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Arb.O.P.(Com.Div.) No.193 of 2023

In the High Court of Judicature at Madras

Reserved on 02.12.2025	Delivered on : 10.12.2025
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Coram :

The Honourable Mr.Justice N.ANAND VENKATESH

Arbitration O.P.(Com.Div.) No.193 of 2023

M/s.Marg Limited, Chennai-41
Rep.by its Authorised
Signatory

...Petitioner

Vs

M/s.Jyoti Limited,
Vadodara-390003.

...Respondent

PETITION under Sections 34(2)(a)(iv), 34(b)(ii) and 34(2A) of the Arbitration and Conciliation Act, 1996 praying to set aside the award dated 14.4.2022 passed by the Arbitral Tribunal, which had arisen out of the dispute between the petitioner and the respondent and direct the respondent to pay the cost of this petition.

For Petitioner : Mr.T.Mohan, SC for
Mr.B.Ramana Kumar
For Respondent : Mr.B.Kishore for
Mr.B.Gautham of
M/s.Dua Associates



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ORDER

This is a petition filed by the petitioner under Section 34 of the Arbitration and Conciliation Act, 1996 (for short, the Act) against the award dated 14.4.2022 passed by the learned Arbitrator.

2. Heard both.

3. The facts leading to filing of this petition are as follows:

(i) The respondent, which was the claimant before the learned Arbitrator, raised a claim on the ground that one M/s.Bhavnagar Energy Company Limited (for brevity, the BECL) floated a tender on 15.10.2010 through International Competitive Bidding in respect of Sea Water Intake Outfall (SWIO) and Circulating Water (CW) systems for 2 X 250 MW lignite based thermal power station at Padva, Bhavnagar, Gujarat. The works included construction of a power plant consisting of two units of 250 MW along with two pump houses namely CW pump house and Sea Water Intake (SWI) pump house.

(ii) The petitioner was the successful bidder and the BECL issued a letter of award dated 20.7.2011 for the aforementioned works for a



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total lump sum value of Rs.237,58,22,999/-. A contract was executed between the BECL and the petitioner.

(iii) The petitioner sub-contracted a portion of the work to the respondent, which included design, procurement, manufacturing, supply, installation, commissioning and performance of the complete electromechanical system including civil works for a total value of Rs.53.52 Crores. The petitioner issued a letter of intent (LoI) dated 15.10.2011 to the respondent. Pursuant to that, the respondent furnished two bank guarantees namely an advance bank guarantee on 03.9.2011 and a performance bank guarantee on 04.11.2011 in favour of the petitioner. Each bank guarantee was equivalent to 10% of the contract value.

(iv) On receipt of the advance bank guarantee, the petitioner released an advance payment of Rs.4.98 Crores on 13.12.2011 through a letter of credit and thereafter, the respondent placed orders for manufacturing and procurement of necessary equipment and spares. The parties entered into a contract dated 15.3.2012 and this contract set out the detailed scope of works to be carried out by the respondent.



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(v) The dispatch clearance for first consignment was issued by the BECL only on 17.8.2012 and by this time, the respondent had invested on men, machinery and equipment for the purpose of executing the work under the contract. Under these circumstances, the petitioner convened a meeting during the end of August 2012 and introduced one M/s.Servomax India Limited (SMIL) to the respondent. Further, the respondent was informed that the petitioner assigned certain works to the SMIL, that a LoI was issued by the petitioner and that the contract executed between the petitioner and the respondent would be completed by the said SMIL in the place of the petitioner.

(vi) A tripartite agreement dated 25.10.2012 marked as Ex.R.4 was entered into capturing the understanding between the petitioner, the respondent and the SMIL. Pursuant to that, the SMIL issued two purchase orders both dated 30.10.2012 aggregating to Rs.53.52 Crores on the respondent. Accordingly, the respondent mobilized equipment and resources at the site based on the project requirement and raised invoices, which were 25 in number for a gross value of Rs.34,92,50,813/- against the supplies made under the purchase orders and the works were carried out in accordance with the purchase orders.



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(vii) Only a partial discharge of amount was made in favour of the respondent towards the outstanding dues and a balance of Rs.8,55,98,727/- remained unpaid to the respondent. Later, the respondent approached the petitioner with this grievance. Accordingly, a meeting was held on 31.1.2014 between the petitioner and the respondent wherein the petitioner undertook to pay the outstanding dues aggregating to Rs.8,55,98,727/-. It was further agreed by the petitioner that in so far as interest portion was concerned, it would not be the subject matter of discussion between the parties and that the petitioner would issue a revised purchase order on the respondent. All these were reduced into writing by way of minutes of the meeting and it was marked as Ex.C.8.

(viii) The petitioner issued revised purchase orders to the respondent for the supply of balance equipment and spares as well as erection. Accordingly, supplies were made and the works were executed. Towards the same, the respondent raised several invoices, which were 55 in number for an aggregate gross value of Rs.11,16,33,023/-. Out of the said sum, a sum of Rs.1,04,92,610/- was adjusted towards advance money and a sum of Rs.90,07,733/- was withheld towards retention amounts. In effect, the respondent



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claimed a sum of Rs.9,21,32,680/- under 55 invoices raised against the revised purchase orders.

(ix) According to the respondent, the petitioner had acknowledged and agreed to pay the outstanding amounts at various points of time and ultimately, a cheque dated 27.12.2016 was issued by the petitioner towards partial discharge of the outstanding invoice amounts. But, it was dishonoured on 06.1.2017. Thereafter, no monies were forthcoming from the petitioner. The respondent claimed a total sum of Rs.6,65,35,943/- towards the outstanding invoice amounts. Only a portion of the electromechanical works was not completed by the respondent since it would depend upon completion of the civil works by the petitioner. In effect, the electromechanical works could not be executed by the respondent unless and until the necessary civil works were completed by the petitioner. Despite that, the petitioner abandoned the work and left the site during May 2017.

(x) The respondent took a stand that they had completed nearly 86.73% of the scope of work as on 16.2.2018. Since the petitioner abandoned the work, the balance work could not be executed by the respondent. The materials that were procured also remained unutilised due to this reason.



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(xi) Later, the respondent received an email dated 25.6.2018 from the petitioner instructing the respondent to renew the performance bank guarantee before 23.7.2018. The respondent was also notified that the same would be invoked if the performance bank guarantee was not renewed before 23.7.2018. However, prior to the expiry of the bank guarantee, the petitioner invoked the performance bank guarantee for the entire sum of Rs.5,35,20,000/-.

(xii) The request made by the respondent for payment of outstanding invoice amounts and refund of the performance bank guarantee was not acted upon and the petitioner took a stand that they were not liable to make payments. Later, the respondent invoked the arbitration clause under the contract on 19.11.2019 and approached this Court for appointment of an arbitrator. Further, the learned Arbitrator was appointed by this Court by order dated 07.5.2020 in O.P.No.114 of 2020 at the instance of the respondent.

(xiii) Before the learned Arbitrator, the respondent made the following claims:

"a) Direct the respondent to pay a sum of Rs.6,65,35,943/- towards balance outstanding amounts due and payable to the claimant under the invoices, with interest thereon at 18% per



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annum from 16.2.2018 until realization (Claim No.1);

b) Direct the respondent to refund the performance bank guarantee amount of Rs.5,35,20,000/- which was wrongfully invoked by the respondent against the claimant on 09.7.2018 and consequently encashed, with interest thereon at 18% per annum from 10.7.2018 until the date of realization (Claim No.2);

c) Direct the respondent to refund the entire retention amount of Rs.4,01,04,296/-, which has been unlawfully withheld by it, with interest thereon at 18% per annum from 28.7.2018 until realization (Claim No.3);

d) Direct the respondent to pay the claimant the costs of the arbitration."

(xiv) Before the learned Arbitrator, the petitioner filed a statement of defence, in which, they took a stand that the claim was barred by limitation. They also denied their liability by virtue of a tripartite agreement wherein the entire contract was assigned in favour of the SMIL and reiterated that if at all any money was due and payable, it was only the SMIL, which had to make payment. According to the petitioner, the SMIL, which was a necessary party to the proceedings, was not even impleaded during the arbitration proceedings and the tripartite agreement itself provided for referring



the dispute to the arbitral tribunal and hence, the respondent ought to have raised the dispute against the SMIL and not against the petitioner.

(xv) Apart from the above stand, the petitioner also disputed the various claims made by the respondent and sought for rejection of the claim petition. Further, the petitioner made a counter claim for a sum of Rs.16.01 Crores.

(xvi) The learned Arbitrator, on considering the pleadings, framed the following issues:

- (a) Whether the claims are barred by limitation?
- (b) Whether the claimant is entitled to payment of a sum of Rs.6,65,35,943/- towards the balance outstanding amounts due and payable against the invoices?
- (c) Whether the claimant is entitled to refund of the performance bank guarantee amount of Rs.5,35,20,000/-, which was invoked and encashed by the petitioner?
- (d) Whether the claimant is entitled to refund of Rs.4,01,04,296/- towards retention amount, which was withheld by the petitioner?
- (e) Whether the claimant is entitled to interest on the claims?
- (f) Whether the claimant is entitled to payment of costs? And



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(g) Whether the petitioner is entitled for the counter claim?

(xvii) The claimant examined C.W.1 and marked Ex.C.1 to Ex.C.53. The petitioner examined R.W.1 and R.W.2 and marked Ex.R.1 to Ex.R.41.

(xviii) The learned Arbitrator, on considering the facts and circumstances of the case and on appreciation of evidence, passed the final award dated 14.4.2022 directing the petitioner to pay the sum of Rs.6,65,35,943/- to the respondent with interest at the rate of 9% per annum from 16.2.2018 within a period of 90 days from the date of receipt of a copy of the award and on failure, to pay interest at the rate of 12% per annum till the date of realisation. The learned Arbitrator further directed the petitioner to refund to the respondent the performance bank guarantee amount of Rs.5,35,20,000/- with interest at the rate of 9% per annum from 09.7.2018 within a period of 90 days from the date of receipt of a copy of the award and on failure, to pay interest at the rate of 12% per annum till the date of realization. The petitioner was also directed to refund to the respondent the entire retention amount to the tune of Rs.4,01,04,296/- with interest at the rate of 9% per annum from 28.7.2018 within 90 days from the date of receipt of a copy of the



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award, failing which, to pay interest at the rate of 12% per annum till the date of realisation. The petitioner was further directed to pay costs to the tune of Rs.20 lakhs. However, the counter claim made by the petitioner was rejected.

(xix) Aggrieved by the award passed by the learned Arbitrator, the above petition has been filed before this Court.

4. The learned Senior Counsel appearing on behalf of the petitioner made the following submissions:

(1) The claim made by the respondent/claimant was barred by limitation;

(2) The tripartite agreement dated 25.10.2012 resulted in the novation of the contract entered into between the petitioner and the respondent on 15.3.2012 and thereafter, the petitioner cannot be made liable under the said contract.

(3) The respondent/claimant failed to implead the necessary party namely the SMIL in the arbitral proceedings and even the application filed by the petitioner to implead the SMIL as a party in A.No.3 of 2021 was dismissed on 16.8.2021.



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(4) The learned Arbitrator rejected the evidence on the side of the petitioner merely because R.W.1 and R.W.2 did not have personal knowledge about the transaction between the parties and more so, when those witnesses had adduced evidence based on records.

(5) The learned Arbitrator went wrong in marking a document (Ex.C.53) at the stage of final hearing and thereby denied an opportunity to the petitioner to confront that document through cross examination, if the same had been properly marked through a witness.

(6) The learned Arbitrator did not consider the fact that the petitioner would be entitled to encash the performance bank guarantee on account of the failure of performance on the part of the respondent.

(7) The award goes against the public policy and the findings rendered by the learned Arbitrator are also perverse and suffer from patent illegality.

(8) If at all the retention amount has to be released, it is only the SMIL, which has to release that amount and not the petitioner.

5. Per contra, the learned counsel appearing on behalf of the respondent made the following submissions:



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The grounds raised by the petitioner do not satisfy the requirements of Section 34 of the Act. The learned Arbitrator rightly rendered a finding that the petitioner had taken over the liability to pay the dues to the respondent and this finding was rendered on appreciation of evidence. In so far as the issue of limitation is concerned, the arbitral proceedings were initiated well within the period of limitation. The learned Arbitrator rightly allowed the claim towards the performance bank guarantee and the retention amount. The learned Arbitrator rightly rejected the counter claim made by the petitioner. The learned Arbitrator also rightly rendered a finding that the corporate insolvency resolution process (CIRP) of the respondent did not vitiate the proceedings before the Arbitral Tribunal.

6. This Court has carefully considered the submissions of the learned counsel on either side and perused the materials available on record and more particularly the impugned award.

7. Broadly, four issues arise for consideration in this case. They are:

(a) Whether the claims are barred by limitation?



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(b) Whether the tripartite agreement dated 25.10.2012 would tantamount to novation of the agreement dated 15.3.2012 between the petitioner and the respondent and as a consequence, the respondent cannot make any claim against the petitioner and such claim can be made only as against the SMIL?

(c) Whether the learned Arbitrator went wrong in directing refund of the performance bank guarantee and the retention amount and interest imposed thereon? And

(d) Whether the learned Arbitrator followed a procedure, which denied a fair opportunity to the petitioner?

8. This Court will take up the issue of limitation as the first issue since it goes to the root of the petitioner.

9. The case of the petitioner is that the invoices were raised as against the SMIL between 21.11.2012 and 17.9.2013 and that however, the amounts were not paid to the respondent. Subsequently, the petitioner came into the scene only to tide over the situation and help the respondent to get back the amounts towards the invoices raised.



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10. Admittedly, the petitioner issued the revised purchased order dated 25.3.2014 (Ex.C.9) to the respondent towards the supply and spares for a total value of Rs.16,32,83,287/-. Apart from that, the petitioner also agreed to take over the liability of the SMIL towards the outstanding payment of Rs.8,55,98,727/- (Ex.C.8). The respondent raised 55 invoices under the revised purchase order, under which, the net payable was Rs.9,21,32,680/-. After all adjustments including credit notes and setting off the unadjusted advances, the total claim made by the respondent is tabulated as hereunder:

<i>Invoice Value (Net)</i> <i>[A]</i>	<i>Rs.37,91,90,367/-</i>
<i>Payment Received [B]</i>	<i>Rs.30,32,12,701/-</i>
<i>Unpaid amount</i> <i>[C = A - B]</i>	<i>Rs.7,59,77,666/-</i>
<i>Less from C the adjustments</i> <i>amounting to Rs.12,30,896/- +</i> <i>Rs.82,10,827/-</i>	<i>Rs.94,41,723/-</i>
<i>Outstanding invoice amounts</i> <i>(after adjustments)</i>	<i>Rs.6,65,35,943/-</i>

11. The invoices that were raised by the respondent were duly acknowledged by the petitioner as it is evident from Ex.C.11 and Ex.C.40 and the petitioner also made some part payments under these invoices as are evident from Ex.C.10, Ex.C.12, Ex.C.33 and Ex.C.43 to Ex.C.45.



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12. The period of limitation has been dealt with by the learned Arbitrator. Further, the learned Arbitrator took into consideration the following facts:

According to the petitioner, the limitation must be considered from the last date of default of payment under the contract i.e. from 06.1.2017 (Ex.C.46). Even if this date was taken into consideration, it was noted that the arbitral proceedings commenced when the petitioner received the trigger notice issued on 19.11.2019 under Section 21 of the Act.

13. The learned Arbitrator also took into consideration yet another important fact whereby a cheque was issued on 27.12.2016 towards partial discharge of the outstanding amounts (Ex.C.13). However, when the cheque was presented for encashment, it was dishonoured and hence, it could not be cleared for payment on 06.1.2017 (Ex.C.46). Thereafter, the petitioner abandoned the work during May 2017 and the respondent invoked the arbitration clause under the contract on 19.11.2019.



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14. In the light of the above facts, the learned Arbitrator rendered a finding that the arbitration proceedings were not barred by limitation. The said finding rendered by the learned Arbitrator is perfectly in order and it does not require the interference of this Court.

The first issue is answered against the petitioner.

15. The next primordial issue raised on the side of the petitioner is the issue of novation.

16. The petitioner and the respondent initially entered into an agreement on 15.3.2012 (Ex.C.5). Even before that, the petitioner issued the LoI with respect to the sub-contracted works on 15.10.2011 and on 04.11.2011, the respondent submitted two bank guarantees each for a value of Rs.5,35,20,000/- (10% of the contract value). The petitioner released an advance payment of Rs.4,98,00,000/- on 13.12.2011. All these events took place before both the parties entered into a formal contract on 15.3.2012.

17. The petitioner convened a meeting towards the end of August 2012 and introduced the SMIL to the respondent. Virtually, the



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respondent was told that the SMIL would come in the place of the petitioner and therefore, all transactions pertaining to the purchase order, the work order, future payments and other formality would be discharged and performed by the SMIL.

18. Accordingly, a tripartite agreement dated 25.10.2012 (Ex.R.4) was executed between the petitioner, the respondent and the SMIL, in which, it was also made clear that the payment terms between the SMIL and the respondent would be the same as among the petitioner - the SMIL and the BECL i.e. on back to back basis and that it was the SMIL, which would make payment to the respondent on receipt of payment from the petitioner/BECL. This agreement also provided for dispute resolution between the SMIL and the respondent touching upon or concerning the contract as per Clause No.20 of the General Conditions of Contract.

19. In the light of the above development, the SMIL issued two purchase orders on 30.10.2012 aggregating to Rs.53.52 Crores on the respondent (Ex.C.6). It was acted upon by the respondent by mobilising the equipment and the resources at the site as per the



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project requirements and the respondent raised invoices, which were 25 in number for a gross value of Rs.34,92,50,813/- against the supplies made under the purchase orders and the works carried in accordance thereof (Ex.C.7 series).

20. But, the respondent was paid only a sum of Rs.20,14,58,960/- towards partial discharge of the outstanding amounts and there was a balance outstanding sum of Rs.8,55,98,727/-. Since the balance payments were not forthcoming, the respondent approached the petitioner and after some discussions, a meeting was held between the petitioner and the respondent on 31.1.2014 and the petitioner took over the principal outstanding dues aggregating to Rs.8,55,98,727/- and agreed to pay the same.

21. A careful reading of the minutes of the meeting (Ex.C.8) brings out the specific agreement between the parties. What were taken over by the petitioner were those amounts that were due and payable by the SMIL to the tune of Rs.8.56 Crores and those purchase orders, which will be raised by the petitioner and which would be acted upon by the respondent and the payments that will be due and



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payable for those works. Accordingly, two components of payments were contemplated under the minutes of the meeting dated 31.1.2014.

22. The agreement between the parties was acted upon and the petitioner issued the revised purchased order on 25.3.2014 (Ex.C.9). Accordingly, the respondent made supplies and executed works under the revised purchase order and raised 55 invoices. Further, part payments were made by the petitioner to the tune of Rs.10,17,53,741/- and the balance amount was arrived at by the respondent to the tune of Rs.6,65,35,943/-, which has been explained through the tabulated calculation extracted supra.

23. According to the petitioner, after the parties entered into the tripartite agreement, there was novation of the earlier agreement dated 15.3.2012 and the subsequent arrangement between the parties did not contain any arbitration clause and if at all any amount is due and payable, the arbitration proceedings can be initiated only against the SMIL.



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24. The learned Arbitrator considered this issue in detail. The learned Arbitrator came to the conclusion that a combined reading of the minutes of the meeting dated 31.1.2014 would show that the petitioner had taken over the liability of the SMIL and decided to continue the remaining contract work with the respondent by placing new purchase orders. This was also acted upon by making part payments against the dues payable by the SMIL towards partial discharge of the debt (Ex.C.10).

25. The learned Arbitrator also took into consideration the acknowledgement of liability to pay the dues of the SMIL by the petitioner through various communications (Ex.C.33 series). In view of the same, the learned Arbitrator came to the conclusion that it is the petitioner, which is liable to pay the balance amount owed by the SMIL. On a careful reading of the petition filed before this Court under Section 34 of the Act, it is seen that even the petitioner admitted taking over of the liability of the SMIL at the meeting held on 31.1.2014.



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26. The next component pertains to the 55 invoices under the revised purchase order issued by the petitioner. The learned Arbitrator took into consideration the fact of the petitioner acknowledging those invoices raised under Ex.C.11 and Ex.C.40. The learned Arbitrator also took into consideration the part payments that were made under these invoices (Ex.C.10, Ex.C.12, Ex.C.33 and Ex.C.43 to Ex.C.45).

27. If really the tripartite agreement resulted in the novation of the earlier agreement between the petitioner and the respondent dated 15.3.2012, there was no need to make a specific reference about the earlier LoI dated 15.10.2011 and the earlier agreement dated 15.3.2012 in the revised purchase order issued by the petitioner dated 25.3.2014.

28. The very conduct on the part of the petitioner by making a specific reference to the earlier LoI and the earlier agreement would show that the subsequent tripartite agreement did not wipe away the earlier agreement dated 15.3.2012. This fact gains significance since it is the petitioner, which is making such a reference in the revised purchase order.



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29. At this juncture, it is also relevant to keep in mind the specific clause under the tripartite agreement, which provided that the payment by the SMIL to the respondent is dependent upon the payments received by the SMIL from the petitioner/BECL. Therefore, the payment made by the SMIL to the respondent is actually a payment that is made by the petitioner to the respondent through the SMIL. The agreement between the petitioner and the SMIL actually came to an end on 28.4.2014 and hence, the petitioner actively came into picture by making a reference and giving life to the earlier agreement dated 15.3.2012.

30. It is true that the learned Arbitrator made some observations that the evidence tendered by R.W.1 and R.W.2 is not based on personal knowledge and that it is only a reproduction of the pleadings. This observation, by itself, does not, in any way, vitiate the findings of the learned Arbitrator since the documents that were relied upon and marked before the learned Arbitrator clearly revealed the intention behind the minutes of the meeting dated 31.1.2014.



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31. The petitioner, during the arbitral proceedings, raised another defence that the payments under the contract were to be paid on back to back basis only after the amounts were received from the BECL.

32. This stand taken by the petitioner was effectively refuted by the respondent by establishing that part payments were made by the petitioner without reference to the payments received by them from the BECL. On a demurer, the respondent also established the fact that the petitioner had, in fact, received the payments from the BECL under the contract, but had failed to make the payment to the respondent. In order to establish this fact, the respondent brought in a document marked as Ex.C.53 by filing I.A.No.5 of 2021.

33. The learned Senior Counsel appearing on behalf of the petitioner raised a lot of objections regarding this document on the ground that this document was brought in at the stage of arguments without examining any witness and that therefore, the petitioner was denied an opportunity to refute this document.



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34. The materials placed before this Court would show that before the learned Arbitrator, the petitioner took time for taking instructions and the matter stood adjourned to 06.1.2022. Even thereafter, on 03.2.2022, no objections were raised nor any reply was given by the petitioner regarding the document that was marked as Ex.C.53. Therefore, the learned Arbitrator proceeded to allow the said application and took the document on record.

35. Quite surprisingly, no objections were raised by the petitioner even during the oral and written arguments before the learned Arbitrator. For the first time, the objections are raised before this Court.

36. In the considered view of this Court, the learned Arbitrator is not strictly bound by the provisions of the Indian Evidence Act, 1872 and ultimately, what has to be seen is as to whether sufficient opportunity was given to the parties during the proceedings. An opportunity was, in fact, given to the petitioner. But, the petitioner did not raise any objections regarding Ex.C.53 and it was not even raised as one of the objections during arguments. Hence, it was rightly acted



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upon by the learned Arbitrator. Thus, the stand taken by the respondent that the payments were received by the petitioner from the BECL and that but, the petitioner failed to make payments to the respondent stood established.

37. In the light of the above discussions, this Court holds that the tripartite agreement did not result in novation of the earlier agreement dated 15.3.2012 and that the petitioner took over the responsibility of not only settling the amounts due and payable by the SMIL, but also the amounts that became payable to the respondent towards the invoices under the revised purchase order. The findings rendered by the learned Arbitrator are based on appreciation of evidence and they do not suffer from any perversity or patent illegality. **Accordingly, the second issue is also answered against the petitioner.**

38. The third issue pertains to refund of the performance bank guarantee and the claim made towards payment of the retention amount.



39. The petitioner took a stand that what was sub-contracted to the respondent was only the electromechanical works and not the civil works. Therefore, the respondent is bound to perform their part of the contract irrespective of the civil works, which were not within the scope of the work assigned to the respondent.

40. In so far as the scope of work is concerned, the learned Arbitrator placed reliance upon Ex.C.1, Ex.C.2, Ex.C.5, Ex.C.32 series, Ex.C.52 and Ex.R.8. The learned Arbitrator also considered the evidence of R.W.1 in this regard. The learned Arbitrator rendered a finding that the electromechanical works could be executed only after the civil works were completed by the petitioner, that since the petitioner failed to execute and complete the balance civil works and abandoned the work site, the electromechanical works could not be executed by the respondent, that consequently, a breach of contract was committed by the petitioner and that therefore, there was no justification for invocation of the performance bank guarantee.

41. The learned Arbitrator also rendered a finding that the communication between the parties during 2014 to 2016 could not be



the basis to justify the invocation of the performance bank guarantee in July 2018. Thus, on appreciation of evidence, the learned Arbitrator found that the petitioner had taken inconsistent and contradictory stand to justify the invocation of the performance bank guarantee and accordingly, allowed the claim made by the respondent for the refund of the performance bank guarantee that was encashed.

42. In so far as the payment of retention amount is concerned, the learned Arbitrator took into consideration the fact that the retention monies were to be withheld only upto the defect liability period and thereafter, it had to be released. However, in the case in hand, it was the petitioner, which had committed the breach by abandoning the work before the completion of the contract. Apart from that, the petitioner also admitted that the contract was terminated by the BECL on 28.7.2018. Therefore, the learned Arbitrator rendered a finding that withholding of the retention money by the petitioner was untenable.

43. An alternative plea was also raised on the side of the petitioner to the effect that they were not liable to pay the retention



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money withheld under the invoices raised by the respondent to the extent of Rs.3,10,96,563/-.

44. This alternative plea taken by the petitioner is unsustainable since this Court has already held that the petitioner had taken over the entire liability and the obligation of the SMIL on 31.1.2014. Hence, they cannot try to run away from the liability. In fact, the evidence available on record would show that the petitioner withheld the retention amount from the invoices of the SMIL.

45. Useful reference can be made to paragraph 30 of the statement of defence and also to paragraph 32 of the proof affidavit of R.W.1.

46. In the light of the above discussions, this Court finds that the award passed by the learned Arbitrator with respect to the refund of the performance bank guarantee and the retention amount does not suffer from any perversity or patent illegality warranting the interference of this Court.



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47. In so far as the interest that was awarded by the learned Arbitrator is concerned, this Court does not find it to be unreasonable and in fact, the learned Arbitrator fixed the interest at the rate of 9% if the amount is paid within a period of 90 days and on failure, awarded interest at the rate of 12% per annum until realisation. Considering the fact that a commercial transaction is involved, the interest that has been awarded is very reasonable and it does not warrant the interference of this Court.

48. In so far as the cost that was awarded is concerned, the learned Arbitrator has given reasoning at paragraph 101. The said reasoning does not fall foul of Section 34 of the Act warranting its interference. In view of the same, ***the third issue is also answered against the petitioner.***

49. The last issue pertains to the procedure that was adopted by the learned Arbitrator.

50. There was hue and cry in the manner, in which, the learned Arbitrator handled the issue of counter claim. It was ultimately given



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up by the petitioner. The marking of Ex.C.53 was also called into question. Apart from that, the appreciation of evidence of R.W.1 and R.W.2 was also commented upon. In the considered view of this Court, an award can be said to be vitiated only if the procedure adopted has virtually prevented one of the parties from effectively conducting the proceedings or bringing in evidence and putting forth their contentions before the learned Arbitrator.

51. The procedure adopted cannot be held to be vitiated just by picking holes here and there. Over all, this Court finds that a proper procedure has been adopted by the learned Arbitrator, that the petitioner has been provided with sufficient opportunity to raise their defence and that therefore, the award is not liable to be interfered by this Court on the ground of procedural irregularities allegedly committed by the learned Arbitrator. Hence, ***the fourth issue is also answered against the petitioner.***

52. The upshot of the above discussions leads to the only conclusion that the award passed by the learned Arbitrator does not warrant the interference of this Court since it does not fall foul of any



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of the grounds contained in Section 34 of the Act as was explained by the Hon'ble Apex Court in the decisions in ***Ssangyong Engineering & Construction Co.Ltd. Vs. NHAH [reported in 2019 (15) SCC 131]*** and ***Associate Builders Vs. Delhi Development Authority [reported in 2015 (3) SCC 49]***.

53. In fine, the above original petition stands dismissed with costs of ***Rs.2,50,000/- (Rupees two lakhs and fifty thousand only)*** payable by the petitioner to the respondent.

10.12.2025

Index : Yes
Neutral Citation : Yes

RS



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N.ANAND VENKATESH,J

RS

P.D.ORDER in
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