

**IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**

R/FIRST APPEAL NO. 1257 of 2024
With
CIVIL APPLICATION (FOR STAY) NO. 1 of 2024
In R/FIRST APPEAL NO. 1257 of 2024

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GUJARAT WATER SUPPLY AND SEWERAGE BOARD & ANR.
Versus
MAN INDUSTRIES (INDIA) LIMITED

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Appearance:

NANAVATI & CO.(7105) for the Appellant(s) No. 1,2

MR. AH MOHAPATRA(6807) for the Defendant(s) No. 1

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CORAM: HONOURABLE THE CHIEF JUSTICE MRS. JUSTICE
SUNITA AGARWAL
and
HONOURABLE MR. JUSTICE ANIRUDDHA P. MAYEE

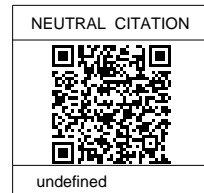
Date : 22/03/2024

ORAL ORDER

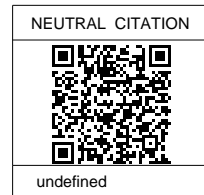
(PER : HONOURABLE MR. JUSTICE ANIRUDDHA P. MAYEE)

1. The present First Appeal is filed under Section 37(1) of the Arbitration and Conciliation Act, 1996 (hereinafter referred to as "the Act", for short), impugning the judgment and order dated 15.02.2024 passed by the Commercial Court in Commercial Civil Misc. Application No.61 of 2021, whereby the said application has been dismissed and the additional arbitral award dated 07.05.2010 clarifying the award dated 28.11.2009 passed by the Sole Arbitrator is confirmed.

2. The brief facts in the present case are that the appellant Gujarat Water Supply and Sewage Board invited the bids for procurement of Mild Steel Pipes under the Gujarat Earthquake Reconstruction and Rehabilitation Project funded by the Asian

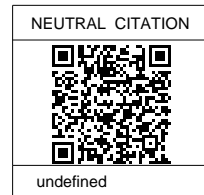


Development Bank for the purpose of reconstruction and rehabilitation of the rural regional water supply in the earthquake affected areas of Jamnagar. The respondent M/s. Man Industries Limited was awarded the tender. The value of the contract was USD 25,85,405 plus Rs.17,19,260/- for the local transportation and insurance. A formal contract came to be signed between the parties on 29.01.2005. The special conditions of the contract provided for making of advance payment of 10% of the contract price to be released within 28 days of signing of the contract. The respondent alleged that there was a delay on the part of the appellant Board in releasing the advance payment leading to delay in commencement of manufacturing work of pipes to be supplied. Further, because of the rain, there was also some delay caused. Accordingly, the respondent sought an extension of the contract period and waiver on levy of pre-estimated penalty for delayed performance of the contractual obligations. Though the appellant Board did not agree with any of the reasons stated by the respondent for seeking extension of time to complete the supply of entire quantity of pipes, the Board granted an extension of 47 days' time to complete the supply. The respondent objected to the limited extension of 47 days as granted by the appellant Board and insisted on a longer extension. Further, the respondent also objected to the levy of penalty for the delayed delivery of pipes. Accordingly, the respondent raised a dispute and sought refund of entire amount of Rs.55,42,006.68 withheld and eventually recovered by the Board towards liquidated damages for delayed performance of contractual obligations by the respondent along with the interest calculated thereon at the rate of 18% p.a. Since the appellant Board did not agree to the demand, the respondent invoked the arbitration clause contained in the agreement between the parties. The dispute came to be referred to the Sole Arbitrator. After hearing the parties and



considering the oral as well as documentary evidence placed on record by the parties, the Sole Arbitrator declared his arbitral award dated 28.11.2009. The learned Arbitrator rejected all the claims of the respondent, except that the respondent was entitled to get an extension of time for supply of pipes by a period of 87 days as requested by the respondent instead of 47 days as approved by the appellant Board. Accordingly, the Sole Arbitrator directed that the recovery of the liquidated damages, advance payment and other misc. recoveries made from the final bills be adjusted and the balance amount was ordered be refunded/released to the claimant.

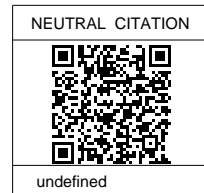
3. Pursuant to the declaration of the award, the respondent claimant filed an application dated 26.12.2009 under Section 33 of the Act for correcting the certain typographical errors and deciding the quantum of the amount, which is awarded and subsequently supported the application dated 16.02.2010 with submission of the undisputed facts and calculation in support of the application dated 26.12.2009 under intimation to the respondent. The appellants, in their reply vide letter dated 25.02.2010, gave a reference of GCC Clause 32.2 "Force Majeure". The respondent claimant also produced the rejoinder to the reply separately with due intimation and service of copy of the same to the appellants. By the further award dated 07.05.2010, the learned Sole Arbitrator decided the quantum of amount, which was awarded as per the award dated 28.11.2009 quantifying the same to be recovered and the balance amount to be refunded to the claimant by the appellant Board. Accordingly, the appellants herein preferred an application being Civil Misc. Application No.125 of 2014 in the District Court at Gandhinagar, which subsequently came to be transferred to the Commercial Court at Gandhinagar and renumbered as Commercial Civil Misc. Application No.61 of 2021 challenging the further award dated 07.05.2010. By the impugned judgment and order dated



15.02.2024, the learned Commercial Court was pleased to dismiss the said Commercial Civil Misc. Application under Section 34 of the Act, 1996 and confirmed the additional award dated 07.05.2010. Aggrieved, the appellants have preferred the present First Appeal.

4. Mr. Maulik Nanavati, the learned advocate appearing on behalf of the appellants submitted that the learned Commercial Court has not given any reason in the impugned judgment and order for upholding the additional arbitral award. He submitted that the proceedings under Section 33 of the Act initiated by the respondent claimant was without jurisdiction, in as much as, there was no agreement between the parties as contemplated under Section 33(1)(b) of the Act. He submitted that the application was not preceded by any notice and the respondent had only served the copy of the application under Section 33(1)(b). He submitted that in the present case, the award has been clarified and not interpreted. He further submitted that the learned Commercial Court has not dealt with any of the judgments relied upon by the appellants herein and the impugned order is silent on the same. He further submitted that the second/additional award was not declared within 60 days and so, the same is also bad in law. He, therefore, submitted that the impugned judgment and order be set aside and the Appeal be allowed.

5. Per contra, Mr. A. H. Mohapatra, the learned advocate appearing for the respondent submitted that the appellant has not made out any ground as required under the provisions of Section 34 of the Act and/or challenged the award on merits. He submitted that the contention of the appellants amounts to re-appreciation of evidence and the correctness of the award on the merits, which is not permissible in law. He submitted that as per the provisions of Section 33 of the Act, the learned Arbitrator has power to pass an



additional award interpreting the original award. He submitted that the learned Arbitrator has limited himself with respect to the interpretation of the award. Further, due notice for appearing in subsequent proceedings came to be issued to the appellants and accordingly, the appellants herein had appeared in the proceedings under Section 33 of the Act and filed their reply and joined the proceedings. He submitted that the appellant was given due opportunity of hearing along with its officers who were present during the hearing in the proceedings under Section 33 of the Act. Since the award did not clarify the exact amount to be adjusted and recovered, therefore, the respondent was constrained to file an application under section 33(1)(b) for quantifying the same. He submitted that by the additional award, the learned Sole Arbitrator has only quantified the amount to be adjusted and recovered which was already awarded in the original award dated 28.11.2009 and therefore, the same is legal and valid and within the scope of reference and the terms of the contract. He submitted that no ground as envisaged under the provisions of Section 34 of the Act has been made out and therefore, the present Appeal be dismissed.

6. Heard the learned advocates for the parties and perused the documents on record.

7. That, by award dated 28.11.2009, the learned Arbitrator has held as follows:-

"I have gone through the complete details of correspondence exchanged between the parties including the Legal Citations and evidence placed by the parties during the Arbitration proceedings.

I also consider the delay in getting the LC operative for as long as 87 days for which the claimant

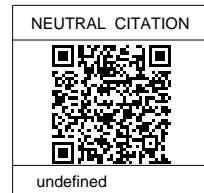


is entitled to get extension of time limit for 87 days from 26.1.05 and 21.1.06 instead of 47 days as approved by the GWSSB.

Accordingly, recoveries of liquidated damages (LD) Advance payment and other misc. recoveries from Final Bills etc. be adjusted and balance amount ordered to be refunded/released to the claimant.

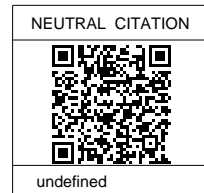
Since the Claimant is equally responsible for delay and not performed seriously for effecting the supply in time and committed the breach of contract, it is ordered that no interest shall be payable as claimed for withheld/recovered amount."

8. Pursuant to the said award, the respondent filed an application on 26.12.2009 as per the provisions of Section 33 of the Act for correcting certain typographical errors and deciding the quantum of the amount, which was awarded along with the undisputed facts and calculation in support of such an application under due intimation to the appellants. The appellants herein along with its officers being the Executive Engineer A.D.B. Cell and Deputy Accountant, A.D.B. Cell participated in the present proceedings under Section 33 of the Act. The learned Arbitrator corrected the typographical errors and after noting the undisputed facts and the calculation presented by the parties has quantified the amount on the basis of the documents provided by both the parties to the arbitration towards the liquidated damages as per the terms of the contract. Accordingly, the application under Section 33 came to be disposed of by interpreting the award dated 28.11.2009 and by giving an additional award dated 07.05.2010.



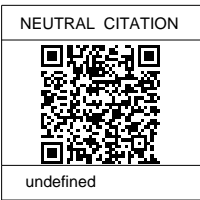
9. This Court has perused the award and the quantification as done by the learned Arbitrator in the additional award. A perusal of the same shows that the said quantification has been done in terms of the contract between the parties and in terms of the award dated 28.11.2009. The interpretation does not go beyond the scope of the contract as well as the original award. Therefore, the contention of the appellants that the the additional award is beyond the scope of the award is hereby rejected. The Sole Arbitrator has confined himself to the interpretation and quantification of the amount under the heads awarded in the original award.

10. It is the contention of the learned counsel for the appellants that Section 33(1)(b) of the Act contemplates an agreement between the parties and with due notice to the other party, a request can be made to the Arbitral Tribunal to give interpretation on a specific point or part of the award. In the present case, due notice was given by the claimant respondent along with the application for correcting the certain typographical errors and deciding the quantum of the amount, whereafter the appellants herein have joined the proceedings by filing a reply and submitting their calculation with respect to deciding the quantum of amount. The learned Arbitrator, while interpreting the award and deciding the quantum of the amount to be awarded towards liquidated damages, has taken into consideration such a reply filed by the appellants. During the proceedings under Section 33 of the Act, each of the submissions made by the parties was duly served upon each other with advance notice and therefore, the learned Arbitrator has, accordingly, after dealing with the contentions, has interpreted the award and decided the quantum of the amount to be recovered/ refunded to and by the parties. The learned Arbitrator has also not travelled beyond the scope of the agreement/contract between the parties and the amount so quantified is in terms of the same.



11. The learned counsel for the appellants has submitted that there was no agreement between the parties and no documentary evidence has been produced on record before this Court. It is pertinent to note here that the appellants have not filed the copy of their objection/reply to the application under Section 33 of the Act preferred by the respondent claimant in the present proceedings and the learned counsel has also not relied upon the same in support of his submissions. In absence of any material on record and further considering the fact that the appellants have joined the proceedings under Section 33 of the Act and also presented their calculation to determine the quantum of amount to be recovered by them, it cannot be said that there was no agreement between the parties to decide an application under Section 33 of the Act. The learned counsel for the appellants has relied upon various authorities in support of the contention that there was no agreement between the parties for filing of an application under Section 33(1)(b) and there was failure to comply with the procedure stipulated under the provisions of Section 33(1)(b). In view of the above mentioned observations made by us, all such authorities relied upon by the learned counsel for the appellants are of no avail and will be of no help to the case of the appellants as the ratio laid down therein is not applicable in the facts and circumstances of the present case.

12. In the present case, this Court finds that the interpretation as done by the learned Arbitrator does not amount to creation of any additional liability, which was not determined by the Arbitrator in the original award dated 28.11.2009. The liability of liquidated damages was already fixed by means of adjustment/refund in the original award. Further, the computation as done by the learned Arbitrator is on the basis of the facts recorded in the award dated 28.11.2009, which is not challenged before the competent court



under Section 34 of the Act. The contention of the learned counsel for the appellants that the additional award was not declared within 60 days and therefore, the same is bad in law, deserves to be rejected since in the present case, the application preferred by the respondent claimant was not under Section 33(4) of the Act, but it was under Section 33(1)(b) and dealt with only interpretation and quantified the liability in terms of the money. Therefore, the additional arbitral award dated 07.05.2010 cannot be said to be an additional award as to the claims presented in the arbitral proceedings, but omitted from the earlier arbitral award.

13. In view of the aforesaid observations, the present Appeal is devoid of merits and is accordingly dismissed. The Civil Application for stay does not survive and the same is accordingly disposed of.

14. The prayer for extension of interim order granted by the Trial Court in Section 34 proceedings which was alive till 15.03.2024 for a further period of four weeks is hereby rejected.

No order as to costs.

(SUNITA AGARWAL, CJ)

(ANIRUDDHA P. MAYEE, J.)

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