



2024:DHC:4339



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* **IN THE HIGH COURT OF DELHI AT NEW DELHI*****Date of Decision: 17th May, 2024***+ **O.M.P. (COMM) 380/2023 and I.A. 18125/2023, 2986/2024****GAIL GAS LIMITED**

..... Petitioner

Through: Mr. Sandeep Kumar Mahapatra,
CGSC with Mr. Sanjeev Goyal, Mr.
Sugam Kumar Jha, Mr. Sree Dass KP,
Mr. Raghav Tondan & Mr.
Tribhuvan, Advs. (M: 9811472444)

versus

M/S OKAY GLASS INDUSTRIES

..... Respondent

Through: Mr Saurav Agarwal, Mr Akhil
Sachar, Mr Anshuman Chowdhury,
Ms Sunanda Tulsyan & Ms Shweta
Pattnaik, Advs. (M: 7381900004)**CORAM:****JUSTICE PRATHIBA M. SINGH****JUDGMENT****Prathiba M. Singh, J. (Oral)**

1. This hearing has been done through hybrid mode.
2. This is a petition under Section 34 of the Arbitration and Conciliation Act, 1996 (*hereinafter 'the Act'*) challenging the impugned award dated 6th June, 2023 passed by a Id. Sole Arbitrator. Vide the impugned award, the Id. Sole Arbitrator allowed Claim no. 7 and directed the Petitioner to reconsider the bills in respect of Claim no. 11 which was raised by the Respondent. In addition, the Id. Sole has rejected all counter claims of the Petitioner. The operative portion of the said award reads as under:



“For the reasons recorded above, I am inclined to agree with the learned Counsel for the Claimant that on the basis of the evidence on the record, the Claimant cannot be held responsible for the tampering of the meters as alleged.

I have not dealt with the Issues separately as, it was agreed that the main issue revolves only around the question as to whether the meters were tampered with and if so is Claimant responsible for the same.

The Counter Claims fail.

During arguments only claims No. 7, 8, 9 and 11 were pressed. Others were given up. In view of my above discussion, Claim No. 7 is allowed. As regards Claim No. 8 there is no cogent and convincing evidence on the record and thus stands rejected. As regards Claim No.11, the Respondent shall have to relook into the bills raised between the period May 28, 2005 to September 2, 2005 in the light of this Award.

The Claimant shall be entitled to costs assessed at Rs. Two lacs.”

3. The background of this petition is that the Petitioner and the Respondent entered into a Contract dated 30th January, 2001 for the supply of gas based on an Administered Pricing Mechanism (APM), and the same was extended from time to time. Pursuant to the contract, the Petitioner installed a Turbine Flow Meter (TFM) bearing no. 25662 at the premises of the Petitioner to record the quantity of gas supplied/consumed by the Respondent. It is stated that during the said contractual relationship between the Petitioner and the Respondent, in the year 2004, a decision was taken to supply Re-Gasified Liquid Natural Gas (RLNG) to the Respondent. However, on 5th August, 2004, during the process of inspection of the consumption of gas, for the purpose of generating invoices, the personnel of the Petitioner found certain anomalies in the reading of the TFM. Upon



discovering the same, the said TFM was removed in the presence of the Station-In-Charge and the suspect TFM was replaced by another meter. The removed TFM was sent to M/s. Rockwin Flow Meter, an independent inspection agency, for thorough examination and calibration. According to the Petitioner, the agency reported several issues including:

- the counter seal of the meter had been tampered with and refixed;
- test lab seal was missing;
- electrical connector seal was broken; and
- counter drive was over-tightened, causing the meter to run slowly.

4. As per the Petitioner, the Respondent was then informed about the findings of the inspection agency, in accordance with the provisions of the Contract. The Respondent is stated to have responded by filing a complaint with the Petitioner's Field Officer and Regional Officer, alleging that the newly installed TFM was not functioning properly. Thereafter, an inspection was carried out by the Technician of the Petitioner on 22nd September, 2024. However, it is claimed by the Petitioner that in the said inspection, it was found that the door seals of the metering skid of the TFM were repasted, indicating that the TFM was tampered with. Consequently, the Petitioner removed the TFM bearing No. 27940 for calibration and inspection and installed a new TFM.

5. It is stated by the Petitioner that the Respondent approached the Inspection Agency by way of a letter seeking information about the packaging condition of the removed TFM. The Petitioner claims that it requested the presence of the Respondent for a joint inspection of the removed TFM on 8th October, 2004. However, the Petitioner alleges that the



Respondent tried to avoid liability for the TFM and did not attend the joint inspection. Subsequently, the Chief Manager of the Petitioner vide communication dated 12th October, 2004 sent the calibration report of the removed TFM, bearing No. 27940, to the Respondent and informed them about the consequences of the tampering.

6. A fresh complaint dated 18th February, 2005 was made by the Respondent in respect of the newly installed TFM. However, the Petitioner claims that in the fresh inspection carried out, it was again found that the newly installed TFM bearing no. 26972 was tampered with, causing irregularities in the reading of the meter. Thereafter, again the said TFM was removed and sent for calibration and inspection to the Inspection Agency. It is once again reported that the TFM was tampered and even the gears installed were changed.

7. Accordingly, in this background, the Petitioner issued a show cause notice dated 14th March, 2015 to the Respondent. The same was replied to by the Respondent on 1st April, 2015.

8. The Respondent instituted an Arbitration Case bearing ***Misc. (Arbitration) Case No. 309 of 2005***, before the Id. District Judge, Agra under Section 9 of the Act. The said petition was initially filed with the prayer for an injunction against the Petitioner to ensure that the Petitioner does not terminate the agreement with the Respondent. However, the said petition under Section 9 was unsuccessful. Subsequently, the Petitioner discontinued the supply of gas to the Respondent's premises. It is claimed by the Petitioner that the said discontinuation was in accordance with the provisions of the Contract. Subsequently, a fresh application was filed in the ***Misc. (Arbitration) Case No. 309 of 2005***, wherein the Respondent sought a



mandatory injunction against the Petitioner, praying for resumption of supply of gas to the Respondent. However, the same was rejected by the Id. District Judge vide order dated 31st May, 2005.

9. In this backdrop, the Petitioner claims that it quantified the liability of the Respondent to the tune of Rs. 4,18,00,804/- and issued a demand notice to the Respondent. In response to the same, the Respondent filed an Appeal bearing **FA No. 621 of 2005** titled **Sri Onkar Nath Bansal v. GAIL (India) Ltd.**, before the High Court of Judicature at Allahabad. As per judgment dated 8th July, 2005, the Allahabad High Court directed the Respondent to deposit an amount of Rs. 50,00,000/- as also furnish a Bank Guarantee or cash security to the tune of Rs. 3,75,00,000/- in order to reinstate the supply of gas to the Respondent. The relevant extract of the said judgment are set out below:

“4. According to the respondent the appellant is liable to pay sum of more than Rs. 4 Crores due to tempering. According to the appellant there was no tempering and nothing is due.

5. This appeal was heard yesterday for some time and thereafter the counsel for the parties took time to consult their clients. Today when the matter was taken up, it was stated by the parties that the appeal may be decided on the following terms.

(i) The appellant shall deposit a sum of Rs.50 Lakhs with the respondent. This deposit will be made in instalments. The first instalment of Rs.20 Lakhs shall be payable forthwith. The second, third and fourth instalments of Rs.10 Lakhs each will be deposited by the appellant before the end of the months of July, August and September, 2005.

(ii) The appellant while depositing Rs.20 Lakhs and will also give security (other than cash or bank guarantee) for the sum of Rs. 3 Crores and 75 Lakhs to



the respondent.

(iii) On deposit of Rs.20 Lakhs as well as on furnishing of security for Rs. 3 Crores 75 Lakhs, the gas supply of the appellant will be restored by the respondent and the dispute will be referred to the Arbitrator. The remaining amount if any due will be payable after decision by the Arbitrator.

(iv) In case it is held that that there was no tampering with the meter or the appellant was liable to pay a sum less than Rs.50 Lakhs, in that event the extra amount deposited by the appellant will be kept by the respondent and will be adjusted in future supply

(v) The respondent will get the amount deposited in a nationalized Bank in the form of recurring F.D.R.

(vi) The appellant will also pay the future bills regularly. In case the future bills are not paid regularly, the instalment mentioned earlier (paragraph 5(i) of the order) then it will be open to the respondent to stop the gas supply.

(vii) The Arbitrator shall decide the case without being influenced by any observations made by the District Judge or by us in this order.

6. With these observations the appeal is finally disposed of.”

10. The Respondent is stated to have complied with the above directions of the Allahabad High Court. However, the Petitioner admits to have written to the Respondent that the amount calculated was only a provisional penalty and a higher amount would be required to be deposited for the reinstatement of the gas supply. Vide communication dated 11th August, 2005, the Respondent invoked Arbitration in accordance with Clause 13 of the Contract. Thereafter, the Respondent moved the Allahabad High Court seeking modification of the judgment dated 8th July, 2005, in respect of the requirement of security for the resumption of supply of gas to the



Respondent. Vide order dated 30th August, 2015, the said modification was allowed by the Allahabad High Court. Further, it is claimed by the Petitioner that the gas supply to the Respondent was reinstated on 3rd September, 2005.

11. After the resumption of gas supply, the Petitioner issued a Debit Note dated 6th January, 2006 bearing ref. no. 2015/MGO/2005-2006-1/66 for a shortfall in gas consumption for the period April 2005-September 2005, amounting to Rs. 45,10,011/-. The Petitioner requested the Respondent to clear this amount within three days of receiving the Debit Note, failing which the gas supply would be discontinued without further notice. The Respondent replied to the said Debit Note, alleging that the shortfall in gas consumption was due to the arbitrary actions of the Petitioner and denied any liability to pay the amount specified. Thereafter, on 25th January, 2006 the Petitioner responded to the Respondent's letter dated 20th January, 2006, stating that the gas supply to the Respondent's unit had been disconnected due to meter tampering and non-payment of penalty charges as per the terms and conditions of the Contract. Subsequently, on 25th February, 2016, the Petitioner is stated to have sent another letter to the Respondent reminding them of the outstanding dues of Rs. 45,10,011/- and stating that the Respondent would have to submit an Irrevocable Letter of Credit (IRLC) for the realization of the outstanding amount. The Petitioner admits that in the said letter, it was mentioned that the Respondent's Bank was required to honour the IRLC within 48 hours, and the balance amount was to be deposited by 3rd March, 2006, failing which the Petitioner would take action to regulate or stop the gas supply to the Respondent's premises.

12. After the above exchanges, the Arbitral Tribunal commenced arbitration proceedings. In the said proceedings the Petitioner filed counter



claims on the basis of the allegation of tampering. However, the counterclaims were fully rejected. In respect of the Respondent's Claims, the Id. Arbitrator gave its findings vide award dated 6th June, 2023. Consequently, the claims relating to tampering were rejected by the Id. Arbitrator. Some other claims were allowed. The relevant portion of the award relating to the Claims are set out below:

“On the basis of the pleadings of the parties following issues were framed:

- 1) Whether there was tampering of TFM? If so who was responsible for the same i.e. the claimant or the respondent and its effect.*
- 2) Whether disconnection of gas supply was not in accordance with the terms contract and was justified?*
- 3) Whether the claimant has suffered any loss due to disconnection of gas supply, if so, its effect.*
- 4) Relief.*
- 5) Whether the counter claims are not arbitrable for the reasons stated in the counter statement?*
- 6) Whether the demand raised by GAIL on 5.5.2006 is justified and is in terms of the contract between the parties?*
- 7) Whether the demand raised by GAIL by amending the counter claims and adding Trade Tax is not sustainable?*
- 8) Whether the claim for MGO is not arbitrable?*
- 9) If issue No. 8 is decided in favour of GAIL, to what amount is GAIL entitled.*
- 10) Relief.*

As would be borne out from above the real bone of contention is as to whether there was tampering of the meters as alleged by the Respondent and if so to what effect. The pleadings, as referred to above, would show



that the meter so installed in the premises was removed for inspection not once but thrice and on all those occasions the meter so removed was sent to Rockwin Flowmeters Private Ltd, for checking and calibration.

xxx

xxx

xxx

For the reasons recorded above, I am inclined to agree with the learned Counsel for the Claimant that on the basis of the evidence on the record, the Claimant cannot be held responsible for the tampering of the meters as alleged.

I have not dealt with the Issues separately as, it was agreed that the main issue revolves only around the question as to whether the meters were tampered with and if so is Claimant responsible for the same.

The Counter Claims fail.

*During arguments only claims No. 7, 8, 9 and 11 were pressed. Others were given up. In view of my above discussion, **Claim No. 7 is allowed.** As regards Claim No. 8 there is no cogent and convincing evidence on the record and thus stands rejected. As regards Claim No. 11, the Respondent shall have to relook into the bills raised between the period May 28, 2005 to September 2, 2005 in the light of this Award.*

The Claimant shall be entitled to costs assessed at Rs. Two lacs.”

13. The present petition was first listed before the Court on 19th September, 2023 and on the said date, the Court stayed the operation of the impugned award. The relevant extracts of the said order are set out below:

“O.M.P. (COMM) 380/2023

3. The present petition under Section 34 of the Arbitration and Conciliation Act seeks to assail the award dated 06.06.2023 passed by the learned sole arbitrator. Vide the impugned award, the learned arbitrator while allowing claim no. 7 and directing the petitioner to relook at the bills in respect of claim no.



11 as raised by the respondent, has rejected the petitioner's all counter claims.

4. Learned counsel for the petitioner submits that the learned arbitrator had allowed the aforesaid claims raised by the respondent without even giving any reasons for the same. Insofar as the challenge to the award pertaining to the rejection of petitioner's counter claims, he fairly concedes that the said aspects are covered against the petitioner

3. As can be seen from the above award, insofar as the GAIL GAS Ltd. is concerned, the counter claim had been rejected. Insofar as the Respondent Claimant is concerned, only claim nos.7, 8, 9 & 11 were pressed. The Arbitrator had allowed only claim no.7. Today, it is submitted by Mr. Saurav Aggarwal, Id. Counsel, the same is no longer pressed by the Respondent. However, he places on record the Division Bench decision dated 26th April, 2024 wherein insofar as the tempering charges are concerned, the award has been upheld by the Division Bench. by a decision of this Court dated 25.07.2023 in O.M.P. (COMM) 263/2023 titled "Gail Gas Limited vs. M/s Shyam Glass Works".

5. In the light of the aforesaid, upon the petitioner taking steps, issue notice to the respondent confined to the petitioner's challenge to the claims of the respondent being allowed under the impugned award. Counter affidavit/reply, if any, be filed within six weeks. Rejoinder thereto, if any, be filed within four weeks, thereafter.

6. It is made clear that the petitioner's challenge to the rejection of it's counter claims is, in view of the decision dated 25.07.2023 in O.M.P. (COMM) 263/2023, being rejected.

I.A. 18125/2023 -Stay.

7. This is an application filed by the petitioner seeking stay of the impugned award dated 06.06.2023.

8. Issue notice to the respondent through all permissible modes. Reply, if any, be filed within six



weeks. Rejoinder thereto, if any, be filed within four weeks, thereafter.

9. Subject to the petitioner depositing with the Registrar General of this Court within six weeks the awarded amount with up to date interest, the operation of the impugned award will remain stayed till the next date.”

14. From the above order, it is clear that notice was issued in this matter, confined to the Respondent's claims which were allowed by the Id. Arbitrator. The rejection of Counter claims has however attained finality. In view of the fact that the claim no.7 has been withdrawn by the Respondent, the main issue between the parties in respect of alleged tampering by the Respondent of the meter in respect of the gas supply is no longer a contested issue. The Arbitrator has found that there is no tampering by the Respondent, which has now been upheld by the Division Bench of this Court.

15. In view of the fact that the Respondent is now finally held not guilty of tampering, the amount of Rs.50 lakhs, which was deposited pursuant to an order passed by Allahabad High Court on 8th July, 2005, is now directed to be refunded by GAIL GAS LTD to the Respondent along with the interest accrued thereupon. If any TDS is to be deducted upon the interest component, the same shall be done. The amount of Rs.50 lakhs along with interest accrued thereon shall be paid to the Respondent by 15th July, 2024.

16. In view of the statement made by the Respondent, that none of its other claims are being pressed including Claim no.7, the amount of Rs.14,42,618/-, which is lying deposited with this Court, along with interest accrued thereupon, be refunded to the Petitioner.



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17. Mr. Saurav Aggarwal, Id. Counsel for the Respondent submits that he undertakes on behalf of his client to withdraw the contempt application, which has been filed by his client before the Allahabad High Court, upon receiving the entire amount.

18. No further orders are called for in this petition. The petition is, therefore, disposed of in these terms. All pending applications are also disposed of.

19. Next date of hearing i.e. 25th July, 2024 stands cancelled.

PRATHIBA M. SINGH
JUDGE

MAY 17, 2024/dk/am

[Corrected and Released on 29th May, 2024]