

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

+ **CS(OS) No.745A/1998**

7th January, 2010

M/S CONTINENTAL DEVICE INDIA LTD.

...Petitioner

Through: Mr. Lalit Kumar and Mr. Deepak
Vohra, Advocates.

VERSUS

DELHI VIDYUT BOARD & ANR

....Respondents

Through: Ms. Avnish Ahlawat, Advocate for
DPCL.

Mr. Vikram Nandrajog, Advocate
for NDPL.

CORAM:

HON'BLE MR. JUSTICE VALMIKI J.MEHTA

1. Whether the Reporters of local papers may be allowed to see the judgment?
2. To be referred to the Reporter or not? Yes
3. Whether the judgment should be reported in the Digest? Yes

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JUDGMENT (ORAL)

VALMIKI J.MEHTA, J

I.A.No.4491/1999 in CS(OS) No. 745A/1998

1. This application has been filed under Sections 30 and 33 of the Arbitration Act, 1940 challenging the Award dated 16.3.1998 passed by the sole Arbitrator Justice J.D.Jain (retd.). A

copy of the Award was not on record and I have with the consent of the parties taken a copy of the same from the counsel for the objector.

2. The disputes between the parties pertained to the claims of the objector for load violation charges, misuse charges and low power factor levied on the basis of an inspection conducted on 7.9.1989 in the premises of the petitioner, which is the registered consumer of the electricity connection.

3. By the impugned Award, the Arbitrator has disallowed the claims based on each of the three aforesaid charges.

4. The first issue pertains to the claim for misuse charges. The Objector alleged misuse of the electricity connection on account of the fact that the electricity connection which was sanctioned in the name of the petitioner was being used by one M/s Delta Electronics (P) Ltd. As per the contention of the objector this amounted to misuse and therefore misuse charges were payable.

5. The Arbitrator has held that misuse charges are not payable for the reasons:-

(i) The company M/s Delta Electronics (P) Ltd. was found to be a sister concern of the petitioner/registered consumer and

which sister concern was under the same management and which had around 99% common share holding.

(ii) The Arbitrator held that there is no definition of misuse in the relevant tariff rules and consequently, the ordinary meaning of misuse as applicable in a relationship between a landlord and tenant should be looked into, and which when done shows that there is no sub-letting.

(iii) It has been thirdly held by the Arbitrator by referring to the agreement that the user of electricity by a sister concern does not amount to transfer or parting with possession of the electricity connection.

6. All the above reasons are perfectly valid and I do not find that the objections by the objector with regard to sustaining of its claim for misuse charges are at all justified. The Arbitrator has arrived at a finding of fact after referring to the returns filed by both the companies before the Registrar of Companies and also with reference to the provisions of Companies Act that both the companies are sister concerns and alter egos of each other. The facts of the present case are not such that there is subletting of electricity from one company to another company or from one entity to another entity which are wholly unrelated

to each other, in the sense that one is a complete stranger to the other. The counsel for the non objector has rightly relied upon a Division Bench judgment of this court reported as **JB Exports Ltd. and Anr. Vs. BSES Rajdhani Power Ltd., 135 (2006) DLT 225** wherein it has been held by this Court that on piercing the corporate veil of a corporate entity if it is found that both the companies are effectively under the same management/shareholding, then, the doctrine of lifting of corporate veil must be utilized in favour of the registered consumer in order to facilitate industrialization and not to obstruct the same. It was further held that the mechanical interpretation of the principle of corporate personality is to be avoided. In the aforesaid case of **JB Exports (supra)** the electricity connection was in the name of BVM Engineering Industry (P) Ltd. but the user thereof was JB Exports Ltd. It was held that use of electricity by JB Exports Ltd., which was a sister concern of BVM Engineering Industry (P) Ltd., cannot amount to subletting. The said judgment would apply in the facts of the present case with greater force because in the case of **JB Exports**, the registered consumer was in fact not doing business at all, whereas in the present case, the registered

consumer has been doing business and it is not that it has wholly effaced itself from the subject premises whereby it can be said that the electricity connection has been transferred or assigned to Delta Electronics (P) Ltd.

7. The Arbitrator has applied valid principles of law and held that since there is no definition of misuse in the tariff rules, the usual meaning of the expression would apply. He has further arrived at a finding of fact with regard to the two concerns being sister concerns and by arriving at such conclusions it cannot be said that the Arbitrator has mis-conducted himself or the proceedings so that this court can interfere with the findings in the Award on this aspect.

8. The second claim of the objector on the basis of the subject inspection dated 7.9.1989, was the claim towards load violation charges. On this aspect, the Arbitrator has held as under:-

(i) The load violation charges cannot be claimed unless an appropriate show cause notice is given.

(ii) The instrument being the Maximum Demand Indicator (MDI) in the premises which records maximum load consumed by the industry at a particular point of time did not support the

stand of the objector that instead of the consumer utilising only sanctioned load of 636.4 KW there was in fact a connected load of 1116.048 KW.

(iii) It has been held, inferentially, that the load of machineries having a particular capacity cannot be added to the definition of connected load unless they are both installed and connected inasmuch as the tariff rules for the subsequent year to date of inspection which say so, and which is relied upon by the objector, can apply not retrospectively but only prospectively and thus machines which stand installed but not connected cannot be included in the definition of connected load.

9. From the arguments of the learned counsel for the objector, I have not found any contention worth accepting so as to set aside the Award when it holds the disentitlement of load violation charges on the basis of the subject inspection. All the three findings and conclusions on the issue of load violation are in accordance with law. A reference to the two notices dated 7.9.1989 and 20.10.1989 issued by the objector shows that the said show cause notices which were issued were only towards the claim for misuse/subletting charges and not for the load violation charges. Therefore, the Arbitrator has rightly relied

upon and followed the judgment of a Division Bench of this court in the case of ***M/s Matsaya Metal Udyog (P)Ltd. vs. MCD 44 (1991) DLT 13***, wherein it has been held in paragraphs 17 and 18, that load violation charges cannot be claimed without issuing an appropriate notice for the purpose. Accordingly, no fault can be found with the finding of the Arbitrator in that the load violation charges could not be claimed without issuing of an appropriate show cause notice.

10. The Arbitrator has arrived at a finding of fact with regard to the connected load in the premises being not as alleged in the inspection dated 7.9.1989 relying upon the instrument of the Maximum Demand Indicator which is fixed by the objector itself in the premises. Admittedly, this instrument records the maximum load which is consumed by a consumer at a particular point of time. This MDI established the correctness in the stand of the petitioner as the said instrument nowhere recorded that the sanctioned load was ever violated. Also, the Arbitrator has rightly held that the definition of 'connected load' of a subsequent year cannot be applied retrospectively to hold the connected load exists as was alleged by the objector because in the relevant tariff year a machinery which was not

connected to the supply point cannot be included in the connected load.

11. So far as the shunt capacitor charges are concerned, the Arbitrator has held that the said charges cannot be claimed in the absence of issuance of an appropriate show cause notice in terms of the aforesaid judgment in the case of **M/s Matsaya Metal Udyog (P)Ltd (supra)** . Again this finding based on the Division Bench judgment of this court cannot be in any manner faulted with.

12. On all the aforesaid three aspects/ issues and claims based thereupon, an additional issue was that whether the charges can be claimed retrospectively for a period of three years and can continue further even if the consumer files a fresh test load report and also deposits the inspection charges for conducting a fresh inspection. It is not disputed that in the tariff rules for the relevant year, there was no statutory provision for claiming the charges retrospectively. The claim for retrospective charges was only based upon office orders of the objector. The Arbitrator has noticed the fact that these office orders were never published for information to the public. The counsel for the objector very fairly states that on this

aspect of entitlement of claiming the charges retrospectively for three years, no objection has been preferred by the objector in this court and that consequently no challenge is laid on this aspect of the Award. I therefore need not dilate any further on this aspect.

13. I may incidentally note certain other findings of the Arbitrator, and which have a bearing of the facts of the present case. The Arbitrator has noted that the petitioner gave a notice to the objector vide letter dated 30.7.1990 informing that the sister concern M/s Delta Electronics (P) Ltd. had shifted from the premises in or about June 1990. The petitioner also deposited the re-inspection charges. However, the fact of the matter is that in spite of the intimation and the deposit of the re-inspection charges, the objector never carried out any inspection for many years and which inspection was only done on 5.5.1994 and which inspection in any case showed that there was no concern in the name of M/s Delta Electronics (P) Ltd in the subject premises. On the aspect of load violation charges, the Arbitrator has referred to the various provisions of the tariff rules defining 'connected load' and 'sanctioned load'. The Arbitrator on reference to the definitions has found that the

issue, therefore, pertains to violation of the sanctioned load only and not the connected load inasmuch as the MDI instrument did not support the stand of the objector that the load as found in the inspection dated 7.9.1989 was used by the petitioner.

14. The scope of hearing objections to an Award by means of a petition under Sections 30 and 33 of the Arbitration Act, 1940 is well settled. It is necessary before the court can interfere with the Award, that, the Arbitrator must have mis-conducted himself or the proceedings. If the Arbitrator takes one plausible view, then, it cannot be said that the Arbitrator has mis-conducted himself or the proceedings merely because another view is possible from the same facts and circumstances on both the issues of load violation charges and misuse charges, the Arbitrator has referred to the relevant provisions of the tariff rules, the provisions of the agreement, various documents and the facts of the case to give one interpretation. This was thus a plausible view. Accordingly, this court has no jurisdiction to interfere with such findings and interpretation as the said findings and interpretation are not perverse and one which only an unreasonable man could have taken. I am thus not inclined

to interfere with the findings in the Award. Further, it is settled law that an Arbitrator is the final fact finding authority. The Arbitrator has found as a matter of fact that the show cause notice was not given. He has further found as a fact that concerns are sister concerns. He has further found that the maximum demand indicator did not indicate load violation charge. There are various other findings in the detailed Award of the Arbitrator running into 38 pages. The Arbitrator has recorded in detail all the arguments raised by the counsel for the parties, the relevant provisions of the tariff rules, the relevant provisions of the agreement and the relevant documents and has therefore given valid and reasonable basis to arrive at his conclusions and findings. By doing so, in my opinion, the Award falls out of the scope of challenge on the ground of the Arbitrator having mis-conducted himself or the proceedings in passing the Award.

15. Mr. Vikram Nandrajog, Advocate appearing for the NDPL has canvassed that the rate of interest granted by Award is excessive. I am in fact distressed that such an objection has been raised because the Arbitrator has only awarded interest at 9% per annum simple. In view of this position, I fail to

understand how this argument can at all be canvassed that the rate of interest is in any manner excessive. I do not therefore find any reason whatsoever to sustain this objection to reduce the rate of interest awarded, more so as the Distcoms are charging interest varying from 18% to 24% for the payment due to it from the consumers.

16. In view of the above, I find no force in the objections which are dismissed leaving the parties to bear their own costs. The Award dated 16.3.1998 passed by the sole Arbitrator is made a rule of the Court.

VALMIKI J.MEHTA, J

January 07, 2010

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