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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% *Date of Decision: 06.05.2022*

+ **O.M.P. (COMM) 4/2021 and IA Nos. 35/2021 & 36/2021**

HARYANA VIDYUT PRASARAN NIGAM

LIMITED HVPNL Petitioner

Through: Mr Samir Malik, Ms Iti
Agarwal and Mr Praful Shukla,
Advocates.

versus

COBRA INSTALACIONES Y SERVICES SA AND

SHYAM INDUS POWER SOLUTION

PVT LTD JV Respondent

Through: Mr Pankaj Kumar Singh,
Advocate.

AND

+ **O.M.P. (COMM) 5/2021 and IA No. 41/2021**

HARYANA VIDYUT PRASARAN NIGAM

LIMITED HVPNL Petitioner

Through: Mr Samir Malik, Ms Iti
Agarwal and Mr Praful Shukla,
Advocates.

versus

COBRA INSTALACIONES Y SERVICES SA AND

SHYAM INDUS POWER SOLUTION PVT

LTD JV Respondent

Through: Mr Pankaj Kumar Singh,
Advocate.

AND

+ **O.M.P. (COMM) 6/2021 and IA No. 47/2021**

HARYANA VIDYUT PRASARAN NIGAM

LIMITED HVPNL Petitioner

Through: Mr Samir Malik, Ms Iti
Agarwal and Mr Praful Shukla,
Advocates.

versus

COBRA INSTALACIONES Y SERVICES SA AND
SHYAM INDUS POWER SOLUTION PVT
LTD JV Respondent

Through: Mr Pankaj Kumar Singh,
Advocate.

AND

+ **O.M.P. (COMM) 7/2021 and IA No. 50/2021**

HARYANA VIDYUT PRASARAN NIGAM
LIMITED HVPNL Petitioner

Through: Mr Samir Malik, Ms Iti
Agarwal and Mr Praful Shukla,
Advocates.

versus

COBRA INSTALACIONES Y SERVICES SA AND
SHYAM INDUS POWER SOLUTION PVT
LTD JV Respondent

Through: Mr Pankaj Kumar Singh,
Advocate.

CORAM:

HON'BLE MR. JUSTICE VIBHU BAKHRU

VIBHU BAKHRU, J. (ORAL)

1. The petitioner (hereafter 'HVPNL') has filed these petitions under Section 34 of the Arbitration and Conciliation Act, 1996 (hereafter 'the A&C Act') impugning a common arbitral award dated 29.07.2020 (hereafter 'the impugned award') rendered by an Arbitral Tribunal comprising of a former Judge of this Court as the Sole Arbitrator (hereafter 'the Arbitral Tribunal').

2. The impugned award was delivered in the context of disputes that had arisen between the parties in relation with two contracts each in respect of Packages G-14A, G-17, G-19A, and G-19B. The works stipulated under the contracts were not finished by the respondent

(hereafter ‘Cobra’) as per the scheduled completion dates.

3. A tabular statement indicating the amounts awarded by the Arbitral Tribunal with respect to the aforesaid packages, in favour of Cobra, is set out below: -

Packages/ Claims	G-14A	G-17	G-19A	G-19B
Interest on the Liquidated Damages Amount	₹21,57,511 /-	₹33,46,165/-	₹35,29,154 /-	₹60,59,966 /-
Refund of deferment charges	₹65,59,914 /- [including interest at the rate of 13% per annum from the period it was charged till 26.12.2018]	₹1,41,97,027 /- [including interest at the rate of 13% per annum from the period it was charged till 26.12.2018]	₹25,11,423 /- [including interest at the rate of 13% per annum from the period it was charged till 26.12.2018]	₹34,45,686 /- [including interest at the rate of 13% per annum from the period it was charged till 26.12.2018]
Reimbursement of tax component of the contract price	Nil	Nil	Nil	Nil

<i>Pendente lite</i> Interest	9% per annum on the aforesaid amounts from 26.12.2018 till date of award	9% per annum on the aforesaid amounts from 26.12.2018 till date of award	9% per annum on the aforesaid amounts from 26.12.2018 till date of award	9% per annum on the aforesaid amounts from 26.12.2018 till date of award
Future Interest	9% per annum on the sum awarded from the date of the award till the date of payment	9% per annum on the sum awarded from the date of the award till the date of payment	9% per annum on the sum awarded from the date of the award till the date of payment	9% per annum on the sum awarded from the date of the award till the date of payment

4. The learned counsel appearing for HVPNL has assailed the impugned award, essentially, on two grounds. First, he submits that the Arbitral Tribunal has grossly erred in allowing Cobra's claim for refund of the deferment charges levied on the liquidated damages imposed by HVPNL. He states that HVPNL was entitled to levy liquidated damages at the material time. However, at the request of Cobra, it had deferred deducting the said charges on an understanding that Cobra would pay deferment charges on the liquidated damages, which HVPNL had refrained from recovering at that stage.

5. Concededly, part of the liquidated damages, as claimed by HVPNL, were found to be not leviable and were not charged by HVPNL. He submits that notwithstanding that HVPNL had not levied the liquidated damages, nonetheless, it is entitled to recover the deferment charges.

6. He submits that the deferment charges are a separate charge as agreed between the parties for deferring the collection of liquidated damages and irrespective of whether the liquidated damages are finally levied or not, HVPNL would be entitled to recover the deferment charges.

7. The said contention is unmerited and was rightly rejected by the Arbitral Tribunal. Cobra had agreed to pay charges for deferment of liquidated damages at State Bank of India's base rate of interest plus 3% (that is, 13% per annum). The Arbitral Tribunal had found that this was in the nature of interest on the liquidated damages. Since HVPNL had agreed to defer the collection of the liquidated damages, it had also stipulated that Cobra would pay interest on the same. The said interest was referred to as deferment charges. However, in this case, it was found that certain liquidated damages were not leviable. Concededly, HVPNL had not levied the same. In these circumstances, there is no question of recovery of interest or the deferment charges where there is no liability to pay the principal amount (that is, the liquidated damages). No interference with the impugned award is warranted on this ground.

8. Second, the learned counsel submits that the Arbitral Tribunal had grossly erred in awarding interest on the amounts withheld by HVPNL on account of deferment charges and liquidated damages that were refunded. He submits that award of such interest runs contrary to Clause 30.1 of the General Conditions of the Contract (GCC). The Arbitral Tribunal interpreted Clause 30.1 of the GCC to be confined to interest, which may have been suffered by Cobra and did not prohibit award of interest on the amounts withheld by HVPNL. The Arbitral Tribunal had also referred to Clause 12.3 of the GCC, which expressly provided for payment of interest on the amounts withheld.

9. Concededly, this issue is also covered by the decision of this Court in *Haryana Vidyut Prasaran Nigam Limited (HVPNL) v. M/s Cobra Instalaciones Y. Services, S.A. & M/s Shyam Indus Power Solution Pvt. Ltd. (JV): O.M.P. (COMM) 8/2021, decided on 25.04.2022*. In that case, this Court had held that the question as to interpretation of the aforementioned relevant clauses was within the jurisdiction of the Arbitral Tribunal and warranted no interference in these proceedings.

10. In view of the above, the petitions are unmerited and are, accordingly, dismissed. All pending applications are also disposed of.

VIBHU BAKHRU, J

MAY 6, 2022

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[Click here to check corrigendum, if any](#)