

Geeteceee Engineers and Constructors Vs. Alstom Power Boilers Services Limited

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Court : Kolkata

Decided On : Dec-11-2014

Judge : Debangsu Basak

Appellant : Geeteceee Engineers and Constructors

Respondent : Alstom Power Boilers Services Limited

Judgement :

IN THE HIGH COURT AT CALCUTTA Ordinary Original Civil Jurisdiction Original Side Before: The Honble Justice Debangsu Basak C.S. No.317 of 1997 Geeteceee Engineers & Constructors Vs. Alstom Power Boilers Services Limited For the Plaintiff : Mr. Mr. Mr. Mr. Sabyasachi Chowdhury, Advocate Rajarshi Dutta, Advocate Uday Goswami, Advocate S. Das, Advocate For the Defendant : Ms. Nairita Datta Chowdhury, Advocate Mr. Surajit Sen, Advocate Hearing concluded on : October 29, 2014 Judgment on : December 11, 2014 DEBANGSU BASAK, J.

The plaintiff claims compensation on account of breach of a contract committed by the defendant. The parties entered into a contract in which the plaintiff agreed to erect and provide assistance to the defendant for commissioning of electrostatic precipitator and its accessories in Madhya Pradesh. The work was agreed to be completed within 180 days from the date of handing over of the site. The plaintiff claims that the defendant is guilty of breaches which caused delay in the execution

of the work. It took about four years to complete a contract agreed to be done in 180 days. The plaintiff claims compensation for the delay caused by the defendant in execution of the contract. The defendant has filed a written statement. The defendant denies being guilty of any breach of the contract and having caused any delay in the execution of the contract. The defendant, however, does not deny the terms and conditions of the contract between the parties. The defendant was originally known as Babcock & Wilcox of India Limited. It changed its name to ABB-ABL Limited and subsequently to Alstom Power Boilers Services Limited. The pleading raises six issues which was settled by the Order dated July 22, 2014 and are as follows:

1. What are the terms and conditions of the contract agreed by and between the plaintiff and the defendant?.

2. Whether the defendant failed to perform its obligations under the contract?.

3. Whether the defendant was responsible for the delay in execution of the work by the plaintiff beyond the stipulated period?.

4. Is the plaintiff entitled to a decree for a sum of Rs.26,03,389/- as per particulars set out in paragraph 22 of the plaint?.

5. Is the plaintiff entitled to interest as prayed for?.

6. What other reliefs is the plaintiff entitled to?.

. The evidence of the witness of the plaintiff was taken on commission. Although the defendant had notice of the commission, it chose not to appear before the Commissioner. The defendant did not cross-examine the witness of the plaintiff. The defendant did not produce any witness at the hearing of the suit. On the date of hearing of the suit, the learned Advocate for the defendant submitted that, the defendant was yet to execute any Vakalatnama in her favour. The suit was heard finally. On the conclusion of the hearing I posted the suit to allow the plaintiff to file a written notes on arguments. On such date an Advocate claiming to appear for the defendant wanted to file a written notes on arguments. The same was not allowed in absence of the Court being apprised as to the filing of the Vakalatnama on behalf of the defendant. In any event, no argument was advanced at the

hearing on behalf of the defendant for the defendant to file any written notes on argument. The first issue is taken up for consideration. In paragraphs 2 and 3 of the plaintiff the plaintiff has enumerated the terms and conditions of the contract. The plaintiff claims that, such terms and conditions will appear from the letter November 4, 1989 and will also appear from the correspondence exchanged between the parties being the letters dated November 10, 1989, February 17, 1990 and two letters dated March 31, 1990 and a letter dated June 22, 1990. These two paragraphs of the plaintiff have not been denied in the written statement. In paragraph 2 of the written statement dealing with paragraphs 2 and 3 of the plaintiff, the defendant claims that the intention of the parties will appear from the contract. The defendant, however, does not specify any contract or any terms and conditions of such contract to be at variance than what the plaintiff has stated in its plaintiff. The six letters referred to by the plaintiff in its plaintiff were tendered in evidence and were marked as Exhibits A to E. The letter dated November 4, 1989 being Exhibit A details the terms and conditions. Exhibit A is written by the defendant. The plaintiff quotes its rates in the letter dated November 10, 1989 being Exhibit B. Various other correspondences ensued between the parties. Ultimately by a work order dated June 22, 1990 being Exhibit E the defendant placed the order on the plaintiff. The plaintiff has proved the five letters which according to the plaintiff form the contract between the parties. The plaintiff has tabulated the terms and conditions of the contract in paragraph 2 of the plaintiff. The defendant has not denied such terms and conditions of the contract in the written statement. The defendant did not adduce any evidence to show that the terms and conditions of the contract between the parties were not the same as that stated by the plaintiff in the plaintiff. The first issue, therefore, is answered by holding that, the terms and conditions of the contract agreed to by and between the plaintiff and the defendant will appear from Exhibits A to E and that the essential features of the contract between the parties is summarized in paragraph 2 of the plaintiff. Issue Nos. 2 and 3 are taken up together for the sake of convenience. The contract period was for 180 days. The plaintiff established that, the site was made over on May 7, 1990. The contract, therefore, was required to be concluded on November 2, 1990. The work under the contract continued beyond November 2, 1990. It would appear from the evidence that, the defendant could not deliver the

equipments under the contract within the time stipulated to the plaintiff. In fact, the defendant admitted that position. However, the defendant gave an explanation as to the delay. The explanation for the delay has nothing to do with the plaintiff. The defendant admitted by its letter dated May 25, 1991 and August 19, 1991 being Exhibit G that, critical components were yet to be delivered. By the letter dated May 25, 1991, the defendant admitted that the overall erection activity was getting behind the stipulated schedule, the defendant expressed its inability to agree for acceptance of further escalation on account of price rise of consumables and wages. The defendant went on to suggest that the plaintiff suspend work temporarily and to come back when materials are received at site for sequential erection. The non-availability of materials continued till 1993 as will appear from Exhibit H. One essential ingredient of the work being discharge electrodes were not made available to the plaintiff till October 1993. Such electrodes were ultimately made over on October 6, 1993 and the plaintiff completed the erection by January 31, 1994 within 180 days from October 6, 1993. In such circumstances issue Nos. 2 and 3 are answered in the affirmative in favour of the plaintiff. Issue No.4 relates to the quantum of compensation receivable by the plaintiff for the delay caused by the defendant in completing the contract. In answer to the previous two issues I have found the defendant to be responsible for the delay and to have acted in breach of the contract between the parties. Therefore, the plaintiff is entitled to compensation for breach of contract by the defendant. The question is as to the quantum and the same requires consideration. The plaintiff is the only party to adduce evidence on this issue. The defendant did not cross-examine the witness of the plaintiff. The plaintiff has claimed compensation in paragraph 17 of the plaint. The plaintiff has tabulated 14 heads including interest claimed up to the date of filing of the suit as heads of compensation. The first head of claim is compensation on the ground of escalation in wages. The minimum wages was increased nine times during April 1990 to September 1994 by the Madhya Pradesh Government. The plaintiff has produced the circulars of the Madhya Pradesh Government in this regard being Exhibits J and K. The plaintiff relies on a chart showing the increase in the minimum wages being Exhibit L. The plaintiff has also established that, it has made payments of wages in terms of the circulars of the Madhya Pradesh Government. The plaintiff has adduced evidence with regard

to such payments being Exhibits N and O. The wage register as well as the wage sheet have been produced in evidence. The plaintiff has claimed a sum of Rs.3,78,386/- on such account. Such amount appears from the documents adduced in evidence on behalf of the plaintiff. There is no evidence to the contrary. The plaintiff is, therefore entitled to recover a sum of Rs.3,78,386/- from the defendant. The second head of claim is on account of escalation in the cost of consumables. The plaintiff had considered 30% of cost of erection to be the cost of consumables. The plaintiff has produced evidence to establish that price revision of the major consumable took place during the subsistence of the contract. This can be found in Exhibits S and T. The plaintiff has established its claim of Rs.3,87,466/- on this account and will be entitled to recover the same from the defendant. The third head of claim is on account of increase in the cost of establishment expenses. The witness of the plaintiff explained that the plaintiff had to maintain a head office, pay for vehicles and had to pay house rent and that the plaintiff had also incurred travelling expenses. The plaintiff claims a sum of Rs.6,20,703/- on such account. The witness of the plaintiff established the same. Exhibit Z shows the amount of the expenses incurred by the plaintiff on such account. The entries in the Exhibit Z are supported by bills and payment vouchers being Exhibit AA. The claim of the plaintiff for Rs.6,20,703/- is allowed. The plaintiff claims a sum of Rs.3,24,000/- on account of letting out value of tools, tackles and equipments. The defendant did not allow the plaintiff to remove the tools, tackles and equipments on completion of the contract. The plaintiff established by evidence that the plaintiff could have earned in excess of Rs.8 lakhs in the event such tools, tackles and equipments were allowed to be removed. However, in its written notes on arguments the plaintiff restricted its claim on such head to Rs.3,24,000/- as originally claimed. Such claim for Rs.3,24,000/- is allowed. The next claim of the plaintiff is on account of loss of man hours due to power failure. Under the contract the defendant was obliged to provide free electricity, compressed air and drinking water at a convenient point for erection purpose. Electricity was not provided uninterruptedly. The plaintiff suffered due to such interrupted electric supply and its man power remained idle. The plaintiff proved the quantum of man hour lost as enumerated in Exhibit LL by oral evidence. The claim of the plaintiff on this account is allowed for the sum of Rs.24,005/-. The

plaintiff claims a sum of Rs.37,938.20p. on account of winch hire charges. The defendant had deducted a sum of Rs.27,961/- from the bill of the plaintiff on account of hire charges for winches. The plaintiff had protested contemporaneously as to such deductions by the defendant. The plaintiff had protested by the letter dated June 28, 1993 being a part of Exhibit PP as to the deduction of the sum of Rs.27,961/-. The defendant did not appear to show that it was entitled to deduct any sum on such account. The plaintiff had adduced adequate evidence on such account and is entitled to a sum of Rs.37,938.20p. from the defendant on such account. The plaintiff claims recovery of overhead charges for a sum of Rs.45,205/-. The defendant had deducted value of consumable to realize overhead charges at the rate of 30% on the consumables supplied. The defendant had recovered an amount of Rs.49,228/- on account of overhead charges. This will appear from Exhibit SS. The defendant was not entitled to deduct overhead charges at the rate of 30% of consumable supply. The defendant was seeking to take advantage of a situation where it was on one hand not paying the 70% of the Running Account bill timely and on the other deducting for overhead. Since the plaintiff claims a sum of Rs.45,205/-, such sum is allowed. The plaintiff claims a sum of Rs.80,068/- on account of interest on retention money at the rate of 18 per cent per annum. There is no agreement as to interest. The plaintiff claims that, the defendant should have returned the retention money much earlier. The plaintiff demanded release of the retention money in 1992 as would appear from Exhibit TT. The plaintiff made similar requests subsequently as will appear from Exhibit UU. However, since the parties did not agree to any rate of interest for retention money I disallow this claim. The plaintiff claims a sum of Rs.30,112/- on account of loss of profit due to reduction in the scope of work. According to the plaintiff, the contract value was of Rs.30,50,000/- and the plaintiff was allowed to execute work for Rs.26,19,833/-. This fact appears from the records. The plaintiff, therefore, could not work for Rs.4,30,167/-. The plaintiff has taken loss of profit at the rate of 7% of Rs.4,30,167/- being a sum of Rs.30,112/-. Such rate of profit being reasonable is allowed. The plaintiff is entitled to realize this sum from the defendant. The plaintiff claims a sum of Rs.46,550/- on account of mobilization and demobilization. The plaintiff had to remove men and material for a period of time in three tranches. The plaintiff incurred additional expenses in

this regard. These additional expenses aggregating to Rs.69,425/- is proved by Exhibit VV. The plaintiff is, therefore, entitled to such sum from the defendant. The plaintiff claims a sum of Rs.13,800/- on account of house rent expenses. The defendant was obliged to provide quarters for the residence of the employees of the plaintiff. Such request was made by the plaintiff as would appear from Exhibit WW. The defendant, however, did not provide such accommodation. The plaintiff incurred the sum of Rs.13,800/-. The plaintiff established this by oral evidence and Exhibit Z. The plaintiff is entitled to realize the sum of Rs.13,800/- from the defendant. The plaintiff claims a sum of Rs.2,60,270/- on account of extra man hours spent. The contract required the plaintiff to spend 10,000 man hours. In effect the plaintiff spent 14,138 man hours costing the plaintiff a sum of Rs.2,60,270/-. The witness of the plaintiff established such claim. Exhibit XX. will show that the limit of 10,000 man hours was reached on April 10, 1993 itself. The plaintiff had to provide additional man hours to complete the contract. The plaintiffs claim on this account for the sum of Rs.2,60,270/- is allowed. The plaintiff claims to have executed extra works beyond the contract. The plaintiff claims a sum of Rs.71,054/- on this account. This claim is made in paragraph 12 of the plaint. The fact that the plaintiff executed extra work is not disputed by the defendant in paragraph 23 of the written statement. The defendant claims to have paid for the extra work. The defendant has not given any evidence to establish payment for the extra work. The question is the value of the extra work. The plaintiff led evidence in a part of Exhibit XX to show that the value of extra work is Rs.40,179/-. The plaintiff however has been able prove extra work for the sum of Rs.40,179/which is allowed. The next claim of the plaintiff is a sum of Rs.45,256/- on account of collecting electrodes. The plaintiff installed 5,170 pieces of collecting electrodes. The plaintiff was given to understand that the weight of each electrode would be Rs.70/- per Kg. The weight of the collecting electrode was however Rs.75.74p. per Kg. The plaintiff, therefore, installed 391.5758 Metric Tons of collecting electrode and has raised a bill for 361.90 Metric Tons only. The plaintiff claims the difference of 29.6768 Metric Tons at the rate of Rs.1,525/- per Metric Ton only aggregating of Rs.45,256/-. By letters dated January 30, 1995 and January 8, 1996 being Exhibit ZZ the plaintiff raised this issue with the defendant. The defendant did not reply thereto. The claim of the plaintiff on this account being reasonable is allowed. The

plaintiff is entitled to realize a sum of Rs.45,256/- from the defendant. The aggregate of the thirteen heads of claims allowed is Rs.23,33,938/-. The plaintiff however admits to have received a sum of Rs. 2,94,279/- on account of escalation from the defendant. The plaintiff has offered to give credit to the defendant for such sum. Therefore, after giving credit for the sum of Rs.2,94,279/- to the aggregate sum of Rs.23,33,938/-, a sum of Rs.20,39,659/- is due and payable by the defendant to the plaintiff. In view of the discussion herein above, issue No.4 is answered by holding that the plaintiff will be entitled to a decree for the sum of Rs.20,39,659/- against the defendant. The next issue is of interest payable by the defendant to the plaintiff. The question is the quantum of interest to be awarded in favour of the plaintiff. The plaintiff claims interest at the rate of 18% per annum till the date of filing of the suit and at the same rate till realization. There is no agreement as to interest between the parties. The nature of transactions between the parties is commercial. The plaintiff has relied upon a certificate from a bank stating that interest at the rate of 20 to 23 per cent was charged in respect of commercial transactions. Since there is no agreement as to interest and since the nature of transaction is commercial the plaintiff is entitled to reasonable interest on the sum outstanding. The plaintiff is entitled to interest at the rate of 12% per annum on and from February 1, 1994 being the date next to the date of actual completion of the work until realization on the sum of Rs.20,39,659/-. Issue No.5 is, therefore, answered in the manner as provided herein and in favour of the plaintiff. With regard to issue No.6, I find that the plaintiff has incurred court fees of Rs.10,000/-. The plaintiff has also incurred Rs.34,000/- as the costs of commission. The plaintiff will, therefore, be entitled to Rs.50,000/- as costs from the defendant. Issue No.6 is answered accordingly. C.S. No.317 of 1997 is decreed accordingly. The department will draw up and complete the decree as expeditiously as possible. [DEBANGSU BASAK, J.].

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