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* **IN THE HIGH COURT OF DELHI AT NEW DELHI***Decided on: 08.08.2024*+ O.M.P. (COMM) 338/2024 & I.As. 35801-02/2024.
UNION OF INDIA

.....Petitioner

Through: Mr. Sandeep Kumar Mahapatra,
Mr. Manoj Kumar, Mr.
Tribhuvam, Ms. Lavika Gupta,
Advocates with Mr. Sumit Kumar
Gautam, SO.

versus

TATA COMMUNICATIONS LTD

.....Respondent

Through: Mr. Ashish Dholakia, Sr. Advocate
with Ms. Padmaja Kaul, Mr.
Yugank Goel, Mr. Vansh Bhutani,
Advocates.**CORAM:****HON'BLE MR. JUSTICE PRATEEK JALAN****PRATEEK JALAN, J. (ORAL)**

1. By way of this petition under Section 34 of the Arbitration and Conciliation Act, 1996 ["the Act"], the petitioner – Union of India ["the Union"] assails an arbitral award dated 27.04.2024, by which a learned arbitrator has adjudicated disputes between the parties under an agreement dated 16.08.2018 ["the Agreement"].

2. At the very outset, Mr. Ashish Dholakia, learned Senior Counsel for the respondent – Tata Communications Ltd. ["Tata"], who appears on advance notice, submits that the impugned award was subsequently



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corrected, and a copy of the corrected award was sent to the parties under cover of a letter dated 30.04.2024. Mr. Sandeep Kumar Mahapatra, learned Standing Counsel for the Union, and Mr. Dholakia, submit that there are no substantial differences between the award annexed to the petition and the corrected award, which essentially took care of certain typographical errors. A copy of the corrected award has been handed up in Court and is taken on record.

3. The Agreement was for provision of technological services relating to the National Nutrition Mission [POSHAN Abhiyaan] being executed by the Union through the Integrated Child Development Services [“ICDS”]. The contract for technological services was tendered by the Union, and Tata was the lowest bidder. In terms of the Agreement signed between the parties, the scope of work included *inter alia* hosting of data on Tata’s cloud services, creation of virtual machines, installation of firewall, and monitoring and maintenance of technical infrastructure.

4. The initial period of the Agreement was from 16.08.2018 to 31.03.2020. There is no dispute with regard to this period.

5. The dispute essentially concerns Tata’s claim for payment in respect of services rendered from 01.04.2020 to 30.06.2020 [Claim A], and from 01.07.2020 to 31.12.2020 [Claim B]. Tata raised invoices for services rendered during both these periods, but the invoices remained unpaid. The distinction between Claim A and B, is essentially that the Agreement was extended by the Union, in writing, for the period until 30.06.2020, whereas the claim for the remaining period is not, according to the Union, based upon any written contractual document.

6. The learned arbitrator has allowed the claims for both the aforesaid



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periods, amounting in total to Rs. 6,83,24,699.80/-, alongwith interest at the rate of 9% per annum from the due dates of payment of the quarterly invoices until the date of realisation.

7. I have heard learned counsel for the parties.

8. The first defence to the claims, pressed by Mr. Mahapatra, is that Tata was liable not just for provision of technological services during the period covered under the Agreement, but also for providing technical support for exit management and transition to a new service provider, at the end of the contract period, including migration of the ICDS application and related data hosted on its cloud.

9. In this connection, Mr. Mahapatra has drawn my attention to provisions of the Agreement in a section entitled “*Additional Terms and conditions*”¹, Clause 2.4 of which, provides that the cloud service provider shall support migration of the ICDS application and related data from the existing cloud to a new cloud. Similarly, the Service Level Agreement includes enumeration of several “*Support and maintenance services*”², including exit management and transition plan. Mr. Mahapatra submits that these contractual provisions required Tata to plan for migration and transition of the ICDS application data stored on its server, to the subsequent service provider, namely National Informatics Centre [“NIC”]. According to him, the extension of the Agreement period from April 2020 until June 2020, granted by a communication dated 24.03.2020 [“the Extension Letter”], was for this purpose. He submits that Tata failed to provide this element of the contracted services.

¹ At page No. 517 of the petition.

² At page No. 519 of the petition.



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10. The Extension Letter, which has also been noticed by the learned arbitrator, reads as follows:

“This is in reference to the Contract No. GEMC-511687706131069 dated 16.08.2018 and subsequent communication on Cloud Services (Infrastructure and Services) for hosting ICDS-CAS Application under POSHAN Abhiyaan of Ministry of Women and Child Development.

2. In this regard, I am directed to convey the approval of Competent Authority for extension of Cloud Services for ICDS-CAS Application till 30.06.2020 or till utilization of the earmarked funds, whichever is earlier. All other terms and condition remains same.

3. This issues with approval of IFD vide Diary no. 1562 dated 20.03.2020.”

11. While dealing with Claim A, the learned arbitrator has noticed³ that the aforesaid Extension Letter does not disclose that the extension had been granted for the purposes of migration. This conclusion is supported, not just by a plain reading of the Extension Letter, but also by the documentary and oral evidence analysed in the impugned award. The Union relied *inter alia* upon an internal meeting dated 28.01.2020, where the issue of transition of the data was discussed, but the learned arbitrator noted that Tata was not privy to this meeting. The Extension Letter, subsequently issued to Tata, also did not mention this to be the purpose of the extension. The learned arbitrator has, therefore, found this contention to be in the nature of an afterthought.

12. With regard to the evidence given on behalf of the Union, that the payment for the period between April 2020 to June 2020, was not made to Tata, as Tata had not transferred the data by then, the learned arbitrator has found that no instructions were given by the Union for transfer of the

³ In paragraphs 42 to 52 of the impugned award.



said data. In the impugned award⁴, the cross-examination of the respondent's witness has been noticed to the effect that NIC and Tata would necessarily have to coordinate for transition of the data, which was neither sought nor commenced at least prior to 03.07.2020.

13. The Union has not placed on record any documentary or oral evidence which suggest that these findings of the learned arbitrator are liable to interference under Section 34 of the Act. It is clear from the record that the Agreement was extended for the period relating to Claim A, in writing, that the services were provided by Tata and accepted by the Union, and that the payment for the services was not contingent upon migration or transition services being provided within a particular time frame.

14. Mr. Mahapatra stressed that the Extension Letter refers to provision of services on the same terms and conditions as contained in the Agreement, which include transition and migration support. This, in my view, is insufficient to dislodge the finding of the learned arbitrator that no such support was sought by the Union during the relevant period. There is no evidence on record to the contrary.

15. Assessment of evidence and interpretation of contract are both tasks which fall within the domain of the learned arbitrator and are amenable to interference only if they are found to be perverse or arbitrary⁵. The impugned award does not suffer from any such defect. The award on Claim A is therefore sustained.

⁴ In paragraph 55.

⁵ As held in *Ssangyong Engineering & Construction Co. Ltd. v. NHAI*, (2019) 15 SCC 131, *Dyna Technologies (P) Ltd. v. Crompton Greaves Ltd.*, (2019) 20 SCC 1, *UHL Power Co. Ltd. v. State of H.P.*, (2022) 4 SCC 116, and *Reliance Infrastructure Ltd. v. State of Goa*, (2024) 1 SCC 479.



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16. Turning now to Claim B, which is for the period between 01.07.2020 and 31.12.2020, there was admittedly no written extension of the Agreement for this period. Tata relied upon the minutes dated 03.07.2020, of a meeting held on 02.07.2020. These minutes have also been placed before the Court and are extensively referred to in the impugned award.

17. The purpose of the meeting was to discuss the transition of the ICDS application relating to the POSHAN Abhiyan, from another agency to NIC, and migration of cloud services being provided in this regard by Tata to NIC. It was chaired by the CEO of NITI Aayog and attended by several representatives of the Union and Tata, including the Principal Scientific Adviser to the Government of India, Special Secretary and Financial Adviser, Ministry of Woman and Child Development, Joint Secretary, Ministry of Woman and Child Development, and the Director General, NIC.

18. Much of Mr. Mahapatra's argument proceeded on the effect of the said minutes of meeting held on 02.07.2020, which is reproduced in full below:

“Record of Discussion on Transition of ICDS-CAS Application under POSHAN Abhiyaan held on 03.07.2020

*A review meeting was held under the Chairpersonship of CEO NITI Aayog on 02.07.2020 regarding Transition of ICDS-CAS application from BMGF to NIC and **Migration of cloud services currently being provided by TCL to NIC, under POSHAN Abhiyaan.** The attendance was as per annexure A. The following issues were discussed:*

- i) Taking over operational control of the for ICDS-CAS Application by NIC from BMGF and M/s. Dimagi, who have developed and guided it so far.*
- ii) Decision on transition of ICDS-CAS Application currently hosted on M/s Tata Communications Limited (TCL) Servers to*



NIC Servers.

2. Everyone agreed that the transition is desirable and that all stakeholders will extend fullest cooperation and support to NIC to ensure that a smooth transition of application takes place without disrupting services at the front end.

3. DG NIC informed that the operational control over the software application can be taken over in the next two months. Country Director BMGF said that they had already put in place a team to ensure that such handing over happens without any glitches and assured full cooperation on the part of BMGF and Dimagi to ensure this.

4. M/s TCL explained that their company was originally VSNL and that 26% of its equity is still owned by Government of India. They further informed that the security of data on its servers is fully ensured and they are open to any audit by NIC, if required. Given that the contract of MWCD with TCL (Cloud Services) for hosting ICSD-CAS Application has expired on 30.06.2020 and that alternate arrangements for such a hosting infrastructure is not possible at least for 06 months. In the absence of any other technically feasible option, it was decided that the services of TCL for hosting the ICDS-CAS application and the data generated through it may be extended for at least 6 months on contractual terms that may be agreed upon by the MWCD and TCL.

5. Representatives of Ministry of WCD noted the six-month time frame for transition of cloud hosting services from M/s TCL to NIC, including the two-month for NIC taking over the operational control of ICDS CAS application from BMGF/ DIMAGI and assured to extend required support.

6. PSA suggested that the MWCD in consultation with NIC and other relevant stakeholders may examine the feasibility of upgrading the existing software/ building a new software incorporating the changes in workflow reflected in the composite guidelines to be issued by MWCD. He further stressed on the need to ensure the security of data generated through the application so far. The six-month timeline may be examined and efforts be made to shorten it, perhaps by parallel processing.

7. Given the technical nature of the job, CEO NITI requested and PSA agreed to steer the entire process of transition as reflected in these minutes and assured him the full support of all stake holders.

8. The meeting ended with a vote of thanks to the Chair.”⁶

⁶ Emphasis supplied.



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19. The submission of Mr. Mahapatra is that the aforesaid minutes did not serve to extend the Agreement beyond 30.06.2020, and no subsequent document was entered into, providing for such extension. He therefore submits that the provision of services by Tata, for the period of 01.07.2020 to 31.12.2020, had no basis in contract and the Union is not obliged to pay for the services.

20. The learned arbitrator has found against the Union on this aspect also, and in my view, quite correctly. It appears clear from the minutes of the meeting itself, that a decision was taken that the Agreement may be extended for a period of at least six months. Paragraph 2 of the minutes, records that front-end services should not be disrupted, which aligns with the purpose of the services in connection with the POSHAN Abhiyan. The representatives of the Ministry of Woman and Child Development also noted “*the six-month time frame for transition of cloud hosting services from M/s TCL to NIC*”, and assured their support. The Principal Scientific Adviser [“PSA”] was tasked with steering the transition process.

21. The learned arbitrator specifically noticed⁷ that Tata had issued various e-mails between 06.07.2020 and 19.11.2020, stating that it was continuing to provide services under the Agreement and requesting for the formalisation of a new contract for this purpose. Several e-mails to this effect have been placed on record, but the only response from the Union is by a communication of the PSA dated 19.08.2020, wherein he assured Tata that a formal written extension of the Agreement would be

⁷ In paragraph 60 of the impugned award.



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addressed expeditiously. The learned arbitrator has found that this communication shows the understanding of all participants in the meeting, that the Agreement was to be extended for a period of six months, i.e., until 31.12.2020. The Union sought to run a case before the learned arbitrator that the PSA was not the concerned authority for extension of the Agreement. Such an argument defies credulity. The PSA is not only the senior most scientific adviser in the Government of India, but was specifically tasked with steering the transition process in the meeting held on 02.07.2020. The e-mails in question are also marked to officials of the concerned ministry and the contents thereof have not been repudiated. The position which emerges from the record therefore, at the very least, is that Tata was asking for execution of a formal agreement, and the Union did not do so, and also did not contest the necessity for such an agreement. The finding of the learned arbitrator with regard to the extension, is thus justified on the basis of the material produced.

22. What, in my view, concludes the issue in favour of Tata is that the services were, in fact, rendered and accepted during the entire period up to 31.12.2020. The hosting of the ICDS application and related data on Tata's cloud services and provision of other services relating to the application, could not have escaped the attention of the concerned officers during the relevant time. The learned arbitrator noticed that the Union did not, at any point of time, ask Tata to stop providing services, and only in November 2020 did the Union request Tata to commence migration of the services to NIC.

23. Once again, these conclusions are based upon the documentary and oral evidence, and do not call for interference by the Court. The learned



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arbitrator has disbelieved the oral testimony offered by the Union's witness. In the matter of evidentiary assessment, including of the weight and credibility to be attached to oral evidence, the Court must ordinarily defer to the arbitral tribunal⁸. The Union has not been able to point me to any absurdity and arbitrariness in the conclusions arrived at, which are *sine quo non* for interference under Section 34 of the Act.

24. The challenge to the award under Claim B also, therefore, fails.

25. I am of the view that there is no merit in this petition under Section 34 of the Act. In my view, the learned arbitrator has correctly observed⁹ that this is not a case which should have gone to arbitration at all. It is certainly not a case in which the Union should have filed a petition under Section 34 of the Act.

26. For the reasons aforesaid, the petition, alongwith all pending applications, stands dismissed.

27. A copy of this judgment be placed before the Secretary, Ministry of Woman and Child Development, and the Secretary, Department of Legal Affairs, Government of India, for necessary administrative directions.

PRATEEK JALAN, J

AUGUST 8, 2024

"Bhupi"/

⁸ As held in *MMTC Ltd. v. Vedanta Ltd.*, (2019) 4 SCC 163, and *Ssangyong Engineering & Construction Co. Ltd. v. NHAI*, (2019) 15 SCC 131.

⁹ In paragraph 79(i) of the impugned award.