
(2025) 12 MAD CK 1852

In the Madras High Court

Case No : Arbitration Original Petition (Com.Div.) No.139, 253 Of 2021

Electronics Corporation Of Tamil Nadu Ltd And Others

APPELLANT

Vs

United Telecom Ltd And Others

RESPONDENT

Date of Decision : 02-12-2025

Acts Referred:

Arbitration And Conciliation Act, 1996 — Section 28(3), 34

Citation : (2025) 12 MAD CK 1852

Hon'ble Judges : N. Anand Venkatesh, J

Bench : Single Bench

Advocate : V.Srikanth, E.Ganesh, M.S.Krishna, J.James

Final Decision : Dismissed

Judgement

N.Anand Venkatesh, J

1. M/s.Electronic Corporation of Tamil Nadu Limited (ELCOT) filed Arb.O.P. (Com.Div.) No.139 of 2021 under Section 34 of the Arbitration and Conciliation Act, 1996 (for short, the Act) against the claim allowed by the learned Arbitrator pertaining to payment of interest towards delayed payments vide award dated 10.3.2021.

2. M/s.United Telecom Limited (UTL) filed Arb.O.P.(Com.Div.) o. 253 of 2021 against those claims, which were rejected by the learned Arbitrator by the very same award dated 10.3.2021.

3. Heard both.

4. The facts leading to filing of these petitions are as follows:

(a) The ELCOT floated a tender on 22.5.2012 for the supply and commissioning of 7,84,000 laptops throughout the State of Tamil Nadu for Phase II for the year 2012-2013. The UTL submitted their bid for the supply of 2,00,000 laptop computers. Vide Letter of Acceptance (LoA) dated 17.12.2012, the ELCOT decided to allot a quantity of 2,50,000 laptop computers with back-ups to the

UTL.

(b) In the said LoA, the ELCOT also provided details regarding specification of the laptop computers as well as back-ups to be supplied by the UTL. Through the said LoA, the UTL was also called upon to submit a security deposit amounting to 3% of the purchase order value and execute a supply agreement within one week from the date of issuance of the LoA.

(c) The UTL submitted a security in the form of bank guarantee on 29.12.2012 for a sum of Rs.12,59,21,250/-. Through a letter dated 07.1.2013, the UTL informed the ELCOT that there was a delay due to various reasons beyond the control of the UTL and therefore, requested for revision of the delivery schedule for the supply of laptop computers. But, no response was received from the ELCOT.

(d) In order to fulfil the eligibility criteria specified under Clause 2 of the tender document, the UTL submitted its bid as a part of the consortium of bidders. The consortium agreement was executed on 23.1.2013 and pursuant to the same, the UTL was appointed as the prime bidder of the consortium. Thereafter, the parties executed a supply agreement as required under Clause 3.27 of the tender document and the LoA on 23.1.2013.

(e) On 05.2.2013, the ELCOT issued the second LoA to the UTL and allotted a further quantity of 1,10,000 laptop computers for supply. The delivery of 2,50,000 laptops was supposed to be completed by 12.5.2013. Since the time schedule was not adhered to by the UTL, the ELCOT cancelled 1,20,000 laptops out of 2,50,000 allotted to the UTL and informed the UTL that its order was limited to the supply of 1,30,000 laptop computers. In the light of partial termination of the contract by the ELCOT, the UTL submitted a revised security deposit for the revised quantity amounting to Rs.6,54,79,100/-.

(f) The UTL completed the supply of laptop computers and the ELCOT continued to withhold payments for the quantity supplied. Hence, a dispute arose between the parties. Accordingly, the UTL issued a letter dated 22.11.2017 invoking the arbitration clause. Further, O.P.No.395 of 2018 and by order dated 06.8.2018, the learned Arbitrator was appointed by this Court.

(g) Pursuant to that, the UTL filed the claim petition by making the following claims:

- "i. to declare that the levy of LD for deviations in the delivery schedule with respect to the contract is illegal;
- ii. to direct the respondent to make payment to the claimant of the sums amounting to Rs.10,91,31,750/- illegally withheld by the respondent as LD;
- iii. to direct the respondent to make payment to the claimant of the sums amounting to Rs.90,982/- as being sums illegally withheld by the respondent;
- iv. to direct the respondent to pay a sum of Rs.19,18,80,000/- being loss of

profit due to unlawful reduction by the respondent of the ordered quantity of laptops and back packs;

v. to direct the respondent to pay a sum of Rs.33,67,49,400/- towards the loss of opportunity to the claimant;

vi. to direct the respondent to compensate the claimant for the additional bank charges incurred by the claimant for roll-over of its LCs due to delay in payments by the respondent, amounting to Rs.53,19,328/-;

vii. to direct the respondent to make payment of interest from the date, on which, the payments were due/cause of action arose till the date of the filing the statement of claim, being an amount of Rs.17,28,87,412/- and all interest accruing from the date of filing of the statement of claim till the date of payment of the money pursuant to an award in favour of the claimant as per the amounts indicated in Annexure 3; and

viii. to direct the respondent to pay costs of the proceedings before the Tribunal.”

(h) The ELCOT filed a statement of defence and took a stand that all sums due and payable to the petitioner had been cleared and that they were not liable to make any payment. They also alleged that the entire delay was attributable only to the UTL.

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

“(1) Whether the claimant is entitled to initiate the arbitration proceeding without participation of its consortium partners?

(2) Whether there is a delay on the part of the claimant in performing the contract and whether the respondent has suffered any loss due to any deviation in delivery schedule?

(3) Whether the levy of liquidated damages by the respondent upon the claimant is unreasonable, illegal or against the provisions of the contract?

(4) Whether the claimant is entitled to claim or raise disputes other than the claims made in the notice dated 22.11.2017 invoking arbitration?

(5) Whether the recovery of liquidated damage is valid?

(6) Whether the respondent is liable to pay the claimant the sum of Rs.10,91,31,750/- stated to have been recovered as liquidated damages?

(7) Whether the respondent is liable to make payment of Rs.90,982/- to the claimant as claimed in the claim statement?

(8) Whether the respondent is liable to pay a sum of Rs.19,18,80,000/- to the claimant as loss of profit as claimed in the claim statement?

(9) Whether the claimant is entitled to a sum of Rs.33,67,49,400/- from the

respondent as claimed in the claim statement?

(10) Whether the claimant is entitled to a sum of Rs.53,19,328/- from the respondent as claimed in the claim statement?

(11) Whether the claimant is entitled to the interest of Rs.17,28,87,412/- from the respondent as claimed in the claim statement?

(12) Whether the respondent is liable to pay interest if any, pendente lite and further interest?

(13) To what other reliefs the parties are entitled to?

The following additional issue was framed as issue No.14 on 20.12.2019:

(14) Whether the respondent is entitled to appropriate the amount due to the claimant made under invoices raised by them for supply of laptops without filing any claim or counter claim?"

(j) On the side of the UTL, C.W.1 was examined and Ex.C.1 to Ex.C.44 were marked. On the side of the ELCOT, R.W.1 was examined and Ex.R.1 to Ex.R.30 were marked.

(k) The learned Arbitrator, on considering the facts and circumstances of the case and the evidence that was let in by both sides, passed an award in the following terms:

"1. The respondent shall be liable to make payment of Rs.90,982/- to the claimant, towards the amount withheld;

2. The claimant is entitled to the interest amount of Rs.17,28,87,412/- from the respondent for the delayed payments towards the bills, with interest on the said amount at 9% per annum from September 2018 till realization;

3. The deduction of Rs.10,91,31,750/- by the respondent by way of recovery from the bill amounts of the claimant as liquidated damages is legal and as per the terms of contract between the parties and the respondent is not liable to pay the said amount to the claimant;

4. The respondent is not liable to pay Rs.19,18,80,000/- to the claimant as loss of profit;

5. The claimant is not entitled for Rs.33,67,49,400/- from the respondent towards loss of opportunity;

6. The claimant is not entitled for Rs.53,19,328/- from the respondent towards rollover of Lcs;

7. The claims of the claimant are disposed in the above terms;

8. The parties shall bear their own costs."

(l) Both parties have questioned the award under Section 34 of the Act by filing

the above petitions.

5. 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.

6. The learned Senior Counsel appearing on behalf of the UTL submitted that the learned Arbitrator went wrong in denying the claim made by the UTL except granting the claim towards payments that were withheld and the interest amount for the delayed payments.

7. On the contrary, the learned counsel appearing for the ELCOT submitted that the learned Arbitrator assigned sufficient reasons for denying all the other claims made by the UTL and the same do not suffer from perversity or patent illegality.

8. The UTL had made a claim for the release of the sums withheld as liquidated damages and had also claimed for the loss towards unlawful reduction in the quantity that was originally ordered. The UTL further claimed for the loss of opportunity and the loss suffered due to roll over of the LCs. The learned Arbitrator, while dealing with all the claims, had properly appreciated the relevant clause in the agreement between the parties and also the evidence that was let in by both sides and rejected those claims. This Court finds that the reasoning assigned by the learned Arbitrator while rejecting the other claims is a possible view taken by the learned Arbitrator based on the relevant clauses in the agreement/tender document and the documents that were marked by both sides. This Court cannot sit on appeal against those findings since the findings did not suffer from any perversity or patent illegality.

9. On a careful consideration of the submissions made on either side, the only issue that has to be gone into by this Court pertains to the interest portion that was awarded by the learned Arbitrator to the tune of Rs.17,28,87,412/- towards delayed payment. In fact, the learned counsel on either side mainly focused their arguments on this issue.

10. The tender document provided for commissioning of the laptop computers, which was defined as switching on the laptop computers and testing its functions in the presence of the head of the institutions. Clause 3.25 provided that the issuance of the LoA signified beginning of the contract with the successful bidder. Clause 3.32 also provided for the liquidated damages for non fulfilment of the delivery schedule at the rate of 1% per week on the value of the undelivered quantity subject to a maximum of 5% on the undelivered quantity. It also provided that the liquidated damages would be automatically deducted from the bills submitted by the supplier.

11. As per the payment terms, Clause 5.3 provided that 97% of the payment would be released after successful completion of supply and acceptance by the respective institutions. As per Clause 5.4, the balance 3% would be released after successful completion of the warranty period of one year from the date of

supply and acceptance by the respective institutions. The tender itself provided for the model form of the contract and the supply schedule was fixed as hereunder:

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Cumulative quantity to be delivered

Supply schedule in calendar days from the date of LOA

1

15% of ordered quantity

Within 60 days

2

45% of ordered quantity

Within 90 days

3

80% of ordered quantity

Within 135 days

4

100% of ordered quantity

Within 150 days

12. It is not in dispute that since the UTL was not able to fulfil the requirement, the ELCOT cancelled 1,20,000 laptops out of 2,50,000 allotted to the UTL and ultimately what was supplied by the UTL was 1,30,000 laptops.

13. The learned Arbitrator had taken into consideration the fact that there was, in fact, delay on the part of the UTL in making the supply and hence, confirmed the levy of liquidated damages by the ELCOT. For the limited purpose of looking into the findings of the learned Arbitrator by allowing the claim towards interest on delayed payment, it will suffice to take note of issue Nos.2, 3 and 11.

14. For issue No.2, which pertained to the delay in the performance of the contract, the learned Arbitrator came to the conclusion that the UTL could not justify the delay in the supply of laptops only on the ground that there was delay in payment. Hence, the learned Arbitrator rendered a finding that there was delay on the part of the UTL.

15. Issue No.3 pertained to levy of liquidated damages. In the light of the finding that there was delay on the part of the UTL in supplying the laptop, the learned Arbitrator took into consideration the relevant clause, which provided for the liquidated damages and rendered a finding that the ELCOT was justified in

deducting the liquidated damages.

16. Issue No.11 was the important issue, which directly arises for consideration in these petitions.

17. The learned Arbitrator rendered a finding that the UTL had claimed interest under three heads namely

(i) Interest on delayed payment of 97% of the invoice amount to the tune of Rs.16,56,92,342/-;

(ii) Interest on delayed payment of 3% retention amount to the tune of Rs.59,26,686/-; and

(iii) Interest on delayed payment on the earnest money deposit (EMD) amount of Rs.12,68,384/-.

18. The learned Arbitrator had taken into consideration Clause 17(c), which provided for payment of 97% to be released by the ELCOT after successful completion of the supply and acceptance by the respective institutions. The UTL provided the particulars of delay by means of annexure, which formed part of the Enterprise Resource Planning (ERP) that is maintained by the ELCOT. Therefore, the annexure was not actually prepared by the UTL. But, they had merely shown the particulars that were available with the ELCOT in the ERP.

19. The learned Arbitrator rendered a finding that the amount towards interest was payable if the payment was made beyond 3 days after the supply. But, nowhere in the contract or in the tender conditions, there was any reference to the three days' time.

20. The learned counsel appearing for the ELCOT submitted that such a finding rendered by the learned Arbitrator runs contrary to the contract between the parties and is in violation of Section 28(3) of the Act. To substantiate this submission, he relied upon the following two judgments of the Hon'ble Apex Court:

"(i) ONGC Vs. Saw Pipes Ltd. [reported in 2003 (5) SCC 705]; and

(ii) OPG Power Generation (P) Ltd. Vs. Enxio Power Cooling Solutions (India) (P) Ltd. [reported in 2005 (2) SCC 417]."

21. The Hon'ble Apex Court, in the above judgments, held that the decision taken by the Arbitral Tribunal must be in accordance with the terms of the contract and that the decision must be taken within the bounds of its jurisdiction conferred under the Act or the contract. It was further held that where the Arbitral Tribunal passed an award against the terms of the contract, the award would be patently illegal.

22. Ordinarily, the terms of the contract should be understood in the way the parties wanted and intended them to be. However, the Arbitral Tribunal can read an unexpressed term in the agreement where there is a basis to come to the

conclusion that such a term was always and obviously intended by the parties thereto. In the absence of the same, the terms of the contract will have to be understood in the way, in which, the parties have expressed their intention in the agreement and if any interpretation is given beyond such intention of the parties, it cannot even be held to be a possible view. Under such circumstances, the award will suffer from perversity.

23. In the case in hand, the learned Arbitrator rendered a finding that 97% amount to be released towards the respective invoice had to be released within a period of 3 days. This finding has no basis.

24. The learned Arbitrator rendered a finding that Clause 17(c) provided that 97% payment would be released by the ELCOT after successful completion of the supply and acceptance by the respective institutions.

25. On carefully going through the annexure, this Court is the considered view that the learned Arbitrator was able to find that there was substantial delay in releasing the payments. The delay, which originally started with 16 days, at one stage even reached 336 days. Therefore, interest can be awarded where there was delay in releasing the amount within a reasonable time. Even though the contract does not anywhere provide the time limit for the release of the payment, it cannot be a reason to deny the claim for interest when the amount was not released within a reasonable time.

26. If the ELCOT was in a position to levy liquidated damages wherever there was a delay in the supply of materials from the bills that were raised by the UTL, the same concept of delay must also befall whenever there was a delay in releasing the payment. As per the relevant clause, the payment had to be released immediately after the successful completion of the supply and acceptance by the respective institutions and those particulars were available in the annexure. Therefore, there had been consistent delay in releasing 97% payment of the invoice amount. Even if the learned Arbitrator was not justified in fixing three days' time, which was nowhere found in the contract, the intention between the parties to get the amount released within a reasonable time can always be read into the contract as an unexpressed term in the contract. Hence, the learned Arbitrator was justified in awarding interest on the delayed payment of 97% of the invoice amount.

27. In so far as the interest awarded on the delayed payment of 3% retention amount was concerned, the learned Arbitrator took into consideration Clause 17(d) of the contract. On the facts of the present case, the learned Arbitrator found that there was no issue of any breach of warranty. Those particulars were available in Annexure II of the statement of claim.

28. The last issue pertained to interest on delayed payment of the EMD amount.

29. The learned Arbitrator took into consideration the return of the EMD amount of Rs.20 lakhs paid by the UTL only on 19.7.2016 under Ex.C.28 and for that

delay, the learned Arbitrator granted payment of interest. Hence, the learned Arbitrator rendered a finding that the UTL would be entitled to interest of Rs.17,28,87,412/- from the date of entering into the award till the date of payment at the rate of 9% per annum. This finding does not suffer from any perversity or patent illegality warranting the interference of this Court.

30. The particulars that were provided by the UTL, while claiming interest, were based on the ERP that was maintained by the ELCOT. If really the ELCOT wanted to contest the claim, they could have resisted the claim. However, it is seen that the ELCOT had casually denied this claim in their statement of defence. Apart from that, they have not let in any evidence to disprove the facts contained in the annexure. Even during the cross examination of C.W.1, no questions have been put to the witness regarding the interest claim.

31. Apart from that, even in the proof affidavit filed by the ELCOT, there was absolutely no mention about the interest component. When R.W.1 was cross examined, several questions were put vide question Nos.52 to 55 on the side of the UTL regarding the release of payment. Thus, the ELCOT had not effectively questioned or disproved the claim made by the UTL for interest on the particulars that were available in the ERP maintained by the ELCOT. In fact, such a finding has been rendered on appreciation of evidence and it is a factual finding rendered by the learned Arbitrator.

32. In the light of the above discussions, this Court does not find any ground to interfere with the award dated 10.3.2021 passed by the learned Arbitrator.

33. Accordingly, both the above original petitions stand dismissed. No costs.