

Union Of India vs M/S Sharma Kalypso Pvt. Ltd. Through ... on 9 May, 2022

Author: Sanjeev Narula

Bench: Sanjeev Narula

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* IN THE HIGH COURT OF DELHI AT NEW DELHI
+ O.M.P. (COMM) 220/2022 & I.A. 7047/2022
UNION OF INDIA

Through:

Mr. Sush Kumar Pand
(Senior Panel Counse
Mourya, Advocate.

versus

M/S SHARMA KALYPSO PVT. LTD. THROUGH RAMESH
SHARMA

..... Responden

Through: None.

CORAM:

HON'BLE MR. JUSTICE SANJEEV NARULA
ORDER

% 09.05.2022 I.A.7046/2022 (u/S. 151 of the Code of Civil Procedure, 1908 ["CPC"]) seeking exemption from filing fair, typed copies of dim, hand written and English translation)

1. Exemption is granted, subject to all just exceptions.
2. The Petitioner shall file legible and clearer copies of exempted documents, compliant with practice rules, before the next date of hearing.
3. Accordingly, the application stands disposed of.

I.A.7045/2022 (u/S. 151 of the CPC, 1908 r/w Section 36(2) and (3) of the Arbitration and Conciliation Act, 1996 on behalf of the Petitioner seeking stay of the impugned Award)

4. Mr. Sush Kumar Pandey, counsel for the Petitioner, states that to the extent the Award has not been impugned, the awarded amount already stands paid to the Respondent. As regards the disputed amount, which is subject matter of the instant challenge, the same had been secured in the form of an FDR as per the directions of the District Court where the petition was erroneously filed. He states that the said FDR is on the record of the District Court, and he will have the same placed on record before this Court.

5. In view of the above, execution of the impugned Award shall remain stayed, subject to Petitioner furnishing the FDR in four weeks' time.

6. The application stands disposed of.

I.A.7047/2022(u/S. 5 of the Limitation Act, 1963 r/w 151 of the CPC seeking condonation of delay about 632 days as the matter was pending in Trial Court)

7. Mr. Sushi Kumar Pandey states that he is entitled to the benefit of Section 14 of the Limitation Act, 1963 as delay in filing was on account of the Petitioner's bonafide mistake in pursuing its remedy before a Court which did not have relevant pecuniary jurisdiction.

8. Issue notice to the Respondent, by all permissible modes, upon filing of process fee, returnable on the next date of hearing.

O.M.P. (COMM) 220/2022

9. Mr. Sushi Kumar Pandey states that the challenge in the present petition is limited. The Award has been partly accepted as is borne out from the pleadings which were filed before the Trial Court, relevant portion whereof reads as follows:

"(a) Award Accepted:

Rs. 6,32,735/- + Rs. 18,07,399/- = Rs.

2. Award of Claim No.2: Rs. 1,78,93,502/- = Rs. 1,78,502/-

3. Award of Claim No.8:

Rs. 3,56,326/- + Rs. 56,62,190/- = Rs. 60,18,516/-

Total = Rs. 2,63,52,152/- "

10. He states that an amount of Rs. 2,63,52,152/- stands paid to the Respondent. The challenge therefore is confined to the balance amount of Rs. 96,44,163/-.

11. Mr. Sushi Kumar Pandey argues that in paragraph no. 14.6 of the impugned Award, the Arbitrator has recorded a finding that both Claimant and Respondent are equally responsible for the delay. He submits that in light of such finding, imposition of compensation by the Respondent under Clause 2 (liquidated damages) of the Agreement becomes an "excepted matter" which could not be examined in arbitration. He also argues that in M/s. Mitra Guha Builders (India) Company v. Oil and Natural Gas Corporation Limited,¹ the court in paragraph number 5 of the judgment took note of a similar fact situation and then went on to hold that the intention of the parties as borne out from Clause 2 of the Agreement, was to accept the decision of the Superintending Engineer of levying compensation as final.

He submits that this aspect has not been examined by the Arbitral Tribunal and therefore, reliance placed by it on the judgment of the Hon'ble Supreme Court in M/s J.G. Engineers Pvt. Ltd. v. Union of India,² is misplaced.

12. Issue notice to the Respondent, by all permissible modes, upon filing of process fee.

13. List along with O.M.P.(COMM) 153/2019 on 20th October, 2022.

SANJEEV NARULA, J MAY 9, 2022 d.negi 2020 3 SCC 222.

2011 5 SCC 758.