

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 7022/2011

B.S.N.L.

Appellant(s)

VERSUS

BHILAI WIRES LTD.(PRESL.BWL LTD.)

Respondent(s)

WITH

CIVIL APPEAL NO. 7124/2011

O R D E R

1. Bharat Sanchar Nigam Limited (B.S.N.L. hereafter) is the appellant in Civil Appeal No. 7022/2011, which is directed against the judgment of the Calcutta High Court. The Calcutta High Court reversed the judgment of the single judge¹. The Single Judge had set aside an award dated 26.09.2000. The B.S.N.L. urges that the Division Bench's impugned judgment is unsustainable on three grounds;

- i. that the Arbitration and Conciliation Act, 1996 did not apply, having regard to the circumstances of the case;
- ii. that the respondent's claim was time barred;
- iii. that award of interest was barred by Clause 25 of the General Terms and Conditions of the contract which bound the parties.

2. So far as the first aspect is concerned, the Division Bench went into the issue in detail. The respondent claimant had approached the Calcutta High Court earlier in writ proceedings. Those proceedings culminated in a Division Bench

1 delivered on 15.10.2004

order which required the claimant to approach the competent court under Section 20 of the (now repealed) Arbitration Act, 1940. Instead, the claimant again approached the court- under Section 11(6), because the new enactment had come into force. By an ex-parte order, the High Court allowed the application and directed the appointment of an arbitrator. In compliance with that direction, the B.S.N.L. nominated one of its officers as an arbitrator.

3. The circumstances in this case would reveal that although B.S.N.L. did raise the issue of the applicability of the new Act unsuccessfully before the tribunal, the reasons which persuaded the Division Bench to accept the claimant's argument constitutes a plausible view. The claimant, undoubtedly, was expected to approach the court under the old Act. However, when it did, the new Act had come into force. In the circumstances, the findings of the Division Bench on this point do not call for interference.

4. On the second aspect, i.e. limitation, B.S.N.L. urged that the last claim made by the contractor/ respondent was on 15.09.1990. The Division Bench, however, noticed that the last payment made was on 13.08.1991 and the demand for arbitration in this case was quantified on 01.02.1994. There cannot be any dispute on this fact because the B.S.N.L. in its petition under Section 34 of the 1996 Act has averred as much unambiguously. Consequently, the demand for arbitration and even the claim cannot be characterized as time barred.

5. So far as the last point, that is, interest could not

have been awarded by the tribunal having regard to the condition or the stipulation in the contract (Clause 25) is concerned, again this Court finds no merit in the submission. The condition relied upon by B.S.N.L. appears to have been inserted in the standard form terms drawn later i.e. after 1996. In the present case, the four purchase orders were issued during the period 1985-88. B.S.N.L.'s appeal, therefore, has to fail.

6. Civil Appeal No. 7124/2011 has been preferred by the claimant, Bhilai Wires Ltd. This Court had issued limited notice on the question of interest. The award has denied pre-award interest but granted pendente lite interest for the period during which arbitration proceedings continued (1994-2000).

7. The Division Bench by the impugned order has curtailed the payment of interest to ₹67,62,366/- and the operation of Section 31 (7) of the 1996 Act by providing that post-award interest would be payable after the impugned judgment. In this Court's opinion, that direction was not justified. Admittedly, the award was in force for the period 26.09.2000 to 15.10.2004 when it was set aside by the Single Judge.

8. It would, therefore, be in the interests of justice that the appellant- Bhilai Wires Ltd. is held entitled to statutory

interest under Section 31 (7) at simple interest basis for that period. However, for the period 16.10.2004 till the date of the impugned order i.e. 29.06.2010 there was no subsisting

award; the impugned order is justified, to that extent.

9. At the same time, this Court is of the opinion that the no interference is called for with respect to the direction that interest under Section 31 (7) would be calculable from the date of impugned judgment i.e. 29.06.2010.

10. For the above reasons, the impugned judgment is hereby modified; in addition to the interest directed by it (calculated on simple interest basis), the appellant Bhilai Wires Ltd. shall also be entitled to statutory interest on simple interest basis for the period 26.09.2000 to 15.10.2004.

11. C.A. No. 7022/2011 is dismissed for the reasons indicated above.

12. C.A. No. 7124/2011 partly succeeds and is allowed to the extent indicated above.

Pending applications, if any, are disposed of.

.....J.
(S. RAVINDRA BHAT)

.....J.
(DIPANKAR DATTA)

NEW DELHI;
APRIL 12, 2023

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

Civil Appeal No(s). 7124/2011

BHILAI WIRES LTD.(PRESL.BWL LTD.)
VERSUS

Appellant(s)

B.S.N.L.

Respondent(s)

([PART-HEARD BY : HON'BLE S. RAVINDRA BHAT AND HON'BLE DIPANKAR
DATTA, JJ.][RETAIN ITS POSITION])

WITH

C.A. No. 7022/2011 (XVI)

Date : 12-04-2023 This appeal was called on for hearing today.

CORAM : HON'BLE MR. JUSTICE S. RAVINDRA BHAT
HON'BLE MR. JUSTICE DIPANKAR DATTAFor Appellant(s) Mr. Ramesh Singh, Sr. Adv.
Mr. Mohit D. Ram, AOR
Ms. Monisha Handa, Adv.
Mr. Rajul Shrivastav, Adv.
Mr. Anubhav Sharma, Adv.

Mr. Ajay Kumar, AOR
Mr. Nirmal Kishor, Adv.
Mr. Prakash Kumar Sinha, Adv.
Mr. Kartik Garg, Adv.For Respondent(s) Mr. Ajay Kumar, AOR

Mr. Ramesh Singh, Sr. Adv.
Mr. Mohit D. Ram, AOR
Ms. Monisha Handa, Adv.
Mr. Rajul Shrivastav, Adv.
Mr. Anubhav Sharma, Adv.UPON hearing the counsel the Court made the following
O R D E RC.A. No. 7022/2011 is dismissed and C.A. No. 7124/2011 partly
succeeds and is allowed in terms of the signed order.

Pending applications, if any, are disposed of.

(HARSHITA UPPAL)
SENIOR PERSONAL ASSISTANT(MATHEW ABRAHAM)
COURT MASTER (NSH)

(signed order is placed on the file)