

M/S. M.B. PATEL & CO.

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v.

OIL & NATURAL GAS COMMISSION

(Civil appeal No.7340 of 2002)

MAY 8, 2008

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[H.K. SEMA AND MARKANDEY KATJU, JJ]

Arbitrtion:

Award by arbitrator – Set aside by High Court – HELD: Arbitrator has not considered, inter alia, clause 14 of arbitration agreement – Interest has also been awarded in violation of clause 18 of the agreement – High Court was right in its reasonings for setting aside the award – Arbitrator may now proceed with arbitration and would consider the matter in the light of the reasonings given in the judgment of the High Court.

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CIVIL APPELLATE JURISDICTION : Civil Appeal NO. 7340 of 2002

From the Judgment and Order dated 11.7.2000 of the High Court of Gujrat at Ahemadabad in First Appeal from NO. 418/ 1986

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Ramesh Singh, Ankur Saigal, Gaurav Singh and Bina Gupta for the Appellant.

B. Dutta, ASG, K.R. Sasiprabhu and R. Chandrachud for the Respondent.

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The following Order of the Court was delivered

This appeal is filed against the judgment and order dated 11.07.2000 of the High Court of Gujarat at Ahmedabad in First Appeal No.418 of 1986 whereby the High Court set aside the award dated 03.05.1985 passed by the Arbitrator. The High Court set aside the aforesaid award on the following reasonings :

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A (a) that an arbitrator or umpire has misconducted himself in the proceedings; *

(b) that there appears to be an error on the face of the record inasmuch as the Umpire has overlooked clauses 14 & 18 of the Arbitration Agreement;

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(c) that the Umpire has traveled beyond the scope of the contract between the parties on certain items and claims and *

(d) that he has rendered lump sum award making it totally unintelligible.

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On the aforesaid premises the award was set aside.

In the present case the contractor claimed Rs.30,425/- for abandonment of contract. This was the first claim. The second claim was for Rs.30,213/- for illegal deductions made by ONGC.

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The third claim was for Rs.2,00,000/- for not supplying the material in time by the ONGC. The fourth claim was loss occasioned by the contractor for keeping his establishment alive and on this head the claim was for Rs.3,50,000/-. The fifth claim was loss of profit at the rate of 20 percent amounting *

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Rs.1,80,000/-. Last claim was interest at the rate of 18% p.a.

As already pointed out that the Arbitrator awarded Rs.5,98,438/- as lump sum, we agree with the reasoning of the High Court that the award is unintelligible.

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Clause 14 of the Arbitration Agreement reads as under : *

"DELAY IN CONSTRUCTION (COMMISSION'S DEFAULTS);

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The Commission will make every reasonable affect to furnish the materials under the contract and the right of user including the permits required to be furnished by the Commission under the contract in due time so as not to delay the construction related work of reconditioning. In case of any hold up to site work of the CONTRACTOR on account of non-availability of any one of these terms, no *

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compensation by way of claims is admissible but only corresponding extension of time limit would be granted." A

Under the aforesaid clause no claim for compensation is admissible even that foul of the Commission. Clause 18 of the Arbitration Agreement reads :

"INTEREST ON AMOUNTS B

No interest will be payable on the security deposit or any other amount payable to the CONTRACTOR under the contract."

The Arbitrator has awarded the interest at the rate of 12% on the amount with effect from 09.02.1984 to 03.05.1985 (pendente lite). He has also awarded interest from the date at the rate of 12% on the amount as shown in 1 & 3 above till the date of decree or actual date of payment, whichever is earlier. C

In view of the aforesaid premises, the Arbitrator has not at all considered clause 14 of the Arbitration Agreement. The interest has been awarded in violation of clause 14 of the Agreement. Apart from others these two legal aspects have not been considered by the Arbitrator. We are, therefore, in full agreement with the reasoning given by the High Court. The Arbitrator may now proceed with the arbitration but in the light of the judgment of the High Court. We direct the Arbitrator to consider the matter afresh in the light of the reasoning of the High Court. D E

Subject to the aforesaid, the appeal is dismissed. F

R.P.

Appeal dismissed.