

(2022) 10 OHC CK 0084
In the Orissa High Court
Case No : ARBA No.4 Of 2021

Jindal India Thermal Power Ltd

APPELLANT

Vs

Quartz Infra and Engineering Pvt. Ltd

RESPONDENT

Date of Decision : 19-10-2022

Acts Referred:

Arbitration and Conciliation Act, 1996 — Section 27, 31(8), 31A

Citation : (2022) 10 OHC CK 0084

Hon'ble Judges : Arindam Sinha, J

Bench : Single Bench

Advocate : C. Mukhopadhyaya, S.P.Mishra, Satyajit Mohanty, Prashant Mehta, Asit Kumar Dash, Divita Vyas, Vegesna Subba Raju

Final Decision : Disposed Of

Judgement

Arindam Sinha, J

1. Mr. Mukhopadhyaya, learned senior advocate appears on behalf of appellant and resumes his argument. In fairness he submits, there was view taken by a learned Single Judge of Bombay High Court in National Highways Authority of India v. Additional Commissioner available at 2022 SCC OnLine Bom 1688. He submits, paragraphs 16 to 18, 22 and 23 in the judgment would show that though judgment of the Supreme Court in NHA v. M. Hakeem reported in (2021) 9 SCC 1 was considered but the view was rendered on reliance of a Full Bench judgment of that Court in R.S. Jiwani v. Ircon International Ltd. reported in (2010) 1 Mah LJ 547. He then relies on judgment of the Supreme Court in National Highways Authority of India v. P. Nagaraju available at 2022 SCC OnLine SC 864 paragraphs 29 and 43 to submit, said Court reiterated that there could not be modification of the award and in the case held, appropriate course to be adopted was to set aside the award and remit the matter to the Tribunal.

2. Drawing attention to paragraph-943 in the award he demonstrates the tabulation to be under three heads of total awarded amount, pendent lite interest

and arbitration costs. He submits, in event Court finds substance in his submissions regarding, inter alia, termination of contract and erroneous rejection of the application under section 27, Arbitration and Conciliation Act, 1996, it would cause reduction in the total awarded amount, with consequent effect on pendent lite interest as well as arbitration costs, provided for under sections 31(8) and 31-A. Same would require modification of the award, impermissible in law.

3. He then draws attention to paragraphs 905, 921 to 925 regarding his client's counter claim no.2 and paragraphs 926 to 930 on counter claim no.3. On query from Court he submits, wrongful termination of contract was not given as reason for rejecting either of the counter claims. In paragraph-930 the Tribunal said it had arrived at finding of fact that respondent (claimant) had not abandoned the contract. He submits further, while rejecting counter claim no.2 the Tribunal also said there is nothing to show that the subsequent contract with Sinhotia Metal Works Ltd. was identical in nature, whereas in paragraph-826, said subsequent contract was considered for adjudication of respondent's claim for loss of profit on termination.

4. He then draws attention to print of electronic mail dated 2nd February, 2013. He submits, this was construed by the Tribunal to be the termination. Respondent thereafter attended meeting between itself, subsequent contractor and his client. He demonstrates from minutes dated 6th February, 2013, serial nos.1 and 2 that respondent expressed unwillingness to complete works in other areas as work on raw water reservoir and ash dyke had been offloaded. There was agreement under serial no.7 for joint measurement.

5. On query from Court he refers to letter dated 19th February, 2013 of respondent, as its response with reference to his client's said electronic mail dated 2nd February, 2013. In this regard Court requires assistance by a list of dates, giving dates of the contracts, their original periods for completion and the disputed termination with relevant correspondence, upto notice for commencement of arbitral proceeding.

6. On further query from Court Mr. Mukhopadhyaya submits, there was no other termination in respect of contracts for works other than construction of raw water reservoir and ash dyke. Loss of profit was awarded on calculation of aggregate value of all contracts.

7. List on 26th October, 2022 marked at 2.00 p.m..

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