IN THE HIGH COURT OF HIMACHAL PRADESH AT SHIMLA

CARBC No. 142 of 2025
Reserved on : 02.12.2025
Decided on : 29.12.2025

Himachal Pradesh State Electricity Board Ltd. and another

…Petitioners

Versus

HCL Infotech limited

…Respondent

Coram
Hon'ble Mr. Justice Ajay Mohan Goel, Judge
Whether approved for reporting?[1]

For the petitioners	**:**	**Mr. J.S. Bhogal, Senior Advocate, with M/s Satish Sharma and Srishti Verma, Advocates.**
For the respondent	**:**	**Mr. Suneet Goel, Senior Advocate, with M/s Vivek Negi and Rajesh Kumar, Advocates.**

Ajay Mohan Goel, Judge *(Oral)*

By way of this petition, filed under Section 34 of the Arbitration and Conciliation Act, 1996, petitioners have, *inter alia,* prayed for the following relief:-

> *"It is, therefore, respectfully prayed that this application may be allowed and the award dated*

1 *Whether reporters of the local papers may be allowed to see the judgment?*

10.10.2018 (Annexure P-3) made by the Hon'ble Arbitral Tribunal may be set aside in so far as it relates to allowing the claim of the respondent and holding the petitioner not entitled to claim/deduct/recover Rs.3,55,31,187/- on account of interest (Rs 1,43,89,166/-) and penalty (Rs 2,11,42,021/-) from the pending invoices/bills of the respondent or otherwise. The petitioner may also be allowed such other and further relief as may be considered just and proper in the facts of the case and justice be done."

2. The case of the petitioner is that it is a company incorporated under the Companies Act. As per the petitioner, it entered into a contract with the respondent-company relating to:-

1) Providing requisite IT hardware, software and peripherals at Data Center (DC) at Shimla, Disaster Recovery Center (DRC) at Paonta Sahib and various offices of 14 towns namely Shimla, Solan, Nahan, Paonta, Baddi, Bilaspur, Mandi, Sundernagar, Chamba, Dharamshala, Hamirpur, Kullu, Una and Yol.

2) Development / Implementation of following software applications at Data Center/Disaster Recovery Center

level:-

a. Meter Data Acquisition System (MDAS).

b. Energy Audit (EA).

c. Identity & Access Management System (IAMS)

d. Management Information System (MIS).

containing Dataware Housing (DW) & Business Intelligence (BI) tools.

e. Enterprise Management System (EMS) & Network Management System (NMS), which is a part of hardware.

3. To execute the work, the parties entered into an agreement and Clause 15.1 and Clause 15.3 of the contract provided as under:-

> *"Clause 15.1: The prices quoted by the supplier shall be inclusive of all duties/taxes/levies. Responsibility for including all applicable taxes/duties/levies in the proposal lie with the bidder and the utility shall not be responsible for any error/omission on the part of the bidder. Payment of taxes/duties/levies shall not be made separately.*
>
> *Clause 15.3: For goods supplied from within the Purchaser's country, the Supplier shall be entirely*

responsible for all taxes, duties, entry tax, license fees, other levies etc, incurred until delivery of the Goods and Related service to the Purchaser. The Purchaser will provide Central sales tax Form C, whenever applicable."

4. According to the petitioner, in light of the above mentioned terms of the contract, the entire responsibility to include all duties/taxes/levies including the entry tax payable, was with the claimant and the claimant had specifically accepted the letter of acceptance issued by the respondent on 30.08.2010, which categorically mentioned that the cost of entry tax as applicable will be the liability of the supplier i.e. the price quoted were inclusive of entry tax.

5. Further as per the petitioner, the respondent-company raised dispute with regard to the reimbursement of entry tax as also the amounts of penalties and interest levied thereupon by the Excise Authorities. The matter was referred to the arbitration of the learned Sole Arbitrator and in terms of the impugned Award, learned Arbitrator has allowed the claim petition vide Award dated 10.10.2018, in the following terms:-

"(i) Claim of Rs.2,28,48,842 of claimant is rejected.

(ii) The respondents are not entitled to

claim/deduct/recover Rs. 3, 55, 31,187 (interest Rs.1,47,89,166 penalty Rs.2,11,42021) from claimant from pending invoices/bills of claimant or otherwise.

(iii) The claimant is not entitled to any costs and interest.

(iv) The parties shall bear their own costs."

6. Feeling aggrieved the petitioners have preferred the present petition.

7. Learned Senior Counsel for the petitioners argued that the Award passed by the learned Arbitrator is against the Public Policy of India as the learned Arbitrator has erred in not appreciating that the price quoted by the respondent was inclusive of all duties/taxes and levies including the entry tax and once the learned Arbitrator had come to the conclusion that the entry tax was included in the rates quoted by the respondent and it also held the respondent liable to pay the entry tax, there was no occasion for the learned Arbitrator to restrain the petitioner from recovering the amount of penalty and interest, which the party was supposed to pay on the late payment of the entry tax. Learned Senior Counsel thus submitted that because the Award passed by the learned

Arbitrator was in conflict with the Public Policy of India, the same was liable to be set aside. Learned Senior Counsel further argued that learned Arbitrator erred in deciding the issue of the competence of Mr. Nishant Nandan, Manager Legal, of the respondent, to file the claim petition without appreciating that there was no competence vested in Mr. Nishant Nandan to file and maintain the proceedings on behalf of the petitioner-company. Learned Senior Counsel also submitted that as there was a complete misleading and misappreciation of the terms of the contract and as the learned Arbitrator had travelled beyond the terms of the contract, therefore, the learned Arbitrator had misconducted himself and the Award was accordingly liable to be set aside. No other point was urged.

8. On the other hand, the learned Senior Counsel for the respondent-claimant submitted that there was no infirmity in the Award passed by the learned Arbitrator. He submitted that a perusal of the Award demonstrates that learned Arbitrator took into consideration the claim as well as response filed thereto of the parties concerned and by interpreting the terms of the contract as they should have been construed, learned Arbitrator

rightly passed the Award, as has been passed. Learned Senior Counsel submitted that there was no misreading or misappreciation either of pleadings or evidence or of the terms of the contract. Learned Senior Counsel further submitted that in light of the fact that Hon'ble Supreme Court of India had in numerous judgments held that in exercise of its power under Section 34 of the Arbitration and Conciliation Act, the Court was not to act as an Appellate Court and that the Award passed by the learned Arbitrator had to be respected until and unless it was perverse on the face of it, in the present case, as there was no such perversity and as the Award was not against the Public Policy of India, the present petition deserved to be dismissed.

9. I have heard learned Senior Counsel for the parties and have also carefully gone through the Award as well as the other documents, which are before the Court.

10. Before the Court addresses respective contentions of the parties, it is necessary to refer to the scope of interference by this Court in a petition which is preferred under Section 34 of the Arbitration and Conciliation Act. Hon'ble

Supreme Court of India in ***UHL Power Company Limited vs. State of Himachal Pradesh***, *(2022) 4 Supreme Court Cases 116*, *inter alia,* has been pleased to hold that the jurisdiction conferred on Courts under Section 34 of the Arbitration and Conciliation Act is fairly narrow and when it comes to the scope of an appeal under Section 37 of the Arbitration and Conciliation Act, the jurisdiction of an appellate Court in examining an order, setting aside or refusing to set aside an award is all the more circumscribed. Hon'ble Supreme Court has held that if there are two plausible interpretations of the terms and conditions of the contract, then, no fault can be found, if the learned arbitrator proceeds to accept one interpretation as against the other. Hon'ble Supreme Court has referred to its earlier judgment passed in ***Dyna Technologies (P) Ltd. Vs. Crompton Greaves Ltd.*** *(2019) 20 SCC 1*, in which Hon'ble Supreme Court was pleased to hold that Section 34 of the Act limits a challenge to an award only on the grounds provided therein or as interpreted by various Courts and arbitral awards should not be interfered with in a casual and cavalier manner, unless the Court comes to a conclusion that the perversity of the award goes to the root of the matter without there being a possibility of alternative interpretation which may sustain the arbitral award. Hon'ble Supreme Court further held that Section 34 is different in its approach and cannot be equated with a normal appellate jurisdiction. The mandate under Section 34 is to respect the finality of the arbitral award and the parties autonomy to get their dispute adjudicated by an alternative forum as provided under the law. Hon'ble Supreme Court has further held that if the Courts were to interfere with the arbitral award in the usual course on factual aspects, then the commercial wisdom behind opting for alternative dispute resolution would stand frustrated.

11. Coming to the facts of this case, a perusal of the Award passed by the learned Arbitrator demonstrates that on the basis of the pleadings of the parties, the learned Arbitrator framed the following four issues:-

> *"1. Whether the claimant is entitled to the recovery of Rs.2,28,48,842/-? OPC*
>
> *2. Whether the actions of respondents passing on interest and penalty amounting to Rs.3,55,31,187/- is liable to the declared as wrong and illegal? OPC*

3. Whether the claimant is entitled to cost and interest over the award amount? OPC

4. Whether the claim is not maintainable? OPR

5. Relief"

12. Thereafter, learned Arbitrator went on to hold the following in Paragraphs No.43 and 44 of the Award:-

"43. The price quoted by the claimant of the material was inclusive of entry tax under the Contract in view of material on record. The clause 6 (d) of LOA dated 30.08.2010 and other documents of Contract authorise the HPSEBL to deduct entry tax from the invoices of claimant and remittance to the tax dept. was to be made by HPSEBL. The claimant vide letter dated 1.12.2014 Annexure R4 had confirmed that as per contract the liability to pay entry tax was of claimant. RW1 in para 8 of affidavit Ex.RW1/A has stated that the respondent had already effected recovery of Rs.2,28,48,842 from the bills of the claimant of entry tax in accordance with agreed terms and has deposited the same with the Excise and Taxation authorities on 30.06.2017. In view of above discussion 019 1 JR HPSEBL had the authority under the Contract to deduct tax from the invoices of the claimant and remit the same to the tax department which HPSEBL

has done. Therefore, no fault can be found with such deduction and deposit of entry tax with the tax department. In these circumstances the claimant is not entitled to recover Rs.2,28,48,842 entry tax from respondents. The issue no.1 is thus decided against the claimant and in favour of respondents.

44. Now the question which requires consideration under issue no.2 is declaration that claimant is not liable to pay penalty Rs.1,43,89,186 and interest Rs.2,11,42,021 total amounting to Rs.3,55,31,187. The claimant has pleaded that it was the duty of respondents under the agreement and letter of award dated 30.08.2010 to make the payment of entry tax since the respondent no.1 was 'dealer' under the agreement. The liability to pay the entry tax was on the 'dealer' i.e., HPSEBL. This position has also been upheld in the order dated 22.04.2017 of Excise & Taxation Commissioner, Himachal Pradesh. The claimant has apprehended that respondents in order to cover their own fault, may recover the penalty and interest, from the payments due and may also encash the Bank Guarantee which is lying with the respondents."

13. Learned Arbitrator thereafter in Paragraphs No.47 to

49 of the Award, held as under:-

> *"47. The para 6(d) of LOA dated 30.08.2010 provides that amount of entry tax will be deducted from the Supplier's invoice and remittance to tax department will be made by the Purchaser under the TIN/TAN number of Purchaser. If any liability is raised by the Commercial Tax Department, Govt. of Himachal Pradesh on account of entry tax at a later date, the same shall be to Supplier's account and accordingly recovery shall be made from Supplier's pending bills/security deposits as available with the Purchaser. The Dy. Excise & Taxation Commissioner on 8.04.2015 held that HPSEBL is liable to pay entry tax under the Entry Tax Act and the contract. The entry tax ultimately now has been recovered by HPSEBL from the invoices of claimant and remitted to the tax authorities.*
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> *48. The connected question is of transferring of claimant of interest and penalty total amounting to Rs.3,55,31,187 which has been imposed by authorities on HPSEBL for not paying timely entry tax under the Entry Tax Act. The respondent no.1 despite the decision dated 8.04.2015 of Dy. Excise and Taxation Commissioner did not deduct and deposit entry tax on*

the supplies made by claimant under the contract even though as per letter dated 23.02.2015 Annx R7 (28) of claimant the respondent no.1 had the details of entry tax under R-APDRP (Part-A). The Id. counsel for both the parties have stated at bar that no further details of entry tax of the material supplied were given by the claimant to the respondents after 23.02.2015 over and above the details supplied with the letter dated 23.02.2015. The respondent no.1 reflecting its cantankerous attitude on entry tax challenged the decision dated 8.04.2015 of Dy. Excise and Taxation Commissioner before Excise Commissioner, Himachal Pradesh, who on 22.04.2017 has upheld the decision dated 8.04.2015 of the Dy. Excise and Taxation Commissioner. The respondent no.1 even then took more than two months and only thereafter on 30.06.2017 deposited Rs.2,28,48,842 entry tax after deducting from the pending invoices of claimant. The respondents have not explained why even after receiving details of entry tax from claimant on 23.02.2015 they did not deduct entry tax from the pending invoices of the claimant and deposit the same with the tax authorities. The respondents have failed to establish bonafides for not recovering the entry tax from the invoices of claimant *at the relevant time. In view of findings recorded by tax authorities and other material on record it is clear that HPSEBL did not discharge its statutory duty to pay the entry tax payable on the material purchased by HPSEBL from claimant under the Contract. In these circumstances the default Committed by HPSEBL for not paying the entry tax cannot be transferred to claimant for no fault of the claimant. The HPSEBL was competent and authorised under the contract to deduct the entry tax from the invoices of claimant, which was to be deducted well in time by HPSEBL. However, for reasons best known to the HPSEBL such entry tax was not deducted in time by HPSEBL nor paid to the tax authorities. The para 6(d) of LOA date 30.08.2010 has authorised the respondents to make lawful deductions and not for amounts which accumulated due to their over which own negligence, default inaction claimant has no control. The party committing the avoidable default cannot take benefit of its own wrong. There is nothing on record that order dated 10.11.2015 imposing interest and penalty on HPSEBL has been set aside. Therefore in view of above discussion and in the facts and circumstances the amount of interest and penalty Rs.3,55,41,187 (interest*

Rs.1,43,89,166 and penalty Rs.2,11,42021) imposed by Dy. Excise & Taxation Commissioner cannot be transferred and recovered by respondents from claimant. The issue no.2 is decided in favour of claimant and against the respondents.

49. The claimant under issue no.3 has claimed cost and interest. The claimant has claimed Rs.1 lac on account of costs incurred upto High Court for pursuing the proceedings in the High Court and remaining costs of the proceedings as determined by the tribunal. The claimant has also claimed interest at the rate of 18% P.A. on the amount of Rs.2,28,48,842 from the date when amount became due. The claim of Rs.2,28,48,842 of claimant as discussed above has been rejected. The amount of Rs.3,55,31,187 (interest Rs.1,43,89,166 and penalty Rs.2,11,42,021) has not been actually recovered by respondents from claimant. In view of overall facts and circumstances of the case I am of the considered opinion that the claimant is not entitled to any costs. The issue no.3 is decided against the claimant and in favour of respondents.

In view of above discussion and findings on issues no.1 to 4 an award is passed to the following effect:-

"(i) Claim of Rs.2,28,48,842 of claimant is rejected.

(ii) The respondents are not entitled to claim/deduct/recover Rs. 3, 55, 31,187 (interest Rs.1,47,89,166 penalty Rs.2,11,42021) from claimant from pending invoices/bills of claimant or otherwise.

(iii) The claimant is not entitled to any costs and interest.

(iv) The parties shall bear their own costs."

14. From the above, one finds that while dealing with and while allowing claim No.2, learned Arbitrator rightly took note of the fact that the petitioner-company despite having passed order dated 08.04.2015, did not deduct and deposit entry tax on the supplies made by the claimant under the contract even though the claimant vide letter dated 23.02.2015, had supplied the details of entry tax under the work in question. This is evident from the findings returned in Para 48 of the Award by the learned Arbitrator and thus it is evident that the conclusion arrived at by the learned Arbitrator that default which was committed by the petitioner in not paying the entry tax, could not be fastened upon the claimant were correct findings,

which were based on the evidence on record. It is also borne out from the record that the petitioner herein, despite being authorized under Clause 6 (D) to make lawful deductions of the invoices of the claimant failed to do so and continued to commit the avoidable defaults and for these acts of omission of the petitioner-company, obviously, the claimant could not have been made to suffer.

15. As far as the contention of the learned Senior Counsel for the petitioners that learned Arbitrator erred in not appreciating that Mr. Nishant Nandan was not having the authority to file the petition is concerned, learned Arbitrator in Para 32 of the Award while deciding issue No.4, has held that Annexure P-1 dated 03.01.2017 was the General Power of Attorney on behalf of the claimant in favour of Mr. Nishant Nandan, Manager Legal of the claimant to initiate and defend legal proceedings on behalf of the claimant before the Courts, Tribunal etc. and to do practically all jobs required for continuing and defending such proceedings. Learned Arbitrator also held that there was no rebuttal to Annexure P-1 and on these basis it held that Mr. Nishant Nandan, Manager Legal of the claimant,

had the authority to represent the claimant in the case. These findings being borne out from the record also in the considered view of this Court cannot be said to be perverse findings returned by the learned Arbitrator.

16. Besides this, I have otherwise also carefully gone through the Award passed by the learned Arbitrator and perusal thereof demonstrates that the Award was passed by the learned Arbitrator after referring to the respective pleadings of the parties as well as evidence led by them. Even during the course of the hearing of this petition, it could not be pointed out on behalf of the petitioner as to which portion of the Award passed by the learned Arbitrator was beyond the record of the case or which findings were beyond the terms of the contract. Obviously, onus to demonstrate these things was upon the petitioner, which the petitioner miserably failed to do.

17. Therefore, in light of the above observations, as this Court sees no reason to interfere with the findings returned by the learned Arbitrator and as the petitioner could not demonstrate that the Award was against the Public Policy of India, this petition is dismissed. Pending miscellaneous

application(s), if any, also stand disposed of accordingly.

(Ajay Mohan Goel)
Judge

December 29, 2025
(Shivank Thakur)