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

\+ FAO(OS) (COMM) 278/2024 & CM APPL. 71803/2024 (Stay), CM APPL. 71805/2024 (12 Days Delay) & CM APPL. 71806/2024 (15 Days Delay in Refiling)

UNION OF INDIA .....Appellant

Through: Mr. Sandeep Kumar Mahapatra, CGSC with Mr. Tribhuvan, Mr. Ishan Malhotra, Ms. Lavika Gupta, Advs. and Mr. Sumit Kumar Gautam, SO.

versus

TATA COMMUNICATIONS LTD. .....Respondent

Through: Mr. Ashish Dholakia, Sr. Adv. with Ms. Padmaja Kaul, Mr. Yugank Goel, Ms. Ananya Narain and Mr. Vansh Bhutani, Advs.

CORAM:
HON'BLE MR. JUSTICE YASHWANT VARMA
HON'BLE MR. JUSTICE DHARMESH SHARMA

O R D E R

% **09.12.2024**

CM APPL. 71804/2024 (Ex.)

Allowed, subject to all just exceptions.

The application stands disposed of.

FAO(OS) (COMM) 278/2024 & CM APPL. 71803/2024 (Stay),CM APPL. 71805/2024 (12 Days Delay) & CM APPL. 71806/2024 (15 Days Delay in Refiling)

1. This appeal under Section 37 of the **Arbitration and Conciliation Act, 1996**[1] seeks to assail the correctness of the

[1] Act

judgment rendered by the learned Single Judge dismissing the petition under Section 34 of the Act. The Section 34 petition was directed against the Arbitral Award dated 27 April 2024 in terms of which the **Arbitral Tribunal**[2] came to allow the claims in the following terms:-

> "(a) That the Respondent vide letter dated March 24, 2020, extended the contract dated August 16, 2018 from March 31, 2020 to June 30, 2020, in which the condition of providing of migration or the Exit Plan as envisaged in the initial contract was not a precondition.
>
> (b) The question of providing an 'Transit & Exit Management Plan' to be provided in the contract dated August 16, 2020 was one of 19 services to be provided by the Claimant to the Respondent and was not a sine qua non for extension or for making the payment for April to June 30, 2020.
>
> (c) The Respondent was obligated to make the payment to the claimant for the aforesaid period that is Rs. 2,25,20041.74/-.
>
> (d) Beyond June 30, 2020, the Respondent and its officer in its joint meeting with the officials of the Claimant, there was a consensus ad-idem to grant an extension to the Claimant's for providing service for a period of six months which would have expired in December 31, 2020. This is reflected from the minutes of the meeting dated July 3, 2020.
>
> (e) No doubt a formal agreement was expected to be signed by the parties but in the absence of signing of the agreement coupled with the fact of continuing to avail of the **services by** the Respondent had acquiesced to the continuation of the contract and by virtue of Section 70 of the Contract Act 1872, the Respondent themselves had obligated to make the payment for services availed of.
>
> (f) The fact of the services were allegedly being provided by the Claimant suo moto is not only factually wrong but also the highly improbable and believable as no objections were ever raised by the Respondent to the same til1 23rd December 2020.
>
> (g) The Respondents are therefore obligated to make payments of Rs. 2,25,20041.74 for one quarter April to June 2020 and two quarters from July to December 2020 amounting to Rs. 45804658.04. These payments shall **carry** interest at the rate of 9% from the date of payment due till realization.
>
> (h) On payment being received by the Claimant they are obligated to migrate the data if available on their servers and **cloud** to the NIC servers under the directions and supervision of the Respondent. So far as the payment of cost is concerned I am of the

[2] AT

view though the stand of the Respondent was not at legally justified and tenable as this was avoidable litigation between the parties, however despite this, the parties are left their own costs.

(j)The award is being printed on a stamp paper of Rs. 500/-. The balance stamp duty payable if any shall be paid by the claimant before getting the award executed."

2. The dispute itself emanated from an agreement entered into between the parties for provision of technological services relating to the National Nutrition Mission being administered by the Union under **Integrated Child Development Services**[3] programme. Upon the respondent being identified as the lowest bidder, the contract for providing of technological services came to be awarded to it.

3. Undisputedly, the agreement was for a period running from 16 August 2018 up to 31 March 2020. The dispute, as the learned Judge records, related to the period between 01 April 2020 to 30 June 2020 and which formed the basis of Claim A and from 01 July 2020 to 31 December 2020 which was the subject matter of Claim B. After the contract had come to an end as per the term originally reserved on 31 March 2020, the respondent continued to discharge various obligations under the agreement.

4. It appears to have been the case of the appellant before the learned Single Judge that the respondent had utterly failed to comply with the contractual stipulations pertaining to support and maintenance services, as well as the formulation of an 'Exit Management and Transition Plan'. It also appears to have been urged before the learned Judge that although the agreement was extended from April 2020 till June 2020 in terms of a letter dated 24 March 2020, the respondents had failed to discharge their contractual obligations.

[3] ICDS

5. The learned Single Judge has in this regard noted that the extension letter of 24 March 2020 was compelling evidence of the extension being for the discharge of all obligations and not one restricted to the respondent complying with the requirement of migration at the end of the originally reserved terms. It is this extension letter which also appears to have been viewed as being indicative of the respondent having continued to work the contract even after the original term had expired.

6. Before us, Mr. Mahapatra, learned counsel appearing for the appellant had essentially argued that the Union could not be held liable for any compensation or monetary liability since there was a failure on the part of the respondent to take appropriate steps for the purposes of 'Exit Management and Transition' to a new service provider. We, however, find that the appellants had abjectly failed to take any step for such an issue being framed for the consideration of the AT.

7. This becomes apparent from the following recital appearing in the Award which ultimately came to be rendered:-

> "39. No formal issues were framed but it was observed that claims raised by the Claimant will be treated as issues between the parties."

8. As is manifest from the above, the Union failed to take any steps to have a question of a purported failure by the respondent to comply with the exit management clause being framed. In the absence of any issue having been framed in that regard, it would clearly be impermissible for the appellant to urge that ground before us and that too at the stage of an appeal under Section 37.

9. We bear in consideration that while examining a challenge under Section 37, we are essentially concerned with examining

whether the court below has evaluated the challenge to the Award on the anvil of Section 34 and the grounds prescribed therein. Bearing that fundamental test in mind, we find no ground to interfere with the judgment impugned before us.

10. The appeal, consequently, fails and shall stand dismissed.

YASHWANT VARMA, J.

DHARMESH SHARMA, J.

DECEMBER 09, 2024/DR