

JUDGMENT UPDATE

DISPUTE RESOLUTION & ARBITRATION



Aneja Constructions (India) Ltd v. Grim-Tech Projects (I) Pvt Ltd & Ors

Delhi High Court | OMP (COMM) 464/2019

Background facts

- Aneja Constructions (India) Ltd (**ACIL**) and Grim-Tech Projects (I) Pvt Ltd (**GTPL**) had executed principal work order on March 07, 2013 for carrying out pile foundation at Muzaffarpur Thermal Power Plant of Kanti Bijlee Utpadan Nigam Ltd. The respective work order was amended on July 24, 2013.
- GTPL had submitted bills for INR 2,94,55,392 and claimed that an amount of INR 1,00,07,985 was due and payable by ACIL. ACIL had acknowledged that INR 1,00,07,985 was due to GTPL. GTPL also claimed that its equipment which was to be used for piling work were lying idle for almost 2 years and could have been deployed at other sites. Accordingly, GTPL also sought compensation for overstay of the equipment at the site.
- The Arbitral Tribunal (**Tribunal**) held that GTPL was entitled to:
 - The outstanding amount of INR 1,00,07,985
 - INR 2,15,00,000 as compensation for overstay of staff and the assets
 - 12% interest on the outstanding dues and if not paid within 30 days; then compound interest at the rate of 12% till realization
- The award was challenged before the Delhi HC under Section 34 of Arbitration & Conciliation Act, 1996 (**Act**).

Issues at hand?

- Whether the award passed by the Tribunal is liable to be set aside as being without jurisdiction?
- Whether there was any evidence before the Tribunal to pass an award of INR 2,15,00,000 for compensation?
- Whether the award of 12% compounded interest on the awarded amount of INR 1,00,07,985 is beyond the claim made by GTPL?

Decision of the Court

- ACIL argued that the amended work order did not contain an arbitration clause and, therefore, there was no arbitration agreement. The High Court upheld the Tribunal's view that the amended work order was amendment to the principal work order. The amended work order records that 'terms and conditions remain same as per earlier order'; hence, the arbitration agreement which was included in the terms and conditions would be applicable and existed to refer the matter to arbitration.
- The High Court observed that at the stage of Section 11 proceedings, GTPL had relied on the terms and conditions of the work order and ACIL had not raised any objection. Moreover, as per Section 7(4) of the Act, an assertion in the Statement of Claim which was not denied in the Statement of Defence would be an arbitration agreement within the meaning of Section 7(4)(c) of the Act.
- Additionally, Court also stated that the Tribunal's observation with respect to the claim for overstay had 'no cogent and convincing evidence' for calculation of compensation. The High Court denied the basis for quantifying the overstay at INR 2,15,00,000 and held that assertion of overstay as loss suffered by GTPL being average of the invoices is patently erroneous. Therefore, the award for INR 2,15,00,000 cannot be sustained.
- The Court did not interfere with the Tribunal's award for INR 1,00,07,985 along with simple interest at the rate of 12% till the date of payment but observed that the Tribunal cannot award compound interest if the awarded amount was not paid within 30 days as no such claim for compound interest was made by GTPL.
- The Court set aside the award with respect to overstay for INR 2,15,00,000 and award for compound interest.

HSA **Viewpoint**

The judgment demonstrates the need for supporting evidence to claim losses suffered due to overstay at the site. The good practice remains to have the supporting evidence for Tribunal's appreciation.



Manan Shukla
Partner



Ashish Anand
Principal Associate

