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

% Reserved on : 20.02.2025
Pronounced on : 09.06.2025

\+ **O.M.P. (COMM) 6/2017**

HINDUSTAN HYDRAULICS PVT. LTD. .....Petitioner
Through: Mr. Faisal Zafar, Advocate

versus

UNION OF INDIA .....Respondent
Through: Mr. Mukul Singh (CGSC), Ms. Ira Singh and Mr. Bharat Singh, Advocates.

CORAM:
HON'BLE MR. JUSTICE MANOJ KUMAR OHRI

JUDGMENT

1. The present petition has been filed under Section 34 of the Arbitration & Conciliation Act, 1996 (hereafter, the 'A&C Act') seeking setting aside of impugned award dated 05.09.2016 passed by the Arbitral Tribunal comprising of Sole Arbitrator (hereafter, 'AT').

2. The Respondent, through Central Organization for Modernization of Workshops (COFMOW) issued a tender notice dated 29.03.2004 for procuring a "Double Column Guillitone Shearing Machine with Hydraulic Main Drive". The Petitioner offered to sell the aforesaid machine to the Respondent vide its offer letter dated 27.03.2004 which was duly accepted by the Respondent on 07.06.2005, subject to terms and conditions mentioned in the acceptance letter.

3. Petitioner returned the signed copy of the terms and conditions of the contract vide its letter dated 21.06.2005, in acceptance of the same.

4. As per the terms, the Petitioner was obligated to deliver the machine within a period of ten months from the date of issue of advance acceptance of the tender by the Respondent-which was 21.06.2005. From this date the delivery period of 10 months expired on 21.04.2006.

5. The machine was delivered on 28.07.2008, after considerable delay and more precisely 3 years and 1 month of the acceptance of tender, which became a point of contention between the parties, so was the quality of machine supplied. Respondent rejected the machine on 25.04.2011 on quality issues, which was disputed by the Petitioner, who demanded the balance consideration of Rs.14,32,918/-, along with interest. Respondent also felt aggrieved by the quality of the machine and services rendered by the Petitioner and sought refund of the part sale consideration of Rs.1,14,63,340/- paid by it to the Petitioner along with interest.

6. Upon their failure to resolve the disputes, the disputes were referred to arbitration under Clause 3200 of bid document (Part-I) for adjudication. A sole member Tribunal was constituted which passed the impugned final award dated 05.09.2016, rejecting the claims of the Petitioner and upholding counter claim no.1 of the Respondent.

7. The award came to be challenged by the Petitioner in the subject proceedings, under Section 34, primarily on the ground that the Tribunal did not deal with the evidence on record and also drew incorrect conclusions dehors the evidence.

8. According to the settled principles of law, an arbitral award could be

susceptible to challenge under Section 34, if the same is an outcome of a non-judicious approach of the AT and its failure to return evidence-based findings. The arbitral award in question, therefore, is being examined in view of the specific objection raised by the Petitioner in this regard.

9. Petitioner raised eight claims in all before the AT. Primary claim pertained to the outstanding sale consideration of Rs.14,32,918/- payable by the Respondent unaffected by the rejection of the machine. Remaining claims are incidental in nature to the main claim, being claim for interest, losses and damages, etc.

10. Petitioner's grievances include late approval of the General Arrangement drawings (GA) by the Respondent, forced deviation from the agreed product specifications, and wrongful rejection of the machine despite long and successful trials conducted by RCF, the consignee to whom the machine was delivered.

11. Respondent too laid its own four Counter Claims, which are consequence of the rejection of the machine due to quality issues. Respondent also alleged that the machine did not conform to the contractual specifications. It refutes the Petitioner's allegation that after the delivery of the machine, the Respondent sought modification in the machine much beyond the agreed specifications. In its counter, the Respondent is claiming refund of part sale consideration of Rs.1,14,63,340/- already paid to the Petitioner, being 90% of the sale price, along with interest thereupon. Incidental to rejection of the machine, the Respondent also claims a sum of Rs.4,38,81,399/- as CC No.3 being the higher price it had to pay for the same machine procured from another vendor as a replacement of the rejected machine.

12. Based on the pleadings filed before the AT, rather comprehensive range of twenty-two issues were framed by the AT for its determination. From the issues framed, it can be seen that the AT chose to frame separate issues on very minute facts in dispute even though the some of which could have been dealt with under the head of one or more than one issues. It is not at all suggested that the AT's approach was wrong, but the purpose of this observation by the court is to highlight the comprehensive nature of the issues framed.

13. The core issues framed by the Tribunal pertained to the delay in commissioning of the machines, design deviations from the agreed technical specifications in the machine delivered and if the design modifications sought by the Respondent during the trials, were contractually binding on the Petitioner. Decision on these core issues would determine the other issues regarding legality of rejection of machine by the Respondent and its consequences.

14. The challenge mounted by the Petitioner is based on the allegation of re-writing of the contract by the Tribunal and ignoring of material evidence to reach incorrect factual findings. In this regard, inter-alia, following are the core paraphrased grounds pleaded in the Section 34 petition:

(i) Ground A: Under Clause 2102 of the Contract (which is referred to as AT in the award and the Petition), the Respondent could reject the machine only within 45 days from the date of delivery. In Clause 0120 delivery of stores is defined as delivery of stores at the consignee premises, which alone could have been the date of delivery to be reckoned as per the contract and none other, but the

Tribunal ignored the contract provision by treating the date of delivery from the date of commission/installation. From the date of delivery on 28.07.2008, admittedly, the rejection was made much beyond 45 days on 24.08.2011, which the Tribunal failed to enforce. Since the Tribunal upheld the rejection beyond 45 days, it is alleged that Tribunal re-wrote the contract, thereby committing a patent error.

(ii) Ground B: Tribunal wrongly held that the deviations of specifications contained in the rejection advice dated 23.04.2011 that the Respondent had wanted the Petitioner to address by modifying the design of the machine, were within the scope of the AT and binding on the Petitioner to carry out. Petitioner alleges that the Tribunal has not even discussed the deviations in the awards and yet concluded that the deviations were within the scope of AT. The finding that the Petitioner did not dispute that deviations (modifications) were within the AT, is contrary to the evidence, which AT has ignored. Petitioner further alleges that the Tribunal has wrongly held that the deviations have been discussed under the discussions pertaining to Issue No 2, whereas no such discussion is recorded under Issue No 2. According to the Petitioner the finding is perverse enough to shake the conscience of the court and is against the public policy.

(iii) Ground C: Tribunal has not decided Issue No 2 i.e whether the modifications in the GA drawings sought from time to time were within scope of AT. Petitioner submits that the said issue was the most vital issue which remained unanswered. Petitioner challenged

the finding that it did not dispute the fact that the modifications were well within the scope of the AT. Petitioner refers to letters dated 11.05.2010, 30.06.2010, 04.08.2010, 27.08.2010, 03.09.2010, 04.12.2010, 08.12.2010, 01.03.2011, 06.04.2011, 20.04.2011, 23.04.2011, 20.05.2011 and joint note dated 07.07.2011 & 01.09.2011, to argue that these letter clearly brought out the Petitioner's opposition to the modifications on the ground that the same were beyond the scope of AT. By ignoring the letters, the Tribunal ignored vital evidence thereby committing a patent error. Petitioner has specifically referred to a letter dated 30.06.2010 issued by the Respondent where 18 defects in the machine were pointed out. It is the Petitioner's grievance that the Tribunal wrongly held that the defects had been dealt with in the discussion on Issue No 2, whereas the same had not been done. According to the Petitioner this approach of the Tribunal was illegal and against the public policy of India.

(iv) Ground E: Tribunal incorrectly held that the machine had not been used for production, which finding was contrary to the evidence on record. Tribunal also incorrectly recorded-contrary to the record, that the trials were conducted by the Petitioner on its own. Petitioner refers to evidence to show that the trials were jointly conducted over a period of 6 months where the machine was deployed for production.

(v) Ground F: Tribunal wrongly held that the drawings were required to be submitted within 4 weeks from 07.05.2005, the day of communication of acceptance Petitioner's bid by the Respondent.

The copy of the tender (referred to as AT) was signed and submitted by the Petitioner on 21.06.2005 which should be date of acceptance of the AT by the Petitioner rather than 07.06.2005. Petitioner has further challenged the finding of the Tribunal that the GA drawings were submitted by the Petitioner on 07.06.2007 whereas the same had been submitted and later approved by the Respondent on 15.09.2006. Petitioner had submitted the drawing of bottom blade-which was not part of the GA drawings on 15.09.2006. GA drawings had already been submitted on 06.07.2005 which was within 4 weeks of the acceptance of AT by the Petitioner.

(vi) Ground H: Tribunal did not understand the issue of space constraint that was the subject matter of Issue No 7. There was a delay on the part of the RCF, the consignee, in making the site available for installation, whereas the Tribunal wrongly framed the Issue No 7 as "space constraint for installing the machine". The Tribunal did not decide Issue No 7 at all.

(vii) Ground I: Tribunal mechanically decided Issue No 6. It ignored the evidence that the machine delivered to the Respondent had a Flat Guiding System as against the Roller Guiding System that was the original requirement. The machine was received on 31.07.2005 and put through commissioning trials by the Respondent instead of rejecting the same for such design deviation. Machine was rejected on 25.04.2011, about 7 years later from the permissible rejection period of 45 days.

15. The award needs to be examined in the light of the aforesaid basic objections raised by the Petitioner.

16. Tribunal in its award has decided Issue No 1 against the Petitioner holding that there was a delay in delivery of the machine. Petitioner's contention was that the permissible rejection period of 45 days would be strictly counted from the date of delivery of machine on 28.07.2008. Tribunal has held that since the work awarded also included commissioning of the machine, as per Clause 2.1 of tender agreement, the date of delivery mentioned in Clause 2102, would necessarily has to be read to mean the date of successful commissioning, which never could take place due to rejection of the machine on 25.04.2011 at the trials stage itself.

17. According to this Court, it will be legally impermissible for this court to interfere with the award on the interpretative differences of the contract clauses. In any case, this court fully endorses the view taken by the Tribunal that the date of delivery cannot be reckoned as the starting date for calculating 45 days for rejection of the machine stipulated in Clause 2102. In Section III of AT, the Petitioner was also obliged to commission the machine which itself comprised of several tests stipulated therein. Noticeably, even in the inspection certificate dated 17.07.2008 issued by the RCF at the time of physical delivery of the machine, it is clearly qualified that the performance of the machine would be subject to successful commissioning. It is reasonable to conclude that the rejection could only be resorted only if the machine failed to pass the commissioning test. Rejection could also be resorted to at the time of physical delivery of the machine if merely on the visual inspection the same was found to be deficient. However, given the nature of machine, it appears, trials were necessary to

ascertain the performance of the machine, which was allowed to be carried out by the Respondent, before it concluded that the machine was deficient and rejected the same.

18. Tribunal rightly harmonized Clause 2102 and Clause 2.1 to conclude that the Respondent's rejection was not beyond the stipulated period of rejection in Clause 2102. Petitioner's assertion that the Tribunal re-wrote the contract provisions by upholding rejection carried out beyond 45 days of physical delivery is legally flawed. Tribunal did not replace the 45 days period of rejection with another period but only interpreted the contract provisions to ascertain the start date for commencement of 45 days period. Such interpretive observation does not amount to re-writing of contract.

19. The other ground of challenge pertains to alleged overlooking of material evidence by the Tribunal in concluding that the remedial design modifications sought by the RCF based on the performance of the machine, was within the scope of the AT. Tribunal has dealt with the issue of design deviations in the machine and the modifications sought by the Respondent post delivery in the machine, as part of Issue No 2, 6 and 10. Under the discussion held pertaining to Issue No 2 the Tribunal has held that the Petitioner did not dispute that the deviations pointed out by the RCF and remedial measures demanded by RCF, were within the AT. Tribunal did not on its own discuss each and every deviation and remedial modifications item to ascertain if the same were beyond the scope of AT. Petitioner is right to the extent that the Tribunal ignored evidence which rather showed that the Petitioner had all along objected to the design deviations pointed out by the RCF. There are letters on record namely letter dated 21.02.2009, 03.09.2010, 08.12.2010, 20.04.2011 and 20.05.2011, where the Petitioner

had clearly objected to some of the deviations and modifications sought by the Respondent as beyond the scope of AT. Letters clearly bear out that the Petitioner had been explaining the design features and also assured the RCF of the performance of the machine. Petitioner, at several places, agreed to carry out changes in the machine as per the RCF's suggestion. However, the Tribunal has not discussed these letters in the award and rather returned an incorrect finding that the Petitioner did not deny that the modifications sought (deviations) were within the scope of the AT. For example, a perusal of the letter dated 11.05.2010 categorically mentions as under:

> *" ..Firstly some changes now desired, are not part of AT, but are insisted by user and concerned staff for the sake of smooth working.*
> *But have these changes been incorporated in GA drawing stage. This would have saved time, effort & human hours to complete these at our works.*
> *...*
> *5. Please note that in last 18 months since the machine has been installed, we have been made to do following changes which were neither, part of the approved GA drawing nor mentioned in the COFMOW AT.*
> *a) Electrical cabinet placement: this has resulted in complete wiring layout.*
> *b) Handling balls with support arms in place of the motorized rollers in the AT.*
> *c) Rear conveyor system as single unit mounted on the wheels not as per our offer (this has completely modified the rear conveyor system) this has also resulted in the relaying of the foundation at the rear side which we were forced to do in spite of the contract being on a non-turnkey basis.*
> *d) Complete layout of the structure for the vacuum system which was previously as per the approved GA drawings*
> *e) Control unit of the vacuum system has been relocated which has changed complete wiring.*
> *f) Additional belt at the rear system to support small size pieces which were not mentioned in the AT.*

g) Manual valves on individual vacuum cups has been desired which were not part of the AT…"

20. There is no reference in the award to the COFMOW inspection report dated 30.06.2010 wherein a list of deficiencies was recorded. The inspection report clearly bears out that there were several observations and remarks recorded in relation to certain deficiencies for which no specifications had been prescribed in the AT. The inspection report also records that the Petitioner had agreed to undertake remedial measures even though some of the measures were beyond the scope of the AT. The inspection report categorically records the following deviations:

Description as per AT	Detail of problem	Remarks
Roller Beam Guide has to be provided as per AT clause No. 3.2.3.2.	Sliding type Beam guide has been provided by firm instead of Rollers Beam guide, which is not as per AT	This is major design deviation as per para 3.2.3.2 of AT. Therefore, it will adversely affect the life span and efficiency of the machine, hence not acceptable
Shearing Blades has to be provided in two pieces. (AT clause no. 2.3.1).	Firm has provided the shearing blades in single piece	As per para 2.3.1 of AT, Shearing Blade required in two pieces. Single piece blade is not acceptable."

In view of the inspection report, the Tribunal wrongly concluded that all the deviations were within the scope of the AT.

21. Petitioner is also right in calling out the Tribunal's observation in the discussion on Issue No.10 that the deviations have been discussed in Issue No 2. As stated above, the Tribunal did not discuss every item of alleged deviation to determine if the same was within the scope of AT, despite specific issues framed for such determination.

22. However, having found the Tribunal wanting in the detailed discussion on the issue of deviations being within the scope of the AT, or not, or drawing incorrect conclusions, it must be quickly clarified that such omissions have not really made the arbitral award vulnerable to challenge. Even if the Tribunal has concluded that the Petitioner did not dispute the fact that the deviations were within the scope of AT, the said incorrect conclusions do not render the eventual decision by the Tribunal that the machine supplied had design deviations from the original AT specifications, incorrect.

23. It is the Petitioner's own case that there was a design deviation in the machine from the original specification laid down in paragraph 3.2.3.6 of the AT, where the machine was supposed to have a 'Roller Guiding system' whereas the machine was delivered with a 'Flat Guiding system'. Petitioner's own letter dated 12.06.2010 admits to such design deviation offered a justification for such deviation. Petitioner claimed that it had developed a new flat guiding system since the submission of tender, as successful improvement over the roller-based system, and decided to incorporate the same in the design. Petitioner, in this letter also requested the

Respondent to amend Para 3.2.3.6 of the AT to regularize the deviation. It is also not disputed that the Respondent did not agree to amend the AT.

24. Whilst it is evident that the Respondent did not outrightly reject the machine, when it discovered the basic design deviation, which was pointed out by the RCF in its earliest deficiency list shared on 30.10.2008, post delivery on 06.10.2008, however, the said deviation was called out consistently in several letters issued by RCF/COFMOW, over the trial run of the machine.

25. It appears that the Respondent expected the Petitioner to rectify the defects raised, including the basic design deviation mentioned above, but the same could not be achieved. Some of the deviations were agreed to be removed as is evident from some of the Petitioner's letters like letters dated 31.10.2008, 21.02.2009, 11.05.2010, 03.09.2010 and 08.12.2010. In these letters, the Petitioner has either agreed to rectify some of the defects, justified some of the design features or has clearly objected to the demands of the Respondent being beyond the scope of the AT.

26. Respondent also blacklisted the Petitioner on 05.05.2010, alleging deviations in the design specifications.

27. In view of the facts discussed above, the Tribunal may have committed errors in recording some of the findings at few places, as discussed above, however the dismissal of the claim was definitely on account of the Petitioner's own admission of the fact that flat guiding system was a deviation from the specified design in paragraph 3.2.3.6 of the AT. Tribunal has decided Issue No 6 against the Petitioner based on the said admission.

28. It is seen that the Tribunal decided the issue as per the contract

provisions i.e., namely para 3.2.3.6. Even in the rejection memo dated 23.04.2011, the ground of rejection was various deviations from the AT specifications. Tribunal relied upon the admission of the Petitioner, at least regarding deviation in design pertaining to flat guiding system. One item of deviation admitted by the Petitioner was found to be sufficient for the Tribunal to uphold the rejection of the machine.

29. Rather, to the credit of the Tribunal, it did not attempt to adjudicate the rejection on the equitable principles given the fact that the machine was not rejected out rightly despite the basic design deviation. The Respondent kept the machine under trial for more than six months whereunder various remedial measures were suggested. However, eventually the same was rejected on the ground of design deviation from the original tender specifications. Tribunal strictly construed the contract provisions regarding technical design specifications, and upheld the rejection, which was solely based on non-adherence of the tender specifications.

30. Tribunal's approach can't be said to be non-judicious or that the Tribunal travelled beyond the terms of the contract. It was not necessary that the Tribunal returned a finding on each deviation item to conclude if the contract was breached. Petitioner's own admission in relation to one of the deviation items was found to be sufficient evidence by the Tribunal.

31. It is pertinent to note that the Petitioner's ground that the rejection was delayed and not in accordance with Clause 2102 of the AT, was rejected by the AT by interpreting date of delivery as the date of successful commissioning. Therefore, the Petitioner's contention regarding machine being used for production during trial period of more than six months, estopping Respondent from rejecting the same is legally untenable. At no

point of time the Respondent waived its right to object to the design deviations or accepted the same.

32. According to this court the Tribunal's findings on the delay in supplies, finalization of drawings etc, against the Petitioner is not relevant since the ultimate rejection was not on account of the delays, but the design deviations in the machine and its sub-par performance.

33. Similarly, as stated above, the errors in the findings of the Tribunal regarding space constraints, which was the subject matter of Issue No 3, is not relevant for the same reason that the rejection was on account of design deviations alone.

34. According to this court, the award may appear to be inarticulate and cryptic at places, in its expression. It records many inconsequentially incorrect findings, as explained above, over looked evidence, however all such anomalies have no bearing on the underlying reasoning of the Tribunal i.e., Petitioner's own admission of the deviations.

35. For the said reason, the Petitioner cannot take advantage of such apparent inconsequential errors and fumbles to challenge the award. Inconsequential errors in the award cannot be a ground to challenge otherwise judicious and reasoned award.

36. There is no infirmity in the arbitral award to call for this court's intervention under Section 34. Consequently, the present petition is dismissed.

MANOJ KUMAR OHRI
(JUDGE)

JUNE 09, 2025/*ry*