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(2021) 02 DEL CK 0280

In the Delhi High Court

Case No : Original Miscellaneous Petition (COMM) No. 21 Of 2021, Miscellaneous Application No. 870, 872 Of 2021

BSF Commandant & Anr APPELLANT

Vs

M/S Applied Communication And Controls RESPONDENT

Date of Decision : 24-02-2021

Acts Referred:
Arbitration And Conciliation Act, 1996 — Section 14, 34, 34(2), 34(2A)

Citation : (2021) 02 DEL CK 0280

Hon'ble Judges : Vibhu Bakhru, J

Bench : Single Bench

Advocate : Gaurang Kanth, Biji Rajesh, Shreesh Chadha, Darpan Wadhwa, Arnav Kumar, Toyesh Tewari, Rajat Mittal

Final Decision : Disposed Of

Judgement

,

Vibhu Bakhru, J",

1. The petitioners have filed the present petition under Section 34 of the Arbitration and Conciliation Act, 1996 (hereinafter the â??A&C Actâ??)",

impugning an Arbitral Award dated 29.06.2020 (hereinafter the â??impugned awardâ??) passed by the Arbitral Tribunal comprising of the learned,

Sole Arbitrator.,

2. The impugned award has been rendered in the context of disputes that had arisen between the parties in relation to a Supply Order dated,

31.12.2013 (hereafter the â??Supply Orderâ??). Petitioner No. 1 (hereafter â??BSFâ??) had placed the Supply Order of eight hundred and fifty-,

five pieces of fogging machines on the respondent, a sole proprietorship concern of Shiv Kumar Sharma (hereafter â??ACCâ??). The said Supply", Order was initially suspended and thereafter, terminated. In the meanwhile, ACC had manufactured and offered two hundred and forty-five machines",

for inspection.,

3. By the impugned award, the Arbitral Tribunal has partly accepted the claims preferred by ACC. The Arbitral Tribunal accepted that the termination",

of the Supply Order was illegal and entered an award for a sum of Rs. 80,85,000 in his favour being the value of two hundred and forty-five pieces of",

fogging machines less their salvage value. In addition, the Arbitral Tribunal awarded a sum of Rs. 25,65,050 as loss of profit on the balance machines.",

Thus, awarding an aggregate amount of Rs. 1,06,50,050 in favour of ACC. The Arbitral Tribunal awarded interest at the rate of 18% per annum on",

the awarded claims from the date of termination of the Supply Order (that is, 23.07.2014) till the date of the award (amounting to Rs. 1,13,65,499.94).",

And, future interest at the rate of 18% per annum on the awarded amount of Rs. 2,20,15,550 (Rs. 1,06,50,050 plus Rs. 1,13,65,499.94.), if the",

awarded amount was not paid within a period of thirty days. In addition, the Arbitral Tribunal also awarded a sum of Rs. 5,00,000/- as costs but",

clarified that future interest would not be payable on this amount, but would only run on the awarded amount of Rs. 2,20,15,550.",

4. The petitioners have assailed the impugned award as being patently illegal and contrary to the fundamental policy of Indian Law.,

Factual Context,

5. Petitioner no. 2, Directorate General of Supplies & Disposals (hereinafter â?? DGS&Dâ??), functions under the Ministry of Commerce and",

Industry and acts as a central purchase and quality assurance organization. DGS&D invites tenders and enters into Rate Contracts with suppliers for,

the purpose of facilitating purchase of materials/machines by Government departments. On 17.01.2013, DGS&D entered into a Rate Contract with",

ACC accepting a rate of Rs. 34,500 for fogging machines (Pulse Jet Type) with manual starting and Rs. 35,000/- for fogging machines with electrical",

starting.,

6. To facilitate the supply for eight hundred and fifty-five fogging machines for field formation, DGS&D forwarded copies of the approved Rate",

Contracts, with respect to two firms: Royal Tradelinks Pvt. Ltd (hereinafter â?? Tradelinksâ??) and ACC. As per the Rate Contracts, the price per",

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fogging machine quoted by Tradelinks was Rs. 62,400 as against Rs. 34,500 quoted by ACC.",

7. On 21.11.2013, the Board of Officers of BSF examined the fogging machines of Tradelinks and ACC and recommended procurement of fogging",

machines manufactured by Tradelinks. On 26.11.2013 that is, after procurement from Tradelinks was recommended, BSF sent a letter calling upon",

ACC to send an authorised representative for physical inspection and demonstration of the fogging machines. Admittedly, the said inspection was",

conducted and the working of the said machine was demonstrated before the concerned officers of BSF.,

8. The Finance Wing raised queries with respect to procurement of the fogging machines at a higher rate. In view of the above, on 31.12.2013, BSF",

placed the Supply Order (No.F-23014/66/2013/Adm/BSF/2101) on ACC for the supply of eight hundred and fifty five fogging machines (Pulse Jet,

Type) on DGS&D at an approved rate of Rs. 39,157 per unit (including VAT and Service Tax) for the total value of Rs. 3,34,79,662.50. These",

machines were to be delivered up to 28.02.2014.,

9. On 20.01.2014, even before any machine could be supplied by Applied Communications, DG, BSF received a complaint from Tradelinks alleging",

that the product offered by ACC was not of good quality on the basis of the said complaint, BSF by a letter dated 29.01.2014, directed ACC to keep",

the order in abeyance.,

10. On 30.01.2014, ACC submitted two hundred fogging machines for pre-dispatch quality inspection. Thereafter, on 31.01.2014, ACC sent a letter to",

BSF enquiring about the reasons for keeping the Supply Order in abeyance. In response to the said letter dated 30.01.2014, BSF sent a letter dated",

04.02.2014, once again reiterating its instructions to keep the supply of fogging machines in abeyance as mentioned in their letter dated 29.01.2014.",

11. On 06.02.2014, BSF sent a letter to ACC to requesting its proprietor to attend the proceedings to record his statement regarding the performance",

report of the fogging machines.,

12. Thereafter, on 19.02.2014, the concerned officers of BSF inspected the fogging machines manufactured by ACC. ACC claims that the said",

inspection was without any prior intimation and the concerned employee (Lab In-charge) was not present during the said inspection.,

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13. On 24.02.2019, ACC requested for extension of time for supplying the fogging machines, which were to be supplied by 28.02.2014. Admittedly,",

the said request was not entertained and the term of the Supply Order was not extended.,

14. On 25.02.2014, BSF sent a letter to DGS&D calling upon DGS&D to stop inspecting the units put up for inspection by ACC. On 25.02.2014, ACC",

offered further forty-five machines manufactured by it, for inspection. Thereafter, BSF sent a communication dated 27.02.2014 rejecting the fogging",

machines (two hundred in number) that were inspected on 19.02.2014.,

15. On 08.03.2014 and on 09.03.2014, the Inspecting Authority (QA Department of DGS&D) carried out the inspection of forty-five fogging",

machines put up by ACC. This was pursuant to the Inspection Call made by ACC on 25.02.2014. A fogging machine was sealed as a sample and sent,

by the Inspecting Authority to MSME Testing Centre for testing the technical parameters. On 27.03.2014, the Inspecting Authority approved forty-",

five fogging machines manufactured by ACC as the same were found to be compliant on all parameters.,

16. BSF states that prior to 25.02.2014, it had sent a letter to DGS&D to stop inspecting the units (fogging machines) put up by ACC. BSF further",

directed DGS&D not to carry out the inspection of fogging machines till the suspension of the Supply Order was not lifted. This was followed by,

another letter dated 01.04.2014 sent by BSF to ACC directing it not to produce any fogging machines before the Inspecting Authority.,

17. On 13.04.2014, the Staff Court of Inquiry (SCOI), which was constituted to examine the complaint made by Tradelinks, submitted its report. The",

Claim No. 1,"Â Rs. 14,40,000- Price of 45 units inspected and approved but not allowed to dispatch, with 18%

interest per annum from 16.09.2018 till actual realization.

Claim No. 2,"Â Rs. 64,00,000- Towards price of 200 units wrongly rejected and still lying being tailor made,

with 18% interest per annum from 16.09.2018 till actual realization.

Claim No. 3,"Â Rs. 65,60,000- Towards price of 205 units ready but due to wrongful instruction of respondent

no.2 to keep contract in abeyance and not to inspect as lying, with 18% interest per annum from

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16.09.2018 till actual realization.

Claim No. 4,"Â Rs. 1,01,25,000- Towards cost of raw material/semi-finished lying available but could not

complete due to illegal instruction of the respondent no.2, with 18% interest per annum from

16.09.2018 till actual realization.

Claim No. 5,"Â Rs. 2,00,00,000- Towards idle machinery equipment, labour and other infructuous expenditure,

with 18% interest per annum from 16.09.2018 till actual realization.

Claim No. 6,"Â Rs. 28,35,000- Towards business loss, with 18% interest per annum from 16.09.2018 till

actual realization.

Claim No. 7,"Â Rs. 3,17,35,200- Towards interest at 18% being MSME registered from date of due

calculated up to 15.09.2018.

Claim No. 8,"Cost of the proceedings- Rs. 7,00,000.00.

28. Ms Biji Rajesh, learned counsel appearing for the petitioners submitted that the impugned award is illegal and perverse on several grounds.",

29. First, she referred to Paragraph no. 29 of the impugned award and submitted that the Arbitral Tribunal had faulted BSF for keeping the Supply",

Order in abeyance, as being contrary to Rules. She submitted that there were no rules, which prohibited BSF or DGS&D from suspending the",

contract and the said view is thus, perverse.",

30. Second, she submitted that the Arbitral Tribunal had faulted BSF in failing to extend the delivery schedule. However, there was no rule or term of",

the contract, which obliged BSF to do so. She contended that in view of the above, the impugned award is contrary to the terms of the contract.",

31. Third, she stated that the Arbitral Tribunal had premised the impugned award on the basis that BSF was obliged to seek replacement of the",

rejected stocks in terms of Rule 17 of the Terms and Conditions contained in DGS&D-1001. She submitted that the said Rule related to Transit,

Insurance and was completely unrelated to the issue. She stated that Clause 17 of the DGS&D-68 may be applicable, but that too did not provide for",

replacement of any rejected goods.,

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32. Fourth, she submitted that the Arbitral Tribunal had erroneously held that the reasons for placing the Supply Order on hold had not been disclosed",

by DGS&D till its termination. She stated that the facts of the case clearly indicated that ACC was aware of the reasons for suspension of the order,

and was also requested to participate in the meetings held to consider the issue regarding the performance of the fogging machines.,

33. Fifth, she submitted that in terms of Clause 5.9 of the Manual on Policies and Procedures for Purchase of Goods, Business Dealings with the",

contractors could be suspended in public interest.,

34. Sixth, she submitted that the Arbitral Tribunal had accepted the contention that the inspection conducted by BSF/ DGS&D was illegal. She",

contended that this was contrary to Clause 7.7 of DGS&D-1001 and Clause 17(i) of DGS&D-68, which contemplated that the inspection officer",

would have access to the facilities of the contractor â??at any timeâ??.,

35. Next, she submitted that the Arbitrator had grossly erred in awarding the entire consideration for two hundred fogging machines and completely",

ignoring that the same were inspected and found to be defective. She contended that BSF, in the given circumstances, could not be asked to pay for",

these machines.,

36. In addition, she contended that the Arbitral Tribunal had grossly erred in awarding loss of profits at the rate of Rs. 4205/- for the machines that",

were not supplied. She stated that the Arbitral Tribunal had computed the said claim on the basis of the fair value of such machines, which was stated",

to be Rs. 42,056.30. However, the profit could not be computed on that value as the agreed price for the said machines was much lower. Lastly, she",

submitted that the rate of interest awarded by the Arbitral Tribunal is excessive and therefore, erroneous.",

37. Mr. Darpan Wadhwa, learned senior counsel appearing for ACC countered the aforesaid submissions. He submitted that the action of BSF in",

keeping the Supply Order in abeyance was mala fide and had been found to be such by the Arbitral Tribunal. He stated that the said action was taken,

at the behest of ACCâ??s competitor (Tradelinks). He submitted that for some reason the officials of BSF wanted to procure fogging machined,

from the Tradelinks at a higher price, however, due to the objections raised by the Finance Wing, BSF could not do so. Compelled to place orders on",

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ACC as its quoted price was lower, BSF acted in a manner so as to frustrate the contract at the behest of ACCâ??s rival (Tradelinks). He",

supported the findings of the Arbitral Tribunal and submitted that there was no error in the impugned award.,

Reasons and Conclusion,

38. At the outset, it is necessary to observe that the scope of examination under Section 34 of the A&C Act is limited. This Court does not examine",

the impugned award as an Appellate Court considering a first appeal. The grounds on which an award can be interfered with are limited. In the,

present case, unless it is found that the impugned award falls foul of any of the grounds as set out in Sub-sections (2) or (2A) of Section 34 of the",

A&C Act, no interference with the impugned award would be warranted. (See: Associated Builders v. Delhi Development Authority: (2015) 3",

SCC 49, Ssangyong Engineering & Construction Company Ltd. v. NHAI: (2019) 15 SCC 131 and Anglo American Metallurgical Coal Pty",

Ltd. v. MMTC Ltd.: 2020 SCC OnLine SC 1030).,

39. The contention that the Arbitral Tribunalâ??s finding that the suspension of the Supply Order was wrongful and contrary to Rules is perverse, is",

without merit. As noted above, there is no provision under the contract or the applicable Rules, which entitles BSF to suspend the Supply Order on the",

grounds, as alleged in the present case. This Court had pointedly asked Ms Rajesh, to point out any specific term of the contract. She submitted that it",

was implicit that BSF could suspend the contract on account of any internal inquiry. Plainly, a contracting party cannot suspend a contract unless the",

terms of the contract so specifically provide. The contracting parties are obliged to perform a contract and their failure to do so would clearly amount,

to a breach of the contract. In the present case, once a Supply Order had been placed on ACC and accepted by it, BSF was obliged to accept the",

supplies in terms of the said Supply Order and it was not open for BSF to suspend the same, without any reference to the terms and conditions",

applicable to the Supply Order. The Arbitral Tribunal had, thus, examined the applicable rules and found that in certain circumstances such as",

occurrence of force majeure events, the performance of an obligation by a party, either in whole or part, could be suspended. However, there was no",

provision to suspend the contract on the ground of any internal discussion or

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inquiry.,

40. BSF had suspended the Supply Order by a communication dated 29.01.2014. Perusal of the said letter indicates that the Supply Order was kept in,

abeyance â??due to some technical reasonsâ?. ACC was not informed of the real reasons for keeping the Supply Order in abeyance, which was the",

complaint from a trade rival. There is no evidence on record to suggest that the action initiated by BSF to suspend the Supply Order on 29.01.2014,

was for any reason other than the complaint by ACCâ??s trade rival.,

41. It is relevant to note that the said suspension was never revoked by BSF during the term of the Supply Order, which expired on 28.02.2014. The",

Supply Order was terminated on 23.07.2014. Although Ms Rajesh contended that ACC was fully aware of the reasons for suspending the Supply,

Order, there is no evidence or material to establish the same. The communications dated 06.02.2014, 06.03.2014 and 28.03.2014 also do not establish",

that ACC was informed of the reasons for suspending the Supply Order. By a communication dated 06.02.2014, the proprietor of ACC was requested",

to attend the proceedings to record his â??statement with performance report of your Fogging Machineâ?. Similarly, by a communication dated",

06.03.2014, ACC was informed that the Board of Officers had been constituted for carrying out extensive user trial of the fogging machines, which",

were supplied by ACC to BSF formations at TC&S BSF, Hazaribagh and Ftr HQ BSF, Bangalore. By a letter dated 28.03.2014, ACC was requested",

to be present for a trial of the fogging machines. It is relevant to note that the term of the contract (Supply Order) had already expired on 28.02.2014.,

Further, ACC was not informed about any complaint from its trade rival/ Tradelinks. The communications dated 06.02.2014, 06.03.2014 and",

28.03.2014 also did not state that the Supply Order has been suspended on account of any performance issues regarding the machines supplied by,

ACC.,

42. It is not disputed that the SCOI constituted by BSF found that there was no irregularity in placing the order for eight hundred and fifty-five number,

of fogging machines on ACC. The SCOI found that â??as their product meets all the parameters of BIS/IS/DGS&D and Kendriya Bhandarâ??.,

43. In view of the above, this Court finds no fault in the conclusion of the Arbitral

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Tribunal that BSFâ??s action of placing the Supply Order in",

abeyance was wrongful and not supported by any Rules and/or the terms of the contract applicable to the Supply Order.,

44. The observations of the Arbitral Tribunal that BSF had not extended the delivery schedule was made in the context of BSF suspending the Supply,

Order and at the same time, not extending its term, thus in effect, repudiating the contract.",

45. The contention that Rule 17 of the Terms and Conditions contained in DGS&D -1001 did not require BSF to seek replacement of the stock, is",

merited. Reference to Rule 17 of DGS&D-1001 is, clearly, a typographical error that has crept in the impugned award. It is obvious that the Arbitral",

Tribunal intended to refer to Clause 17 of DGS&D-68 as is apparent from the context and Paragraph no. 53 of the impugned award. Rule 17(8) of the,

â??General Conditions of Contract applicable to Contracts placed by the Central Purchase Organisation of the Government of India â?",

Form No. D.G.S. & D. 68 (Revised)â?? reads as under:,

â??(8) Consequence of rejection â?" If on the stores showing rejected by the Inspector or consignee at the designation, the contractor fails to make",

satisfactory supplies within the stipulated period of the delivery, the Secretary shall be at liberty to â?"",

i. Require the contractor to replace the rejected stores forthwith but in any event not later than a period of 30 days from the date of rejection and the,

contractor shall bear all cost of such replacement, including freight, if any on such replacing and replaced stores but without being entitled to any extra",

payment on that or any other amount.,

ii. Purchase or authorise, the purchase of quantity of the store rejected or stores of a similar description when stores exactly complying with",

particulars are not in the opinion of the Secretary, which shall be final, readily available without notice to the contractor at his risk and cost and without",

affecting the contractorâ??s liability as regards the supply of any further installment due under the contract or,

iii. Cancel the contract and purchase or authorise the purchase of the stores or stores of a similar description (when stores exactly complying with,

particulars are not in the opinion of the Secretary, which shall be final, readily available) at the risk and cost of the contractor. In the event of action",

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being taken under sub-clause (ii) above or this sub-clause the provisions of clause 14 shall apply as far as applicable.,

46. Ms Rajesh had contended that the Arbitral Tribunal had completely ignored that one of the consequences for rejection of goods is that BSF was,

entitled to cancel the Contract. The said contention is also unmerited because the opening words of Rule 17(8) clearly indicate that the said,

consequence would arise only if ACC failed to make the satisfactory supply within the stipulated period after the goods had been rejected. Thus,",

clearly, the Rules enabled a supplier to rectify/replace the defective goods and complete the supplies within the period as stipulated in the contract.",

47. In the present case, BSF had suspended the Supply Order by a communication dated 29.01.2014 and the said suspension was not lifted. In the",

meanwhile, ACC had offered two hundred pieces of fogging machines for inspection. BSF had responded to the said offer by sending a letter dated",

04.02.2014, once again requesting to keep the supply of fogging machines in abeyance. Thus, it is apparent that BSF did not accept the call for",

inspection made by ACC in terms of its letter dated 30.01.2014. Nonetheless, the Q&A Department of DGS&D inspected the fogging machines at",

the premises of ACC on 19.02.2014. The said inspection was conducted without any prior information to ACC.,

48. According to ACC, the said inspection was illegal. First of all, it was done without any prior intimation after the Supply Order was suspended. It",

was conducted in absence of ACCâ??s concerned employee â?" the Lab In-charge. Second, it is stated that the said inspection was done hastily and",

was completed within a short time in the morning of 19.02.2014.,

49. Considering the above, ACC issued another inspection call on 25.02.2014 calling upon BSF/DGS&D to inspect further forty-five machines for",

inspection. On the same date â?" that is, on 25.02.2014 â?" BSF sent a letter to DGS&D calling upon it to stop inspecting the units that are put up by",

ACC for inspection. These units (fogging machines) were inspected on 08.03.2014 and 09.03.2014 and were accepted by DGS&D on 17.03.2014.,

50. The Arbitral Tribunal accepted the contention that the inspection carried out on 19.02.2014 was illegal. The Arbitral Tribunal held that it was in,

contravention of Clause 14.6 of â??Form No. D.G.S. & D. 68 (Revised)â??. The said Clause is reproduced below:,

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â??The purchaser shall not be bound to apply for delivery but the contractor shall when the stores are ready for inspection and test send a notice in,

writing to the Inspector specifying the place where inspection is offered and the inspector shall on receipt of such notice notify to the contractor the,

date and time when the stores would be inspected.â??,

51. The Arbitral Tribunal, after evaluating the evidence and material on record, concluded that the actions of BSF were contrary to the terms of the",

Contract and were also mala fide. The view expressed by the Arbitral Tribunal cannot be held to be perverse or patently illegal. It certainly is a,

plausible view and warrants no interference by this Court in proceedings under Section 34 of the A&C Act.,

52. It is not disputed that ACC had manufactured at least two hundred and forty-five machines that were offered for inspection. During the course of,

Arbitral Proceedings, the witness for BSF was granted liberty to file any evidence in rebuttal. However, instead of leading evidence, he applied for",

inspecting the factory of ACC for the purpose of examining the fogging machines/ raw material at site. The said prayer was allowed and an inspection,

was carried out on 10.02.2020. In terms of the said inspection report, the concerned official of the petitioners found that there were two hundred and",

fifty-seven fogging machines stored at ACCâ??s facility at the time of inspection. This was disputed by ACC as it claimed that there were, in fact,",

four hundred and fifty fogging machines including forty-five that had been approved. Thus, there is no dispute that at least two hundred and fifty-seven",

fogging machines had been manufactured. Although two hundred machines were rejected, as noted above, the Arbitral Tribunal found merit in the",

contention that inspection of those machines was contrary to the Rules/terms and conditions of the contract. In addition, the Arbitral Tribunal accepted",

ACCâ??s contention that ACC had the right to rectify the defects and supply the machines within the stipulated period. However, ACC was",

prevented to do so as BSF had suspended the Supply Order. In view of the above, the Arbitral Tribunal awarded the consideration for two hundred",

and forty-five fogging machines less the salvage value of Rs. 5,000/- as approved by CW2. The Arbitral Tribunal considered the price of the machine",

as Rs. 38,000/- after factoring the discount that had been offered by ACC. It is material to note that whilst Ms Rajesh had contended that the full",

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price of the machine could not be awarded, she had not questioned the computation of the same.",

53. In view of the above, this Court finds no reason to interfere with the award of Rs. 80,85,000/- on account of the price of the fogging machines",

offered for inspection, less their salvage value.",

54. Insofar as the claim for award of loss of profit is concerned, there is merit in Ms Rajeshâ??s contention that there is an ex facie error in",

awarding the same. She had pointed out that the Arbitral Tribunal has awarded Rs. 4205 as being 10% fair market value of the fogging machines as,

proved by CW2. However, the price offered by ACC was Rs. 39,725/- per unit and not Rs. 42,056/- as assumed by the Arbitral Tribunal for",

computing the loss of profit. She submitted that even if 10% profit margin on the market price was accepted, the same would necessarily have to be",

calculated on Rs. 38,000/- being the price as considered by the Arbitrator after adjusting the discount offered by ACC for the purposes of awarding",

Claim No. 1/2.,

55. There is no evidence on record to establish that the appellant would have earned 10% profit on the offered price. The Arbitral Tribunal had,

assumed the said profit margin in view of the decision of this Court in Himachal Joint Venture v. Panilpina World Transport (India) Pvt. Ltd.: 2008,

(106) DRJ 424 rendered following the decision of the Supreme Court in A.T. Brij Paul Singh and Ors. v. State of Gujarat: (1984) 4 SCC 59. The,

reliance placed on the said decision in the facts of the present case, is clearly misplaced.",

56. In the present case, ACC had led evidence as to the normal profit margin. CW2 had led evidence to establish that the fair market value per unit",

cost of manufacturing fogging machine was Rs. 32,351/-and the fair profit margin was 10% of the said amount. This evidence was substantially",

accepted by the Arbitral Tribunal and the fair scrap value of the fogging machine as calculated on the basis of the aforesaid cost sheet. ACC had led,

evidence to the effect that 10% of the unit cost of Rs. 32,351/- is fair profit. Therefore, in any event, could not be awarded profit margin in excess of",

the same. Accordingly, the amount towards loss of profit, as worked out on the basis of the said evidence, would amount to Rs. 19,73,411 (610 x",

3235.1). The fair price of the fogging machine was computed at Rs. 42,056/-.

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However, that is not the price offered by ACC. It had offered a price of",

Rs. 39,725/-. The difference would necessarily have to be absorbed by the overheads (computed at 20% of the costs in the cost sheet) or the profit.",

There is sufficient margin under overheads to absorb the difference in fair price and the price quoted by ACC, thus the said margin of profit need not",

be reduced further. As observed earlier the petitioner could not be awarded loss of profits in excess of that as set up by ACC. Thus, the award",

entered against Claim No. 6 (business loss) in excess of the amount of Rs. 19,73,411/- is set aside.",

57. Insofar as the payment of pre-award and future interest is concerned, it is accepted that ACC falls within the definition of a Small Scale Industry",

and is covered under the Micro, Small and Medium Enterprises Development Act, 2006. The rate of interest as awarded is in conformity with the rate",

of interest as contemplated under the said Act. In view of the above, this Court is unable to accept that there is any manifest error in awarding the",

interest at the rate of 18% which warrants any interference by this Court.,

58. The impugned award to the limited extent as set out above (reduction in the value of business loss awarded to ACC) is set aside.,

59. The petition is disposed of in the aforesaid terms. All pending applications are also disposed of.,

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