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

\+ O.M.P. 1510/2014

UNION OF INDIA ..... Petitioner
Through: Mr Ruchir Mishra & Mr Mukesh Kr. Tiwari, Advs.

versus

M/S NCC LTD ..... Respondent
Through: Ms Priya Kumar & Ms Tanya Tiwari, Advs.

CORAM:
HON'BLE MR. JUSTICE RAJIV SHAKDHER

O R D E R

% 28.11.2014

OMP 1510/2014 & IA Nos. 23543/2014 (Stay), 23544/2014 (Exemption), 23545/2014 (condonation of delay in filing) & 23546/2014 (condonation of delay in re-filing)

1. This petition is directed against award dated 16.06.2014. The learned arbitrator, by virtue of the impugned award, has allowed the claim of the respondent for escalation of cost of materials, involving, cement, steel and labour. The only ground on which the claims of the respondent were resisted, was that, clause 19 of the contract, which allowed the respondent to seek escalation of cost, was, in fact, amended by virtue of a policy letter dated 22.02.2010.

2. Learned counsel for the petitioner does not dispute the fact that the contract which was entered into between the parties thereafter, on 18.03.2010, did not contain the clause 19A, which, according to the petitioner, had replaced clause 19.

3. To be noted, clause 19 allowed for lodgement of a claim for escalation whereas, clause 19A, which is referred to by the petitioner, and which does not find mention in the contract, prohibited claim for escalation, in respect of contracts which had a tenure of 24 months.

3.1 There is no dispute though, in the present case, that the, tenure of the contract was 24 months.

3.2 Learned counsel for the petitioner says that this was an inadvertent error on the part of the petitioner and, therefore, the arbitrator should have adjudicated upon the matter based on clause 19A and not clause 19.

4. According to me, the learned arbitrator has proceeded in accordance with the terms of the contract. As a matter of fact, if the learned arbitrator had taken into account clause 19A, which the petitioner relies upon, he would have stepped outside the periphery of the contract and would have committed a patent error. In these circumstances, this submission of the petitioner has to be rejected. It is ordered accordingly.

5. The other claims are consequential reliefs; in the nature of interest and costs. In so far as interest is concerned, learned counsel for the petitioner says that the interest rate awarded by the arbitrator at the rate of 12% per annum, is high.

6. The learned arbitrator, while examining this very plea, has employed the rate which the Supreme Court has found reasonable in the case of ***IT Expressway Limited vs Ascent Engineers 2013 Arb WLJ 695***. This is a discretion employed by the learned arbitrator, with which I do not wish to interfere with. In any case the interest rate stipulated in the award is neither unconscionable nor so high that I would feel impelled to interdict the award on this score. Thus, this submission is also rejected. There is no other submission

made by Mr. Mishra. I may only note that both vis-a-vis interest and cost, there is no ground taken in the petition to assail the award on these counts.

7. The petition is, accordingly, disposed of. All pending applications, having been rendered infructuous, are also disposed of.

RAJIV SHAKDHER, J

NOVEMBER 28, 2014
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