



\$~9

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

+ CS(COMM) 580/2021, & IA 15007/2021, IA 22741/2023,
IA 3159/2022

LARSEN AND TOUBRO LIMITED Plaintiff

Through: Mr.Manu Seshadri, Mr.Aveak
Ganguly, Mr.Sahil Maganani,
Advocates.

versus

NBCC INDIA LIMITED AND ANR Defendant

Through: Mr.Arvind Minocha, Sr. Advocate
with Mr.Krishan Kumar, Ms.Neetu
Sharma, Ms.Dhanlakshmi Iyer,
Mr.Nitin Pal, Ms.Mukkan Jain, and
Mr.Seemant K.Garg, Advocates for
D-1.
Mr.Dinesh Kumar, SSO from ESIC.

CORAM:

HON'BLE MR. JUSTICE JASMEET SINGH

ORDER

21.03.2024

%

1. The present suit has been filed seeking following reliefs :

(a) Declare that the Defendant No.1 is in breach of Contract Packages dated 29.09.2009, 09.06.2010 and 30.05.2012;

(b) Pass a judgment and decree in favour of the Plaintiff and jointly and severally against the Defendant No.1 and Defendant No.2 for a sum of Rs.244,72,19,851/- (Rupees two hundred and forty-four crore seventy-two lakh nineteen thousand eight hundred fifty-one only);

(c) Pass a judgment and decree in favour of the Plaintiff and jointly and severally against the Defendant No.1 and



Defendant No.2 directing payment of interest at 12% p.a. from when the decretal sums became due, pendente lite and in future till date of payment;

2. The written statements have been filed.
3. It is the case of the plaintiff that the plaintiff was awarded three packages with regard to ESIC Medical College and Hospital at Coimbatore. The hospital was being made for and on behalf of defendant No.2 by defendant No.1 as the executing agency. The plaintiff was a contractor who participated in the tender for all three packages and was awarded the bids.
4. Since there were disputes, the plaintiff has filed suit for recovery, compensation, damages and several consequential reliefs.
5. Mr. Minocha, learned senior counsel appearing on behalf of defendant No.1 had filed the application being I.A. 22741/2023 under Order II Rule 6 CPC. It is submitted that in the present case the defendant No.1 had entered into three item-rate contracts with the plaintiff as under :

(i) Package 1 - Contract dated 29.09.2009 for "Construction of Buildings, Medical College, Auditorium, Residential Buildings, Hostels, Site Development, Electrical Fire Alarm, Fire Fighting, HVAC, BMS etc. at Coimbatore, on behalf of the Director General ESIC, Govt. of India" for Rs.270,99,99,979/-. The scope of work involved the dismantling and demolition of certain existing structures and construction of new structures such as the hospital, medical college, auditorium, residential buildings, hostels, site development among other works.

As per the said LOA, the date of commencement of the works was to be reckoned from the 10th day of its issuance, i.e., from 02.10.2009. Accordingly, the work was originally scheduled to be completed within a period of 24 (twenty-four) months, i.e., by 30.09.2011.

{ii} Package 2 - Contract dated 09.06.2010 was for



"Retrofitting work at existing ESIC Hospital Building at Coimbatore" for Rs.7,65,00,000/-. The scope of work related to retrofitting and renovation of existing In-Patient Department (IPD).

As per the said LOA, the date of commencement of the works was to be reckoned from the 10th day of its issuance, i.e., from 31.05.2010. Accordingly, the work was originally scheduled to be completed within a period of 12 (twelve) months, i.e., by 01.06.2011.

(iii) Package 3 - Contract dated 30.05.2012 was for "Construction of ESIC Medical College at Coimbatore, Tamil Nadu SH:

Miscellaneous Civil Works and Medical Infrastructure" for Rs.87,52,78,657 /-. The works related to interior design, construction of miscellaneous civil and sanitary works, and supporting medical infrastructure in and around the complex such as the supply and fixing of the Nurse Call systems and Crash Guard, Information Technology and Communication Networking Systems, Medical Gas Line works, the Modular Operation Theatre (Indian & Imported), False Ceiling works, Miscellaneous Interior Civil works, Sanitary works, Civil works other than existing work under Package 1, Laundry and Kitchen equipment, Non-medical Furniture, Outdoor Furniture, UPVC and Steel doors and Windows, Handles and Locks for windows and Doors among other works.

As per the LOA, the date of commencement of work was to be reckoned from the 10th (tenth) day of its issuance, i.e., from 12.04.2012. Accordingly, the period for completion was 5 (five) months from the said date of commencement. The works were to be completed by 11.09.2012.

6. Mr. Minocha, learned senior counsel appearing on behalf of defendant No.1 states that the claims raised by the plaintiff are with respect to Package-1 and there is not commonality between the claims of one package vis-a-vis the other package.



7. He further states the three packages require distinct adjudication and combining three packages for the suit will delay the trial. It is stated that the cause of action for three packages are distinct as it arises from three different contracts and not from same transaction. Additionally, he submits that the claims under Package-2 are less than two crores and therefore would have to go to District Court since none of the claims are interdependent on each other.

8. Mr. Minocha, learned senior counsel appearing on behalf of defendant No.1 submits that all three packages could have been allotted to three separate contractors. Hence, the plaintiff should file three separate suits under Order II Rule 6 CPC in respect of the three different causes of action.

9. I have heard learned counsel for the parties.

10. Order II Rule 3 CPC states as under :

“Joinder of causes of action- (1) Save as otherwise provided, a plaintiff may unite in the same suit several causes of action against the same defendant, or the same defendants jointly; and any plaintiffs having causes of action in which they are jointly interested against the same defendant or the same defendants jointly may unite such causes of action in the same suit.

(2) Where causes of action are united, the jurisdiction of the Court as regards the suit shall depend on the amount or value of the aggregate subject-matters at the date of instituting the suit.”

11. Order II Rule 6 CPC states as under :

“Power of Court to separate trials.- Where it appears to the Court that the joinder of causes of action in one suit may embarrass or delay the trial or is otherwise inconvenient, the Court may order separate trials or make such other order as may be expedient in the interests of justice.”



12. In the present case, admittedly the plaintiff was L1 bidder in all three contracts and was awarded the tender. It cannot be said that the work in Package 1, 2 and 3 were not interdependent on each other as Package-1 was regarding construction of buildings, medical colleges, auditorium, residential buildings of ESIC Medical College and Hospital at Coimbatore; Package-2 also related to the same hospital and involved Retrofitting works and Package-3 was with regard to interior design construction, civil and sanitary works of the same hospital.

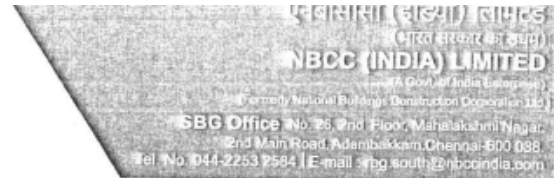
13. The letter of 18.12.2018 by defendant No.1 reads as under :





14. A perusal of the same shows that all the claim arising out of three Packages were considered together.

15. The letter of 08.09.2020 rejecting the claims of all three packages is also a common letter. It reads as under:-



No.CGM(SBG)/NBCC/CHN/TECH/L&T/2020/ 249

Date: 08.09.2020.

Shri. M.V Satish,
Whole Time Director &Sr.EVP,
(Buildings & Factories),
Larson & Toubro Limited,
L & T Construction,
Mount Poomamallee Road,
Chennai - 600 089

Sub: Construction of Projects, in ESIC Coimbatore.

1. Construction of buildings for Hospital Building, Medical College, Auditorium, Residential Buildings, Site Development, Electrical, Fire Alarm, Firefighting, HVAC, BMS, etc. at Coimbatore(TN) - Package 1)
2. Retrofitting work at existing ESIC Hospital Building at Coimbatore (TN) - Package 2),
3. Miscellaneous Civil works, and Medical Infrastructure at Coimbatore (TN) - Package 3)

- Ref: 1. Your letter No. LTDC/B&F/CB&B/Health/ESIC Coimbatore/202 -002 dated 13.07.2020 addressed to Secretary, Ministry of Housing & Urban Affairs, New Delhi.
2. Your letter No. LTCD:ECCD:B&F:CB&A/Health/ESIC-Coimbatore/2020-002 dated 30.06.2020.
3. Your letter No. LTCD:ECCD:B&F:ESIC-CBE-PLAN: 1580/2020 dated 18.04.2020.
4. Your letter No. LTCD:ECCD:B&F:ESIC-CBE-PLAN: 1548/18 dated 27.06.2018
5. Your letter No. LTCD:ECCD:B&F:ESIC-CBE-PLAN: 1549/18 dated 27.06.2018
6. Your letter No. LTCD:ECCD:B&F:ESIC-CBE-PLAN: 1550/18 dated 27.06.2018

Dear Sir,

The following works were works were awarded to M/s. Larson &Toubro limited during 2010 -2012.

1. Construction of Medical College, Hospital, and Allied Facilities in the existing ESIC Hospital Campus at Coimbatore, TamilNadu vide LOA No. NBCC/CGM-RBG(E&I)/ESIC/Coim/2009/4997 dated 22.09.2009 for the value of Rs. 270,99,99,979.00 with a completion period of 24 months.
2. Retrofitting Work at existing ESIC Hospital Building at Coimbatore vide LOA No. NBCC/ED-IV/ESIC/Coimbatore/2010/2568 dated 21.05.2010 for the value of Rs. 7,65,00,000.00 with a completion period 12 months.
3. Construction of ESIC Medical College at Coimbatore, Tamil Nadu SH: Misc. Civil works and Medical Infrastructure vide LOA No. NBCC/SGM/CHN/ESIC/Coimbatore/2012/53 dated 12.04.2012 for the value of Rs. 87,52,78,657.00 with a completion period of 05 months.

Contd.. P/2



The date of completion of the work package -1, 2 and 3 as per agreement was 30.09.2011, 29.05.2011 and 20.04.2012. The works were delayed abnormally and actual date of completion of the whole work (package 1,2 and 3) was 31.03.2018.

The projects has been delayed abnormally, for which application for Extension of Time has been submitted to ESIC for granting the same. Decision for levy of penalty or otherwise for delay of Construction will be decided on granting EOT by ESIC.

As per contract, GCC clause no. 37.3 " it is clearly under stood by the contractor that notwithstanding anything to the contrary that may be stated in the agreement between NBCC and the contractor shall become entitled to payment only after NBCC has received the corresponding payment(s) from the Client/Owner for the work done by the contractor. Any delay in release of payment by the Client/Owner to NBCC leading to a delay in releasing of corresponding payment by NBCC to the contractor shall not entitle the contractor to any compensation/interest from NBCC".

The legitimate payment as per contract agreement has been paid to Larson & Toubro Limited. There are no wrongful recoveries done by NBCC as alleged by you. The reduction in rates in the item of works have been carried out as per contractual provisions only. We would request you not to indulge in incorrect statements.

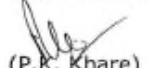
Escalation payment has also been released upto contract period for package 1 and beyond the contract period escalation is not payable as per contract GCC clause no.16.1.

For package 2 and 3, escalation is not payable as per contract GCC clause no.16.1 but it is surprise to see that institution like L&T are claiming Escalation, which is not part of contract provision.

Your claims such as reimbursement of tax and duties like Excise duty, WCT, Contribution towards ESI, has been forwarded to ESIC. Please refer SCC Clause No.5 in this regard.

The para wise reply of your claims is enclosed as Annexure I, II & III.

Thanking You,
Yours faithfully,


(P.K. Khare)
CGM (Engg.)

CC:

1. Director (Proj.), NBCC (India) Ltd., New Delhi - 11003 - for kind information please.
2. AGM(ZI), NBCC (I) Ltd., SBG, Chennai - for follow up action.


CGM (Engg.)

16. In addition, as per the statement of learned counsel for the plaintiff, he will lead common evidence and most of the witnesses to prove the claims arising out of three packages would be common.

17. The objection as per Mr. Minocha, learned senior counsel, that the defendants will have separate witnesses, will not be of much assistance as I am of the view that all claims arising out of the three Packages concern the



same parties and the same work related to ESIC Medical College and Hospital.

18. Reliance on the judgment *Hema Khattar and Another vs. Shiv Khera* (2017) 7 SCC 716 is also well placed:

26) Since the suit was dismissed for misjoinder of parties and/or causes of action, it is pertinent to mention here the law on the point which is as under:-

.....

In Black's Law Dictionary it has been stated that the expression 'cause of action' is the fact or facts which give a person a right to judicial relief. A cause of action, thus, means every fact, which, if traversed, it would be necessary for the plaintiff to prove in order to support his right to a judgment of the court. In other words, it is a bundle of facts which taken with the law applicable to them gives the plaintiff a right to relief against the defendant. It must include some act done by the defendant since in the absence of such an act no cause of action can possibly accrue. It is not limited to the actual infringement of the right sued on but includes all the material facts on which it is founded.

27. Order 2, Rule 3, provides for the joinder of several causes of action and states that a plaintiff may unite in the same suit several causes of action against the same defendant, or the same defendants jointly or several plaintiffs having causes of action in which they are jointly interested against the same defendant or defendants jointly may unite them in one suit. The remedy for any possible inconvenience with regard to said rule is supplied by the provisions of Order 2, Rule 6, which authorizes the Court to order separate trials of causes of action which though joined in one suit cannot be conveniently tried or disposed of together.

28. Similarly, Order 1 Rule 1 of the Code permits joinder of more than one persons any right to relief in respect of, or arising out of, the same act or transaction or series of acts or transactions is alleged to exist in such persons, whether jointly, severally or in the alternative; and if such persons brought



separate suits, any common question of law or fact would arise. Order 1 Rule 2 provides that where it appears to the court that any joinder of plaintiffs may embarrass or delay the trial of the suit, the court may put the plaintiffs to their election or order separate trials or make such other order as may be expedient.

29. In this connection, it is pertinent to refer to a judgment of this Court in Ramesh Hirachand Kundanmal vs. Municipal Corporation of Greater Bombay and Others 1992 (2) SCC 524 wherein it was held as under:-

“14. It cannot be said that the main object of the rule is to prevent multiplicity of actions though it may incidentally have that effect. But that appears to be a desirable consequence of the rule rather than its main objectives. The person to be joined must be one whose presence is necessary as a party. What makes a person a necessary party is not merely that he has relevant evidence to give on some of the questions involved; that would only make him a necessary witness. It is not merely that he has an interest in the correct solution of some questions involved and has thought or relevant arguments to advance. The only reason which makes it necessary to make a person a party to an action is that he should be bound by the result of the action and the question to be settled, therefore, must be a question in the action which cannot be effectually and completely settled unless he is a party.”

30. In view of the foregoing discussion, we are of the opinion that the appellants even though had different causes of action against the respondent but it was a continuity of the agreement dated 06-06-2009 and oral agreement is evidenced by the transcript of conversation between the appellant 2 and the respondent on 6-4-2011/7-4-2011, therefore, both the appellants could have joined as plaintiffs in a suit and the suit is not bad for misjoinder of parties or causes of action. Hence, learned Single Judge as also the division bench, was not right in giving an option to the appellants to pursue reliefs qua appellant 1 or qua appellant 2 only.

19. The Hon’ble Supreme Court in the said judgment has held that



separate trial is required only where the court is of the view that the joinder of causes of action in one suit may cause embarrassment, delay of trial or is otherwise inconvenient.

20. I am of the view that none of these facts exit in the present case. In fact in the present case, Order II Rule 3 CPC permits joinder of cause of action. Plaintiff and defendants are saying that all 3 Packages relate to ESIC Medical College and Hospital, Coimbatore. In case there is a separate trial, it will cause delay and will be inconvenient. For the said reason, the application is dismissed.

CS(COMM) 580/2021

21. On the pleadings of the parties, the following disputes are framed:

Issue No.1. Whether there was any breach of the terms of Contracts dated 29.09.2009, 09.06.2010, and 30.05.2012 by the Defendant No.12? OPP

Issue No.2. Whether the Defendant No.2 is liable to compensate the Plaintiff for enjoying the benefits of non-gratuitous work executed by the Plaintiff? OPP

Issue No.3. Whether the Plaintiff is entitled to losses and damages under the subject Contract(s) and law? OPP

Issue No.4. Whether the Plaintiff is entitled to payment of an amount of INR 101,95,11,358/- towards escalation from Nov'11 to Mar'18? OPP

Issue No.5. Whether the Plaintiff is entitled to payment of an amount of INR 13,18,94,739/-towards certified bills pending payment? OPP

Issue No.6. Whether the Plaintiff is entitled to payment of an amount of INR 2.01.74,160/- towards GST implication? OPP



Issue No.7. Whether the Plaintiff is entitled to payment of an amount of INR 4,46,54,951/- towards reimbursement of wrongful recovery towards manpower and debit person a/c? OPP

Issue No.8. Whether the Plaintiff is entitled to payment of an amount of INR 19,04,49,515/- towards reimbursement of Works Contract Tax and Value Added Tax? OPP

Issue No.9. Whether the Plaintiff is entitled to payment of an amount of INR 12,80,675/- towards reimbursement of ESI? OPP

Issue No.10. Whether the Plaintiff is entitled to payment of an amount of INR 50,45,53,686/-towards site overheads during the extended stay period? OPP

Issue No.11. Whether the Plaintiff is entitled to payment of an amount of INR 64,68,86,231/-towards head office overheads? OPP

Issue No.12. Whether the claims of the Plaintiff are premature? OPD

Issue No.13. Whether the Plaintiff is entitled to any interest on its claims, if so, at what rate and what period? OPP

Issue No.14. Whether the parties are entitled to costs?

Issue No.15. relief.

22. The learned counsel for the plaintiff states that in the present case voluminous evidence is required and a Local Commissioner be appointed for the purpose of recording of evidence at its cost.

23. Ms. Yashmeet Kaur (Mob: 9810788943) is appointed as the Local Commissioner to record the entire evidence. The Local Commissioner shall



be paid Rs. 7,500/- for every effective hearing plus Rs. 500/- for clerkage and Rs.1,000/- for stenographer.

24. The Local Commissioner will book the bar room for which the plaintiff shall pay the cost.

25. Six months are granted to the Local Commissioner to complete the evidence.

26. List before the Joint Registrar on 09.10.2024 for further proceedings.

27. On 15.12.2023, Dr. Subhash C Gupta, Adv. attendance for defendant No.2 was not recorded inadvertently. Let it be so recorded.

JASMEET SINGH, J

MARCH 21, 2024
VLD

[Click here to check corrigendum, if any](#)