

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 4289 OF 2017

(Arising out of SLP (C) No. 8732 of 2017)

(Arising out of SLP (C) CC No. 5001 of 2017)

GEODESIC TECHNIQUES (P) LTD. ... Appellant

VERSUS

ERA INFRA ENGINEERING LTD. ... Respondent

O R D E R

Delay condoned.

2. Leave granted.

3. Consequent upon the execution of a works contract between the parties, certain disputes arose between the parties. In order to press the disputes, an application was filed before the High Court of Delhi by the appellant herein, seeking appointment of an Arbitrator. The High Court, by its order dated 02nd March, 2012, appointed an Arbitrator.

4. The appellant before this Court filed its Statement of Claim, before the Arbitrator, on 26th April, 2012. Having examined the issues raised by the appellant, the Arbitrator passed Award dated 16th April, 2014. While disposing of the claims raised by the appellant herein, the Arbitrator did not deal with the 'retention amount' of Rs.39,05,772/-. It is in

the above circumstances, that an application was filed under Section 33 of the Arbitration and Conciliation Act, 1996 (hereinafter referred to as 'Act') for rectification of the Award so as to include therein, the claim raised by the appellant, pertaining to the aforementioned 'retention amount'.

5. The Arbitrator by his order dated 04th July, 2014, declined the prayer made by the appellant herein, by observing as under:

"Even otherwise the interpretation sought to be placed that the arbitrator has to decide the application within 30 days even if the parties are not present. Such would not be the intentions of the law makers. As such the eleven clerical errors as pointed out shall be deemed to have been carried out. Annexure P-1 would form part of the Award. So far as the prayer that the claimant is entitled to retention amount is concerned I am of the view that no relief can be given in these proceedings. Though the observations made in the Award is that the defect liability has not been incurred by the claimant but making any addition at this stage would not be appropriate. Whatever, consequences are to ensue from the observations made at page 87 of the Award can be put across in terms of the proceed are available to the claimant."

6. It is, in the aforesaid circumstances, that the matter came to be re-agitated before the High Court of Delhi which passed the impugned order dated 17th November, 2016. By the impugned order, the High Court rejected the inclusion of the 'retention amount', on the ground that the appellant herein was precluded from raising the same, for the simple reason,

that the appellant should have sought the 'retention amount', in the original Statement of Claim (consequent upon the appointment of Arbitrator vide order dated 02nd March, 2012).

7. During the course of hearing, learned counsel for the appellant vehemently contended, that it was not open to the appellant to make a claim with reference to the 'retention amount' of Rs.39,05,772/- when it preferred the Statement of Claim on 26th April, 2012. In this behalf, the contention of the learned counsel for the appellant was, that the retention amount became refundable after the expiry of the defect liability period. It was submitted that the 'defect liability' period extended till 12 months, from the date of completion of work. It was asserted that the work of the Airport was completed on 27th November, 2012, and as such, the 'defect liability' period would be over only on 26th November, 2013. It was submitted, that it was only after 26th November, 2013, that the appellant could have raised the claim for a refund of the 'retention amount' (of Rs.39,05,772/-).

8. While the learned counsel for respondent did not dispute the factual position brought to our notice, as has been recorded in the foregoing paragraph, it was his vehement contention, that the claim for the 'retention amount' was duly raised by the appellant before the Arbitrator, and yet, the Arbitrator had not accepted the said claim. In this behalf, learned counsel for the respondent also invited our

attention to the findings recorded by the Arbitrator in the Award dated 16th April, 2014, as also, the pleadings made by the appellant herein in, as well as, in the application preferred under Section 33 of the Act (referred to hereinabove).

9. We have given our thoughtful considerations to the submissions advanced by the learned counsel appearing for the rival parties.

10. In our considered view, the claim for the refund of the 'retention amount' could have legitimately been made, only after 12 months of the date of completion of works. Since, admittedly, the work at the Airport was completed on 27th November, 2012, the refund of the 'retention amount', could not have been sought prior to 26th November, 2013. It is, therefore, apparent, that when the application for appointment of Arbitrator was made before the High Court, which was allowed on 02nd March, 2012, the appellant herein could not have raised the claim for the refund of the 'retention amount'. We are also of the view, that the appellant preferred a Statement of Claim before the Arbitrator on 26th April, 2012. Even at the time of filing of the Statement of Claim, the appellant could not have sought the refund of the 'retention amount', as the same became due, way thereafter, on 26th November, 2013. In our considered view, it is immaterial whether the appellant in the claim

petition had made a reference to the 'retention amount', since a rightful and legitimate claim for the 'retention amount', could have only been entertained after 26th November, 2013. We are hence satisfied, that the High Court has erred in arriving at the conclusion, that the 'retention amount' could not now be claimed by the appellant, since the appellant had not agitated for the same, in the Statement of Claim filed by the appellant, before the Arbitrator. We, therefore, set aside the impugned order passed by the High Court.

11. Rather than requiring the parties to approach the High Court once again, for the appointment of an Arbitrator, we consider it just and proper to direct the parties to approach the same Arbitrator who has passed the earlier Award dated 16th April, 2014, as he is well-versed with the controversy between the parties.

12. For the above purpose, the parties shall appear before the Arbitrator on 17th of April, 2017. The appellant shall raise an appropriate claim, within the time afforded to the appellant by the Arbitrator.

13. Needless to mention, the respondent would be entitled to raise all objections as may be available to the respondent, other than the ones adjudicated upon and disposed of by the instant order.

14. The appeal stands disposed of.

....., CJI.
[JAGDISH SINGH KHEHAR]

....., J.
[DR. D.Y. CHANDRACHUD]

....., J.
[SANJAY KISHAN KAUL]

New Delhi;
March 20, 2017.

ITEM NO.16

COURT NO.1

SECTION XIV

S U P R E M E C O U R T O F I N D I A
R E C O R D O F P R O C E E D I N G S

Petition(s) for Special Leave to Appeal (C).....

CC No. 5001/2017

(Arising out of impugned final judgment and order dated 17/11/2016 in ARBP No. 424/2015 passed by the High Court of Delhi at New Delhi)

GEODESIC TECHNIQUES (P) LTD.

Petitioner(s)

VERSUS

ERA INFRA ENGINEERING LTD.

Respondent(s)

(With appln. (s) for c/delay in filing SLP)

Date : 20/03/2017 This petition was called on for hearing today.

CORAM :

HON'BLE THE CHIEF JUSTICE
HON'BLE DR. JUSTICE D.Y. CHANDRACHUD
HON'BLE MR. JUSTICE SANJAY KISHAN KAUL

For Petitioner(s)

Mr. S. Ravi Shankar, Adv.
Ms. Yamunah Nachiar, Adv.

For Respondent(s)

Mr. Nilava Bandyopadhyay, Adv.

UPON hearing the counsel the Court made the following
O R D E R

Delay condoned.

Leave granted.

The appeal stands disposed of in terms of the signed order.

(Nidhi Ahuja)
Court Master

(Renuka Sadana)
Assistant Registrar

[Signed order is placed on the file.]