BEFORE JUSTICE R.C. LAHOTI (Fr. CJI)
SOLE ARBITRATOR

IN THE MATTER OF ARBITRATION

BETWEEN

M/s HCL Infosystems Ltd. ..... Claimant

And

The Government of NCT ..... Respondent

CORRIGENDUM and ADDITION IN THE PROCEDURAL ORDER dt. 12-03-2014

"Procedural Order No. 4" for the hearing held on 12-03-2014 has been communicated to the parties. It is noticed that there are a few errors which have inadvertently crept in the said Order. They are to be rectified as under:

i) The title "Procedural Order No. 4" shall be corrected as "Procedural Order No. 6".

ii) Below the table on page 2 the word 'Respondent' needs to be replaced by the word 'Claimant' at two places.

iii) On page 4, in 7th line the date '12-03-2014' needs to be corrected as '19-03-2014'.

iv) Commas at three places need to be corrected, which correction is innocuous.

v) The following para is to be added before the topic 'pleadings and documents':

Respondent's Application for Review of Procedural Order dt. 03-01-2014

The application is filed today. Copy delivered to the Counsel for the Claimant. Heard Mr. Salwan, the Ld. Counsel for the Respondent. Claimant may file reply to the application, if so desired, on or before 05-04-2014. The application will be taken up for hearing and directions on the next date of hearing.

vi) To correct the Records, Procedural Order dt. 03-01-2014 relates to 5th sitting and is Procedural Order No. 3. The number of sitting and the number of the Procedural Order is corrected accordingly.

Corrections in the record of the Tribunal have been carried out under the hand of the Sole Arbitrator.

(R. C. Lahoti)
Sole Arbitrator
19-03-2014
BEFORE JUSTICE R.C. LAHOTI (Fr. CJI)
SOLE ARBITRATOR

IN THE MATTER OF ARBITRATION

BETWEEN

M/s HCL Infosystems Ltd. ..... Claimant

And

The Government of NCT ..... Respondent

Presence:

For Claimant

Mr. V.N. Kundra, Advocate
Mr. S. Sirish Kumar, Advocate
Mr. Abhinav Tandon, Advocate

In Person

Mr. Mahay Tandon, General Manager
Mr. Ashish Sharma, Sr. Executive, Legal
Mr. Rajiv Sawhney, General Counsel

For Respondent

Mr. Sushil Dutt Salwan, Advocate
Ms. Latika Dutta, Advocate
Ms. Divya Pretap, Advocate

In Person

Mr. Vivek Mittal, Dy. Secy (I.T.)
Mr. Santulan Chaubey, SA
Mr. S.K. Singh, Addl. DCP-Comm.
Mr. R.K. Singh, GM, TCIL
Mr. Ramesh Purohit, DIT, GNCTD
Mr. Ashish Pankhuri, Dy. Manager, TCIL

Procedural Order No. 4

with

Record of Proceedings held on March 12, 2014
(from 5.00 pm to 7.00 pm at India Habitat Centre)

Claimant's Application dt. 13-12-2013 for Interim Directions / and / Application dt. 19-02-2014 for Interim Award

On behalf of Respondent reply is filed today. Mr. S.D. Salwan, the Ld. Counsel for the Respondent states that this is a combined reply to the Claimant's two applications as above said.
Heard the Ld. Counsel for the parties. This being a technical matter involving intricacies of IT and Accounts too well conversant officials of the parties present before the Tribunal were also heard additionally.

It is not disputed that the Claimant has raised and submitted bills to the Respondent, for first to sixth quarters (period March 2012 to August 2013), the total whereof comes to Rs. 29,04,58,800. The Respondent GNCTD has issued circulars from time to time (available at pages 109 to 133 of the Claimant’s application dt. 19-02-2014 for interim award), to its Departments and end-consumers of services for releasing payments to the Claimant. In the submission of the Claimant, the amount outstanding and payable, even if calculated as per the circulars issued by the Respondent itself, comes to Rs. 11,65,53,439/- which cannot be withheld from payment though, according to the Respondent, the deductions made are not justified and are disputed.

The table referred to hereinabove reads as under:-

<table>
<thead>
<tr>
<th>Period</th>
<th>Bill amount (Rs.)</th>
<th>SLA Penalty &amp; Withholding (Rs)</th>
<th>Net Payable (Rs.)</th>
<th>Net Paid + TDS (Rs.)</th>
<th>Outstanding payable (Rs.)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Commonweal---</td>
<td>9,46,22,456</td>
<td>66,89,808 (7.07%)</td>
<td>8,79,32,648</td>
<td>8,71,35,607</td>
<td>7,97,641</td>
</tr>
<tr>
<td>Games Period - September 1, 2010 - October 31, 2010 (for additional TETRA handsets)</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>1st Quarter March - May 2012</td>
<td>3,02,79,700</td>
<td>18,16,782 (6.0%)</td>
<td>2,84,62,918</td>
<td>2,54,92,247</td>
<td>29,70,671</td>
</tr>
<tr>
<td>2nd Quarter June - August 2012</td>
<td>3,05,21,838</td>
<td>12,72,761 (4.17%)</td>
<td>2,92,49,077</td>
<td>1,99,60,369</td>
<td>92,88,708</td>
</tr>
<tr>
<td>3rd Quarter September - November 2012</td>
<td>3,13,63,789</td>
<td>4,76,730 (1.52%)</td>
<td>3,08,87,959</td>
<td>1,54,88,837</td>
<td>1,53,98,222</td>
</tr>
<tr>
<td>4th Quarter December 2012 - February 2013</td>
<td>3,40,57,870</td>
<td>3,91,666 (1.15%)</td>
<td>3,36,66,204</td>
<td>46,63,025</td>
<td>2,90,03,179</td>
</tr>
<tr>
<td>5th Quarter March - May 2013</td>
<td>3,47,77,045</td>
<td>6,92,063 (1.99%)</td>
<td>3,40,84,982</td>
<td>43,12,413</td>
<td>2,97,72,569</td>
</tr>
<tr>
<td>6th Quarter June - August 2013</td>
<td>3,48,36,103</td>
<td>49,25,825 (1.2%)</td>
<td>2,99,10,278</td>
<td>5,87,828</td>
<td>2,93,22,449</td>
</tr>
<tr>
<td>TOTAL</td>
<td>29,04,58,800</td>
<td>1,62,65,633</td>
<td>27,41,93,167</td>
<td>15,76,38,728</td>
<td>11,65,53,439</td>
</tr>
</tbody>
</table>

Mr. Salwan, the Ld. Counsel for the Respondent submitted that though the bills have been submitted by the Respondent and circulars for releasing payment have been circulated yet the Respondent has to make further deductions from the bills of the Respondent on the following grounds:

(i) That the SLA penalty and withholding has to be not merely 2.06%, but 2.14%.

Claimant
(ii) That a deduction @ 12% per quarter has to be made for not providing connectivity in Metro tunnel area;

(iii) That Application Programming (API) which was to be made available by the Claimant has not been so made available till date and hence the Claimant is in default;

(iv) That the Respondent has incurred an expenditure of Rs. 72 lacs approximately in providing manpower to the Claimant which amount the Respondent is entitled to deduct from the bills of the Claimant;

The Tribunal put it to the Ld. Counsel for the Respondent that assuming (and certainly without conceding) that the Respondent were to make all the deductions, yet, what would be the amount due and payable to the Claimant?

After taking time in between the hearing, and consulting the officials of the Respondent present at the hearing, the Ld. Counsel stated that the amount would come to Rs. 5,92,60,372/-.  

Ld. Counsel for the Claimant has vehemently stressed before the Tribunal the need for releasing the payment without any loss of time in view of the fact that the Claimant has to incur huge expenses de very to maintain provision of services to the Respondent and in view of the payments being withheld the Claimant is finding it very difficult to continue with the Contract between the parties and has been compelled to serve a notice for termination of contract feeling frustrated by the situation in which it has been placed. Mr. Koura, the Ld. Counsel for the Claimant further pointed out that during the pendency of these proceedings, bills for 7th and 8th Quarters (September 2013 to February 2014) have also been submitted and become due. Each bill is for an amount of Rs. 3,48,36,103/- per quarter. Ld Counsel for the Respondent submitted that the bills for 7th and 8th quarter are yet to be scrutinized and the amount due and payable is yet to be calculated. For this purpose they need some assistance from the Claimant which is not forthcoming. The Claimant disputes any allegation of non-co-operation on its part and submits that it being interested in receiving the payment, it would hardly do anything, which may delay the release of payments.

After hearing the Ld. Counsel for the parties, the officials of the parties present and perusing such documents to which attention of the Tribunal has been invited by the Ld. Counsel for the parties following directions are made:-

i) As against the bills for first to sixth quarters, the Respondent shall, on or before 31.03.2014 release payment of Rs. 5,92,60,372/- to the Claimant.

ii) As to 7th and 8th quarter also, the Respondent shall release 50\% of the amount of the bills to the Claimant on or before 31.03.2014.

iii) As to the balance amount the Respondent shall make calculations of the amount which it considers to be due and payable to the Claimant as against bills for first to 8th quarters. The calculation shall be worked out in a tabular form. Such tabular statement with explanatory notes showing the method of arriving at the figures shall be prepared and handed over to the Claimant on or before 30.04.2014 accompanied by payment of such amount by which the amount found to be due and payable exceeds the amount already paid in terms of the directions made hereinabove.
iv) A meeting shall be held between the parties for which the Claimant’s team shall be headed by Mr. Malay Tandon, GM, HCL and the team of the Respondent shall be headed by Mr. R.K. Singh, GM and Mr. Ashish Pankhoji, Dy. Mgr. of Telephone Consultants of India Ltd. (TCIL) for the purpose of (i) finalizing the development of software required to generate the requisite report for releasing the payment in the light of the Contract, (ii) to remove the pinch points so that the software becomes fully automated, and (iii) to upgrade the software enabling calculation of uptime and availability of all the network elements including user complaints. First such meeting shall take place on Wednesday, 12-03-2014 at 10.30 am at Control Centre near ISBT. Further meeting shall be held, if necessary, at the earliest and by mutual agreement. At such meeting the parties will also formalize the formulae for pending and future payments, may be without prejudice if necessary.

v) The Ld. Counsel and the officials present have assured the Tribunal that they shall maintain the atmosphere congenial and do their best at removing the bottlenecks which are not difficult to remove. The Tribunal appreciates the gesture so shown and, looking at the stand taken by both the parties, is hopeful of a positive outcome.

vi) If the payments are not released by 31-03-2014 and 30-04-2014 as above, the amounts shall carry interest calculated @ 18% per annum with effect from today till the date of payment.

vii) The notice of termination served by the Claimant on the Respondent shall not be given effect to and shall remain suspended until further orders of the Tribunal.

Before parting, the Tribunal would like to make it clear that the above said directions are only by way of interim directions and all the payments released under this direction shall be treated as provisional only or by way of advance payments only, without prejudice to the contentsions of either party which shall remain open for consideration and adjudication by the Tribunal.

Pleadings and Documents:

Statement of Defense is filed today by the Respondent. The Respondent also proposes to file a Counter Claim. Let it be done in three weeks i.e. on or before 05-04-2014. The Claimant may file reply to the Counter Claim on or before 30-04-2014.

Let each pleading be accompanied by such documents as are relied on in the pleadings in support of the respective cases of the parties, bound in volumes separate from the pleadings, with index and pagination. All the pleadings and documents which are being filed shall be on A-5 size paper only.

Next date of Hearing:

The Tribunal shall assemble on May 3, 2014 at 4.30 pm for further hearing and directions. On such date the parties shall also come prepared with an agreed memo of issues setting out the points on which adjudication by the Tribunal is sought for.

(R. C. Lahoti)