

ITEM NO.4

COURT NO.3

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) No(s). 11478/2016

(Arising out of impugned final judgment and order dated 07-01-2016 in FAO No. 487/2015 passed by the High Court Of Delhi At New Delhi)

ENGINEERS INDIA LTD.

Petitioner(s)

VERSUS

TEMA INDIA LTD.

Respondent(s)

Date : 06-02-2018 This petition was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE RANJAN GOGOI
HON'BLE MRS. JUSTICE R. BANUMATHI

For Petitioner(s) Mr. K.K. Venugopal, Attorney General
Mr. Dhruv Dewan, Adv.
Ms. Reena Chaudhary, Adv.
Mr. Rohit Bhat, Adv.
Mr. Kunal Dutt, Adv.
Ms. Yashna Mehta, Adv.
Mr. S. S. Shroff, AOR
Mr. Shrutanjaya Bhardwaj, Adv.
Ms. Veera Mahuli, Adv.

For Respondent(s) Mr. P.Chidambaram, Sr.Adv.
Mr. Ankur Kashyap, Adv.
Ms. Khooshnum Daviervalva, Adv.
Ms. Malavika Prasad, Adv.
Mr. Shiv Kumar Suri, AOR
Mr. Hasan Murtaza, Adv.

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

In view of the extensive arguments that have taken place, we deem it appropriate to briefly indicate our reasons for arriving at the conclusion in the matter.

The dispute in the present case centers around the interpretation of Clause-12 of the Agreement between the parties which is in the following terms:

12. DELAYED DELIVERY :

The time and date of delivery of materials/equipment as stipulated in the Order shall be deemed to be the essence of the contract. In case of delay in execution of the order beyond the date of delivery stipulated in the order or any extensions sanctioned, the Purchaser may at his option either :

- (i) Accept delayed delivery for Critical items i.e. Refrigeration Package, Reciprocating Compressor, Centrifugal Compressor, Pump Multistage Centrifugal (Feed Pump), HP Heat Exchangers (Screw Plug/Breach Lode), at prices reduced by a sum equivalent to one (1%) of the total order value for every week of delay or part thereof, limited to a maximum of ten percent (10%) of the total order value.
- (ii) For all items other than critical items, accept delayed delivery at prices reduced by a sum equivalent to one (1%) of the total value of delayed equipment/item for every week of delay or part thereof, limited to a maximum of ten percent (10%) of the total order value.
- (iii) Cancel the order in part or full and purchase such cancelled quantities from elsewhere on account and at risk and cost of the Seller, without prejudice to its right undo-(i)&(ii)

above in respect to goods delivered.

Note : If an enquiry covers critical items the same shall be so identified in the RFQ.

The parties went to arbitration, as evident from the pleadings and other materials on record, on the basis that Clause-12 of the Agreement, extracted above, was a clause permitting levy of liquidated damages. The learned Arbitrator notwithstanding the pleadings held that the said Clause-12 is a price reduction clause and no proof of loss of damage is required for its invocation.

The learned Single Judge of the High Court hearing the objections under Section 34 of the Arbitration and conciliation Act, 1996 (for short, 'the Act') and the Division Bench in the appeal under Section 37 of the Act have taken the view that when parties had gone to the arbitration with a specific understanding of Clause-12 it was beyond the jurisdiction of the Arbitrator to proceed on the basis that Clause-12 is a price reduction clause.

If the above is the core of the reasoning of the learned Single Judge and the Division Bench of

the High Court, we will have no occasion to disagree with the same.

Consequently, we do not find any merit in this Special Leave Petition. Special Leave Petition is accordingly dismissed.

(NEETU KHAJURIA)
COURT MASTER

(TAPAN KUMAR CHAKRABORTY)
BRANCH OFFICER