evidence filed on behalf of the petitioner :

Statement of defence dated 10.04.2017

“C. UNJUSTIFIED MONETARY DEMAND

Having said the same, it is submitted that the out of the claim of Rs. 4,38,03,899/- (Rupees Four Crores Thirty-Eight Lakhs Three Thousand Eight Hundred and Ninety-Nine Only) an amount of Rs. 14,90,472 (Rupees Fourteen Lacs Ninety Thousand Four Hundred and Seventy-Two Only) and Rs. 20,69,280 (Rupees Twenty Lacs Sixty-Nine Thousand Two Hundred and Eighty Only) being the 10% of the retention amount of the invoiced amount, is admitted as due and payable, subject to the Claimant being in strict compliance with the payment provisions of the Purchase Order Terms and



Conditions and a further sum of Rs. 9,53,685 (Rupees Nine Lacs Fifty-Three Thousand Six Hundred and Eight Five Only), Rs. 19,07,370 (Rupees Nineteen Lacs Seven Thousand Three Hundred and Seventy Only and Rs. 14,49,601 (Rupees Fourteen Lacs Forty-Nine Thousand and Six Hundred and One Only) are disputed primarily because the Claimant raised the invoice for the entire piece of work, but the actual completion was way lesser, further, the same was not accompanied with a proper breakup and therefore, the same remained unpaid due the lack of a proper invoice break up to be in compliant with the terms of the Purchase Order, RFP including its annexures and Addendums, being raised by the Claimant. However, it is clarified that a portion of the payment of each of these claims were made by the Respondent for the work completed. The Respondent reserves the right to produce the documentary evidence at the time of the proceedings.

“19. In terms of the conditions set out in clause 13, the Respondent, vide a letter dated 01.08.2016 responded to the illegal and unjustified claims of the Claimant, while acknowledging certain claims and disputing the others (subject to the various contentions raised in the foregoing paragraph 1 C – Unjustified Monetary Demand). It is stated that claims to the tune of Rs. 78,70,408/- (Rupees Seventy-Eight Lakhs Seventy Thousand Four Hundred and Eight Only) were acknowledged as due and payable subject to the compliance of the requirements set out in the RFP and Purchase Order. The conditions of the RFP and Purchase Order and the contentions raised by Respondent in its letter dated 01.08.2016 are not repeated here for the sake of brevity and the Respondent craves leave to refer and rely upon the same.

A copy of the Letter dated 01.08.2013 issued by the Respondent to the Claimant is annexed herewith and marked as ANNEXURE R/16.”

Affidavit of Evidence dated 12.04.2018

“s. I state that in terms of the conditions set out in clause 13, the Respondent, vide a letter dated 01.08.2016 responded to the illegal and unjustified claims of the Claimant, while acknowledging



certain claims and disputing the others. I state that claims to the tune of Rs. 78,70,408/- (Rupees Seventy-Eight Lakhs Seventy Thousand Four Hundred and Eight Only) were acknowledged as due and payable subject to the compliance of the requirements set out in the RFP and Purchase Order. The conditions of the RFP and Purchase Order. The conditions of the RFP and Purchase Order and the contentions raised by Respondent in its letter dated 01.08.2016 are not repeated here for the sake of brevity and the Respondent craves leave to refer and rely upon the same.

A copy of the Letter dated 01.08.2016 issued by the Respondent to the Claimant is annexed herewith and exhibited as MARK-F.”

13. Mr. Kumar submits that the foregoing admissions are the basis of the learned Arbitrator having observed the following in the impugned arbitral award :

“In para 8 (sic, para ‘s’) of the affidavit of evidence, Anoop Kumar Das has admitted claim to the tune of Rs. 78,17,408/- (sic, discrepant figure) subject to compliance of requirements set out in RFP and purchase order. This para also refers to the contention raised by the respondent in its letter dated 1.08.2016. This amount includes the sums of Rs.14,90,472/- and Rs.20,69,280/- for which claim was raised in aforesaid letter dated 21.04.2016, Rs. 9,53,685/- , Rs. 19,07,370/- and Rs. 14,49,601/- for which claim was not made either in the said letter or in claim petition. Total sum of last three amounts comes to Rs. 42,10,656/-. Considering the admission made in para No.8 (sic, para ‘s’) of the affidavit by Anoop Kumar Das and aforementioned explanation given in the replication filed to the reply of the respondent to the application dated 06.09.2017, the claimant is entitled to the amount of Rs. 42,10,656/-.

Issues 1, 2 & 3 are decided accordingly.

Relief

For the foregoing discussion, an award of Rs. 42,10,656/- is passed subject to deduction towards TDS in favour of the claimant and against the respondent. Respondent is granted one month time from the date of award to pay this amount to the claimant. In case



the amount is not paid within this period, the claimant will be entitled to 12% interest on the said amount after expiry of one month period. Rest of the claims made are dismissed. In the facts and circumstances of case, the claimant will be entitled to ½ of the amount deposited with the Arbitration Centre towards Arbitrator's fee and administrative expenses, from the respondent.

The award is made and pronounced at New Delhi on 22.09.2018.”

(emphasis supplied)

14. Counsel accordingly argues, that quite contrary to the petitioner's contention that the learned Sole Arbitrator has misread the documents on record or has come to a conclusion without any evidence on record, the correct position is that the learned Arbitrator has proceeded on the clear, unequivocal and express admissions made by the petitioner, both in their statement of defence well as in the affidavit in evidence filed on their behalf in the arbitral proceedings.
15. In the circumstances, it is argued that it is irrelevant whether or not the said claims were expressly prayed-for in the statement of claim.
16. It is submitted that in any case, a mere error in deciding a factual issue does not fall within the scope of interference under section 34 of the A&C Act.
17. In the above factual backdrop, this court reminds itself of the permissible scope of interference by court under section 34 of the A&C Act. The following verdict of the Supreme Court is noticed in this behalf :



Delhi Airport Metro Express (P) Ltd. vs. Delhi Metro Rail Corporation Ltd.¹

“28. This Court has in several other judgments interpreted Section 34 of the 1996 Act to stress on the restraint to be shown by Courts while examining the validity of the arbitral awards. The limited grounds available to Courts for annulment of arbitral awards are well known to legally trained minds. However, the difficulty arises in applying the well-established principles for interference to the facts of each case that come up before the Courts. There is a disturbing tendency of Courts setting aside arbitral awards, after dissecting and reassessing factual aspects of the cases to come to a conclusion that the award needs intervention and thereafter, dubbing the award to be vitiated by either perversity or patent illegality, apart from the other grounds available for annulment of the award. This approach would lead to corrosion of the object of the 1996 Act and the endeavours made to preserve this object, which is minimal judicial interference with arbitral awards. That apart, several judicial pronouncements of this Court would become a dead letter if arbitral awards are set aside by categorising them as perverse or patently illegal without appreciating the contours of the said expressions.”

“29. Patent illegality should be illegality which goes to the root of the matter. In other words, every error of law committed by the Arbitral Tribunal would not fall within the expression “patent illegality”. Likewise, erroneous application of law cannot be categorised as patent illegality. In addition, contravention of law not linked to public policy or public interest is beyond the scope of the expression “patent illegality”. What is prohibited is for Courts to reappraise evidence to conclude that the award suffers from patent illegality appearing on the face of the award, as Courts do not sit in appeal against the arbitral award. The permissible grounds for interference with a domestic award under Section 34(2-A) on the ground of patent illegality is when the arbitrator takes a view which is not even a possible one, or interprets a clause in the contract in such a manner which no fair-minded or

¹ (2022) 1 SCC 131



reasonable person would, or if the arbitrator commits an error of jurisdiction by wandering outside the contract and dealing with matters not allotted to them. An arbitral award stating no reasons for its findings would make itself susceptible to challenge on this account. The conclusions of the arbitrator which are based on no evidence or have been arrived at by ignoring vital evidence are perverse and can be set aside on the ground of patent illegality. Also, consideration of documents which are not supplied to the other party is a facet of perversity falling within the expression “patent illegality” ”.

(emphasis supplied)

18. After a careful consideration of the submissions made; having perused the relevant portion of the statement of defence and the affidavit in evidence filed on behalf of the petitioner; and being conscious of the limitations of its jurisdiction under section 34 of the A&C Act to interfere in an arbitral award, this court is persuaded to hold as under :
- 18.1. The total claim made by the respondent in the arbitral proceedings was about Rs. 4,38,03,899/-. This amount included within it the sum of Rs. 42,10,656/-; and it is therefore incorrect for the petitioner to contend that the amount awarded was never claimed.
- 18.2. In its statement of defence as also in its affidavit in evidence filed in the arbitral proceedings, the petitioner/non-claimant said 02 things – (i) that the sum of Rs. 35,59,752/- (being Rs.14,90,472/- + Rs.20,69,280/-) were not disputed and had been paid to the respondent; and (ii) that the sum of Rs.43,10,656/- (Rs. 9,53,685 + Rs. 19,07,370/- + Rs. 14,49,601/-) were disputed *because* the respondent had raised invoices for the *entire* piece of work, whereas the actual work



completed was *less* and because the invoices were not accompanied with a proper breakup as was required under the terms of the Purchase Order, the RFP, its annexures and addendums. In context of the latter, the petitioner also said that the sum of Rs. 78,70,408/- (*i.e.* Rs. 35,59,752/- + Rs.43,10,656/-) was “... ..*acknowledged as due and payable subject to the compliance of the requirements set out in the RFP and Purchase Order.*”. This statement was repeated in the affidavit in evidence filed by the petitioner.

18.3. In this backdrop, the learned Arbitrator, based on his appreciation of the evidence on record and in his own wisdom, has awarded the sum of Rs. 42,10,656/- (which appears to be a somewhat discrepant amount, though based on the calculation of Rs.43,10,656/- as referred to above) “... ..*(c)onsidering the the admission made in para No. 8 (sic, para ‘s’) of the affidavit... ..*”.

18.4. The quantum of money awarded was certainly based on the material on record, and to say the least, it was based on the evidence adduced *by the petitioner itself* by way of its affidavit-evidence. It cannot therefore be said that the learned Arbitrator has proceeded either ignoring the evidence on record, or that he has drawn inferences without any evidence on record. If, as the petitioner now contends, the quantum awarded was discrepant or incorrect, the petitioner could have moved before the learned Arbitrator an application under section 33 of the A&C Act



seeking requisite correction in the award, which the petitioner did not do.

- 18.5. It is the last of this court's mandate to *re-work the calculations*, based on which some amount was awarded by the learned Arbitrator. Even if, in the opinion of this court, the amount awarded was *not entirely correct*, but was based on the material on record, it is not the remit of this court to interfere with such finding under section 34 of the A&C Act.
19. In the circumstances, this court is of the view that there is no error in the arbitral award that would fall within the ambit of interference permissible under section 34 of the A&C Act.
20. The petition is accordingly dismissed; without however any order as to the cost.
21. This court records a note of appreciation for Mr. Palzer Moktan, learned counsel for the petitioner, for having ably argued the matter.
22. Pending applications, if any, also disposed-of.

ANUP JAIRAM BHAMBHANI, J

FEBRUARY 19, 2024

V.Rawat