

THE HIGH COURT OF DELHI AT NEW DELHI

% Judgment delivered on: 28.09.2007

+ **ARB. P. 135/2007**

HARISH KUMAR SIKKA ... Petitioner

- versus -

UNION GOVT OF INDIA ... Respondent

Advocates who appeared in this case:

For the Petitioner : Ms Deepika Jain
For the Respondent : Mr Ambar Qamaruddin

CORAM:-

HON'BLE MR JUSTICE BADAR DURREZ AHMED

1. Whether Reporters of local papers may be allowed to see the judgment ? Yes

2. To be referred to the Reporter or not ? Yes

3. Whether the judgment should be reported in Digest ? Yes

BADAR DURREZ AHMED, J(ORAL)

1. This is an application under Section 11 (6) of the Arbitration and Conciliation Act, 1996 (hereinafter referred to as 'the said Act') for appointment of an arbitrator. The learned counsel for the respondent, at the outset, submitted that the claims submitted by the petitioner are not arbitrable and, therefore, there is no question of appointment of an arbitrator. He straightway referred to para 7 (vi) of the petition where the losses / claims are mentioned. The losses / claims read as under:-

“(A)	Claim of work done and not paid	=Rs.89823=00
(B)	Loss due to increased work done (beyond the prescribed limit of variation)	=Rs.82500=00
(C)	Interest charges on delayed and unpaid payments	=Rs.72067=00
(D)	Profitability loss	=Rs.13473=00
(E)	Relief / Compensation for mental agony & harassment	=Rs.100000=00
(F)	Litigation charges	=Rs.25000=00

Total: = Rs.3,85,363=00”

2. The learned counsel for the respondent submitted that insofar as Claim (A) is concerned, the same was the subject matter of an arbitration and an award has also been made to the extent of Rs39,123/- in favour of the petitioner and the respondent has also paid the said amount. Insofar as Claims (B) to (F) are concerned, he submitted that these are not within the scope of arbitration in terms of the general conditions of the contract read with the special conditions of the contract between the parties. The learned counsel for the petitioner, however, submitted that these claims were arbitrable and, therefore, an arbitrator ought to be appointed.

3. Claim (B) relates to losses due to increased work done beyond the prescribed limit of variation. The learned counsel for the

petitioner placed reliance on clause 42 (2) (i) of the General Conditions of Contract which reads as under:-

“42 (1) xxxxx xxxxx xxxxx xxxxx

(2) (i) Unless otherwise specified in the special conditions of the contract, the accepted variation in quantity of each individual item of the contract would be upto 25% of the quantity originally contracted, except in case of foundation work. The contractor shall be bound to carry out the work at the agreed rates and shall not be entitled to any claim or any compensation whatsoever upto the limit of 25% variation in quantity of individual item of works.”

4. According to the learned counsel for the petitioner, if the variation was beyond 25% for individual items, then the petitioner was entitled to make a claim in respect thereof. The aforesaid clause, according to her, only prevented the petitioner from making a claim if the variation for an individual item was less than 25%. However, while construing the said clause, it must be noted that the opening words are “Unless otherwise specified in the special conditions of the contract...”. The relevant clause of the Special Conditions of the Contract are as under:-

“5. The contract value given above are approx. & subject to variation according to actual requirement to Rlys. No claim on this account will be entertained by Rly. Admn.

6. I/we clearly understand that I/we are not entitled to compensation on account of any variation to the value of contract and also agree to complete all such works allotted to me / us within the stipulated period.”

5. Clearly, the Special Conditions of Contract would override the General Conditions of Contract. The Special Conditions provide that no claim on account of variation would be entertained by the Railway Administration. The Special Conditions of Contract also indicate that the petitioner clearly understood that they were not entitled to compensation on account of any variation in the value of the contract. This means that the petitioner is not entitled to any amount in respect of variation whether it is within 25% or beyond 25% and, therefore, there can be no arbitration with regard to this.

6. Insofar as claim (C) is concerned, it relates to interest charges on delayed and unpaid payments. The learned counsel for the respondent referred to clause 16 (3) of the General Conditions of the Contract which reads as under:-

“16 (3) No interest will be payable upon the Earnest Money and Security Deposit or amounts payable to the Contractor under the Contract, but Government Securities deposited in terms of Sub-

clause (1) of this clause will be payable with interest accrued thereon.”

A plain reading of the said clause indicates that no interest is payable on, *inter alia*, the amounts payable to the contractor under the contract. Therefore, this claim is also beyond the scope of arbitration. Insofar as claims (D), (E) and (F) are concerned, they all flow from claims (A), (B) and (C). As regards claim (A), that has already gone through arbitration and an award in favour of the petitioner has been made. As indicated above, Claims (B) and (C) are not arbitrable. Therefore, the question of referring the disputes pertaining to claims (D), (E) and (F) to arbitration does not arise. Consequently, no occasion arises for the appointment of an arbitrator.

7. In these circumstances, this petition is dismissed.

**BADAR DURREZ AHMED
(JUDGE)**

September 28, 2007

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