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

+ O.M.P. (COMM) 505/2023, I.A. 24772/2023, I.A. 24773/2023

BUCON ENGINEERS INFRASTRUCTURE PVT. LTD

..... Petitioner

Through: Mr. Ajit Anekar, Adv. (VC).

versus

GAIL GAS LIMITED

..... Respondent

Through: Mr. N. L. Ganapathi, Ms. Rini V.
Tigga, Mr. Amogh S. Rao, Advs.

CORAM:

HON'BLE MR. JUSTICE DINESH KUMAR SHARMA

ORDER

22.04.2024

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I.A. 1682/2024

1. The present application has been filed for condonation of a delay of 65 days in re-filing the present petition. It has been submitted that the award was passed on 15.06.2023 and the same was received by the petitioner on 03.07.2023.
2. The petition was initially filed on 14.09.2023 i.e., within three months of the date of receipt of the award.
3. I have gone through the defect sheet and the objections raised are very formal in nature.
4. Learned counsel submits that after the defects were notified which were mainly pertaining to the chronology of the documents, the same has now been arranged.



5. I have gone through the same and I consider that the objections are procedural in nature. In *ONGC Ltd. v. Saw Pipes Ltd.*, (2003) 5 SCC 705, wherein it was inter alia held that It is essential to understand that for an application to be considered as non est, the Court must come to the conclusion that it cannot be considered as an application for setting aside the arbitral award. It was further held that the first and foremost requirement for an application under Section 34 of the A&C Act is that it should set out the grounds on which the applicant seeks setting aside of the arbitral award.
6. In view of the law laid down where the courts have taken a liberal view in refilling. I consider that if the defects are procedural in nature as in the present case, a liberal view can be taken, and the delay be condoned.
7. Hence, the delay is condoned.
8. In view of the above, the present application stands disposed of.
O.M.P. (COMM) 505/2023
9. The present petition has been filed under section 34 of the Arbitration and Conciliation Act, 1996 challenging an arbitral award dated 15.06.2023 passed by the Ld. Sole Arbitrator, Shri Justice (Retd.) Dilip Raosaheb Deshmukh, wherein the learned tribunal dismissed the claims of the Petitioner and as well as the Counter Claim of the Respondent.
10. The impugned award came to be passed in the context of a dispute having arisen between the parties in respect of an LOA dated 28.06.2010 issued in favour of the petitioner, awarding the contract for laying a gas pipeline. The initial term for completing work under the contract was 16 months, which expired on 13.10.2011. However, the



defect liability term of 12 months was in place, and the respondent later extended the period for the claimant to complete the work until 30.06.2013 by letters dated 14.09.2011, 13.04.2012, and 14.10.2012. It is also an admitted fact that the claimant was never awarded the completion certificate by the Engineer-in-Chief (EIC) Wood Group Kenny India Pvt. Ltd. The claimant also submitted its final bill dated 24.06.2013 for Rs. 1,24,51,820.18 and the said bill was returned by the EIC along with its letter dated 04.07.2013 (CW- 1 /22 at Sl. No.24 of List of Documents with SoC) which was accompanied by a list of pending works of MOPE and GI as on 30.06.2013 awarded under the contract and also a list of documents required from the Claimant with the final bill.

11. Petitioner has filed the present petition under Section 34 of the Arbitration and Conciliation Act, 1996 challenging the impugned award. It has been submitted that the Impugned Award is liable to be set aside as the claims have been allowed by following a manifestly unjust procedure unknown to the law laid down under section 34 (b) (ii) and in terms of Section 34 of the Act as vitiated by patent illegality appearing on the face of the record [Section 34 (2A)] and the Impugned Award traverses beyond the terms of the agreement.
12. Learned counsel for the petitioner submits that the learned arbitrator ought to acknowledge that the final bill was duly submitted by the petitioner, which fact is not in question; the return of the final bill by the respondent's EIC does not amount to non-submission of the final bill. It has been further stated that the delivery of the final bill upon the respondent amounted to submissions of the same.



13. It has been also stated that the arbitral tribunal has also failed to observe that the Petitioner cannot obtain a completion certificate from the Respondent's EIC under the General Conditions of the Contract because the matter is over 10 years old and it is unclear if the EIC is continued or not.
14. Learned counsel for the petitioner further submits that the arbitral tribunal has failed to acknowledge that the Respondent's inability to respond in a timely manner cannot offer the Respondent an unfair advantage. It has been also stated that the Arbitral Tribunal should have assessed whether the claims filed in the final bill were acceptable.
15. Learned counsel for the petitioner has also stated that the arbitral tribunal erred in holding the submission of the final bill to the EIC on 24.06.2013, was premature because neither the work awarded to the Petitioner under the contract had been completed nor had the EIC awarded the Petitioner a completion certificate.
16. Learned counsel for the petitioner further stated that an arbitral tribunal ought to have observed that the evidence on record fails to demonstrate that the submission of the final bill was premature, and no such objection was raised by the Respondent in response to the filing of the final bill. It has further stated that the arbitral tribunal should have considered that in a letter dated 04.07.2013, the Respondent requested certain papers from the petitioner to process the final bill, which the petitioner supplied.
17. The Petitioner filed its Statement of Claim on July 20, 2015, inter alia, seeking for the following claims to be allowed against the respondent.



SI	Particulars	Claim Amt (Rs)
1.	Outstanding payment against RA and final 1,30,06,495 bills	1,30,06,495
2.	CPBG renewal charges after DLP period	3,54,589
3.	CPBG renewal interest charges after 1,51,142 Period	1,51,142
4.	CPBG Fixed Deposit Security Margin Interest Difference Charges after DLP Period	7,67,349
5.	Stock yard charges from 28.10.2011 to 31.03.2014	3,40,000
6.	Office/Guest house charges from 28.10.2011 to 30.06.2013	3,00,000
7.	Staff salary from 28.10.2011 to 30.06.2013 and 01.07.2013 to 30.06.2015	28,45,000
8.	Car, WC and Marine cargo Policy renewal charges after work completion	71,190
9.	Loss of Business and Mental Harassment	25,00,000
	Total	2,03,35,765

18. Per Contra., learned counsel for the respondent submits that the petitioner was intimated vide letter dated 04.07.2013, 29.06.2013 and 26.06.2014, to complete the balance work but in spite of these communications the contractor did not mobilize and complete the work. It has been submitted that the balance works including rectification due to less pipeline cover to be Carried out at the risk and cost of the Claimant of the GCC Clause No.78 of the contract.



19. Learned Counsel for the respondent also submits that against the contract value of Rs.3,15,19,000/-, the petitioner has only performed the work for the sum of Rs. 67,57,531.52, which amount was paid to the petitioner by the respondent. It has been submitted that the petitioner didn't submit any final documents which include the following documents.
- i) As-built: Drawings.
 - ii) Original: Inspection Reports of all- types.
 - iii) Procedure Qualification Report
 - iv) Welder Qualification Report/ Training Report.
 - v) Hydrostatic and other test results and reports.
 - vi) Materials Reconciliation Statement.
 - vii) NOC from local authorities against restoration work.
20. The mandate of the legislative procedure while deciding the petition under Section 34 of the Arbitration and Conciliation Act is to provide an expeditious and binding dispute resolution process, with minimal court intervention. The proceedings under Section 34 are summary in nature. The scheme and provisions of the Act disclose two significant aspects, i.e. minimal interference by the courts and expeditious disposal of disputes. The scope of enquiry under Section 34 is restricted to a consideration of whether any of the grounds mentioned in Section 34 (2), 13 (5) or 16 (6) of the Arbitration and Conciliation Act, 1996 are made for setting aside the award. The petitioner is required to specifically mention the grounds for setting the award as provided under the law and is required to make out the ingredients of the grounds in Section 34 (2) to establish that the award is liable to be set



aside. The grounds mentioned under Section 34 (2) of the Act are as follows:

- 2) *An arbitral award may be set aside by the Court only if—*
- (a) *the party making the application furnishes proof that—*
- (i) *a party was under some incapacity, or*
 - (ii) *the arbitration agreement is not valid under the law to which the parties have subjected it or, failing any indication thereon, under the law for the time being in force; or*
 - (iii) *the party making the application was not given proper notice of the appointment of an arbitrator or of the arbitral proceedings or was otherwise unable to present his case; or*
 - (iv) *the arbitral award deals with a dispute not contemplated by or not falling within the terms of the submission to arbitration, or it contains decisions on matters beyond the scope of the submission to arbitration: Provided that, if the decisions on matters submitted to arbitration can be separated from those not so submitted, only that part of the arbitral award which contains decisions on matters not submitted to arbitration may be set aside; or*
 - (v) *the composition of the arbitral tribunal or the arbitral procedure was not in accordance with the agreement of the parties, unless such agreement was in conflict with a provision of this Part from which the parties cannot derogate, or, failing such agreement, was not in accordance with this Part; or*
- (b) *the Court finds that—*
- (i) *the subject-matter of the dispute is not capable of settlement by arbitration under the law for the time being in force, or*
 - (ii) *the arbitral award is in conflict with the public policy of India.*



[Explanation 1. —For the avoidance of any doubt, it is clarified that an award is in conflict with the public policy of India, only if, —

(i) the making of the award was induced or affected by fraud or corruption or was in violation of section 75 or section 81; or

(ii) it is in contravention with the fundamental policy of Indian law; or

(iii) it is in conflict with the most basic notions of morality or justice.

Explanation 2. —For the avoidance of doubt, the test as to whether there is a contravention with the fundamental policy of Indian law shall not entail a review on the merits of the dispute.] [(2A) An arbitral award arising out of arbitrations other than international commercial arbitrations, may also be set aside by the Court, if the Court finds that the award is vitiated by patent illegality appearing on the face of the award: Provided that an award shall not be set aside merely on the ground of an erroneous application of the law or by reappreciation of evidence.]

21. It is a settled proposition that the court at this stage cannot make a roving enquiry and has to rely on the material placed before the arbitrator. It is pertinent to mention here that the grounds of challenge are quite limited in nature and the party making an application to set aside the award can rely on any of the grounds mentioned in Section 34 of the Arbitration and Conciliation Act, 1996 been discussed above. The scheme of the Act makes it clear that the Arbitral Tribunal is the sole judge of the quality and the quantity of the evidence. The court is



not required to take upon itself the task of being a judge on the evidence adduced before the arbitrator except if there is a perversity appearing on the face of the award.

22. The Supreme Court in ***UHL Power Company Ltd. vs State of Himachal Pradesh*** in Civil appeal No. 10341 of 2011 has *inter-alia* held that there should be minimal intervention. It is also pertinent to mention here that the jurisdiction of the court under Section 34 of the Act is limited and the court does not act as a court of appeal or subject the award to review on merits. The court is also not required to reassess the material placed before the arbitrator nor can it correct the error of the arbitrator. It is a settled proposition that the approach of the court to an award must be to support it if it is reasonably possible rather than annul it may be. There is always a legal presumption in favour of the award being valid. The court is not required to re-appreciate the evidence or interfere with the findings of the facts rendered by the arbitral tribunal. The court can only set aside the award if the findings are totally perverse, and are contrary to the terms of the contract, or in violation of the principles of the natural justice or in conflict with the public policy, or contrary to grounds specified in Section 34 of the Act. Reliance can be placed upon ***ONGC vs. Interocean Shipping (India) Pvt. Ltd.***, 2017 (5) Arb. LR 402 (Bom).
23. The award can be set aside if the same is perverse and the same may be covered under the head “patent illegality”. Such cases would fall in the parameter if the arbitrator ignores the substantive law in force in India and passes an award which causes a miscarriage of justice. The expression “perverse” refers to findings that are not supported by the



evidence on record, or are against the law, or suffer from the vice of procedural irregularity. The court has to see whether some relevant material has been considered or not or that some inadmissible material has been taken into consideration. An award has been defined to be perverse in *Associate Builders vs. DDA* (2015) 3 SCC 49 if (i) it contains a finding based on no evidence or an (ii) arbitral tribunal takes into account material which is irrelevant or extraneous to the decision; or (iii) it ignores crucial evidence.

24. The perusal of the award indicates that the learned arbitrator has copiously gone through all the clauses of the award and has given findings after duly considering the submissions made by both parties. It is pertinent to mention that the proceedings before the learned arbitrator are not required to be technical in nature and the learned arbitrator is within its power to decide the same on the basis of material on record.
25. I do not find any perversity or procedural irregularity in the award of the learned arbitral tribunal. The court is conscious of the fact that the court cannot go into the nitty-gritties and cannot sit as a court of appeal.
26. In view of the facts and circumstances of the petition, this court is of the view that there is no illegality or violation in the collusion arrived at by the arbitral tribunal. I consider that the applicant has failed to make out any case to interfere with the order of the learned arbitrator. Thus, the present petition along with the pending application is dismissed accordingly.

DINESH KUMAR SHARMA, J

APRIL 22, 2024/AR..