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

Date of Decision: 30th July, 2021

\+ **O.M.P. (COMM) 145/2021 & I.A. 5217-5219/2021**

UNION OF INDIA ..... Petitioner

Through: Ms. Monika Arora, CGSC with Mr. Shriram Tiwary, Advocate.

versus

M/S. SARAOGI BUILDERS LTD. ..... Respondent

Through: None.

CORAM:
HON'BLE MR. JUSTICE SANJEEV NARULA

JUDGMENT

[VIA VIDEO CONFERENCING]

SANJEEV NARULA, J. (Oral):

1. The present petition under Section 34(2)(b)(ii) of the Arbitration and Conciliation Act, 1996 (in short 'the Act') assails the award dated 31st October, 2018 passed by the learned Sole Arbitrator.

2. Briefly stated, the facts of the case are that the parties entered into a contract bearing No. CA NO. DGMAP/HISSAR (PKG-l)/PHASE-I/T-l/OF 2006-2007 appointing the Respondent as the contractor for Construction of Married Accommodation for officers of the rank of Major and above in the Indian Army.

3. On account of disputes arising between the parties, on a petition filed by the Respondent, a Sole Arbitrator was appointed *vide* order dated 17th

March, 2017, by the High Court of Punjab and Haryana. In the arbitration proceedings, the Respondent filed its statement of claim and raised a total of 19 claims. There were no counter claims filed by the Petitioner. The learned Arbitrator by way of the impugned award allowed 12 claims and rejected 7 claims. The Petitioner has already released the awarded amount against 9 claims; the present challenge is confined to the remaining 3 claims.

Claim No. 15: for Rs. 7,13,506/- (Rupees Seven Lakhs Thirteen Thousand Five Hundred Six Only) for blockage of payment of Final Bill.

4. The Respondent made a claim of Rs. 7,13,506/- on account of delayed payment of undisputed amount of the final bill of Rs. 23,48,604/-. They claimed interest @ 14% for the period of delay i.e., from 11th September, 2009 to 17th November, 2011.

4.1. The final bill was submitted on 30th May, 2009 on the basis of running account bills, measurements from the measurement book and was ultimately resubmitted on 19th November, 2009. Thereafter, contrary to the conditions of the contract, the Petitioner delayed issuance of deviation order no. 28, which was issued belatedly on 16th August, 2010. Later, in January, 2011, Petitioner asked the Respondent to separate the disputed items from the undisputed ones and give them as Annexure II to the final bill. Eventually, the payment was made on 17th November, 2011.

4.2. Taking note of facts narrated above, the learned Arbitrator has held that the delay has occurred primarily due to the failure of the Petitioner in pointing out and raising objections to the final bill at one time. However, at the same time, the learned Arbitrator also noted that there is a contributory

delay on the part of the Respondent in submission and meeting the objections. In these circumstances, he assessed the delay period to be four months. After deducting the aforesaid delay period**,** interest has been awarded @ 14% from 11th January, 2010 to 17th November, 2011 and the claim under this head has computed at Rs. 6,79,529.42/-.

4.3. In view of the aforesaid finding, Ms. Monika Arora, learned Central Government Standing Counsel for the Petitioner, argues that the Respondent was bound to submit its final bill supported by all necessary documents within three months of the completion of work which was not done. Since the Respondent itself delayed submission of the final bill as per the contract, it caused delay in settlement. The Respondent is therefore equally responsible for causing delay and the compensation awarded is patently illegal.

4.4. The delay in settlement of the final bill primarily occurred on account of the Petitioner's fault. Yet, as noted above, the learned Arbitrator, has factored the contributory delay on the part of the Respondent while determining the period for which interest was to be granted. The period stands reduced by four months. The reasoning of the learned Arbitrator based on facts cannot be faulted. The Court does not find any merit in the objection of the Petitioner on this ground and the same is accordingly rejected.

Claim No. 17: Rs. 21,09,500/- (Rupees Twenty One Lakhs Nine Thousand Five Hundred Only) for recovery of alleged deficient Engineers.

5. This claim pertains to refund of recovery made by the Petitioner on

account of an alleged deficient number of engineers deployed at the site. The Respondent was required to employ two engineers and adequate diploma holders for execution of the work in terms of condition no. 22 of the General Conditions of Contract ('GCC'). The Petitioner *vide* communication dated 29th March, 2010 asked the Respondent to deposit Rs. 21,09,500/- on account of deficient number of engineers at the site. As a result, recovery was made from the Respondent.

5.1. The learned Arbitrator, on perusal of the data produced on record observed that the contractual provision permitted the Petitioner to suspend the work in the event of deficient employment of staff or engineers. However, no such action was taken. The learned Arbitrator also examined the material on record and the evidence brought before him and came to the conclusion that the recovery was wholly arbitrary, excessive and disproportionate. Furthermore, the learned Arbitrator held that in case there was a violation of the terms of the contract, a token amount could have been deducted. Accordingly, the recovery of Rs. 21,09,500/- was set aside; Rs. 19,09,500/- was awarded to the Respondent and the remainder Rs. 2,00,000/- was deducted as a penalty.

5.2. The award of claim under this head is impugned by contending that the learned Arbitrator has not decided the claim in accordance with the terms of the contract. Ms. Arora submits that as per the contract, the Respondent was responsible for deployment of certain minimum supervisory staff, which was not done. As a result, the project got delayed and the Petitioner was constrained to make recoveries/ deductions from the Respondent. The Respondent admitted that it had deployed less staff but at the same time raised a claim for refund of the amount deducted. This was

impermissible and the award is erroneous on this account.

5.3. Before the learned Arbitrator, the Respondent averred that as of January, 2008, 90-98% of the work was complete so there was no need to keep all the staff at the site, and the remainder of the work was pending as a result of delay by a third party. This weighed on the mind of the learned Arbitrator as he came to the conclusion that the recovery was wholly arbitrary, excessive and disproportionate. Therefore, the learned Arbitrator awarded the entire amount recovered (barring the penalty of Rs. 2 lakh) to the Respondent. The findings of the learned Arbitrator are based on the material on record and the Court, while exercising jurisdiction under Section 34 of the Act, cannot re-appreciate the evidence. The findings of the learned Arbitrator, therefore, cannot be interfered with and accordingly the objections to that effect are rejected.

Claim No. 18: Claim for interest.

6. The Petitioner contends that the learned Arbitrator has wrongly awarded interest @ 14% per annum; it is on the higher side and is in conflict with the provisions of the Interest Act, 1978. As per Section 2(b) of the said Act, the maximum rate of interest can be 2% plus of maximum interest rate on deposits. It is submitted that the RBI has reduced the repo rate considerably and it is about 3-4% only, due to which the interest rate on deposits have also reduced; maximum rate of interest is just 4-5%. The Court may allow a reasonable rate of interest at par with current bank rate of interest in the range of 6-7%.

6.1. The contention of the Petitioner is untenable. The learned Arbitrator has awarded interest from the date of statement of claim i.e., 27th May, 2017

till realisation. No pre-reference interest has been awarded. Besides no interest has been awarded on claim no. 15 which was for interest on the final bill amount for the period of delay. The amount of 14% was claimed by the Respondent in the statement of claim. The Petitioner has not pointed out any provision under the contract specifying rate of interest, to the contrary. It has generally contended that on the mobilization advance given by the Respondent, rate of interest charged is 8-10%. Also, no bar is shown under the contract for excluding award of *pendente lite* interest. The Arbitral Tribunal has the discretion to award interest at the pre-reference stage, *pendente lite* and future interest.[1] In the present case, the learned Arbitrator has only awarded the latter two and that was within his domain.

6.2. Under Section 31(7) of the Act, discretion to award interest as also the rate at which it is to be awarded lies with the Arbitrator. Section 31(7)(b) deals with award of interest from the date of the arbitral award to the date of payment i.e., the future interest. Section 31(7)(b) which uses the phrase 'current rate of interest', which as per the explanation given thereunder, refers to Section 2(b) of the Interest Act, 1978. This provision also uses the phrase 'unless the award otherwise directs'. This prevents the second half of the provision, that provides for interest @ 2% above the current rate of interest, from getting triggered, in cases where the award itself specifies the rate of interest. The second half of the above provision only becomes relevant when the award is silent on the aspect of interest. Considering the delay in settlement of claims, the rate of interest awarded is not grossly unreasonable. Merely because the Petitioner finds the rate of interest to be exorbitant is no ground to set it aside. In fact, the Court is not to interfere

[1] Bhagawati Oxygen v. Hindustan Copper Ltd., AIR 2005 SC 2071.

with arbitral awards in cases where the rate of interest is found to be reasonable.[2]

6.3. Reliance upon the judgments of the Supreme Court in ***Ssangyong Engineering and Constructions v. NHAI***[3] and ***Associate Builders v. DDA***[4], is to no avail. These decisions deal with the scope of interference of the Court under Section 34 and not particularly the discretion of the Arbitrator to award the rate of interest. In fact, observations made by in the abovementioned judgments would go against the Petitioner; these judgments sound caution that the Court is not to sit in appeal against an arbitral award; interference is warranted in exceptional circumstances only.

7. In view of the above, the Court does not find any ground to interfere with the impugned award. Accordingly, the present petition is dismissed. The pending applications are disposed of.

SANJEEV NARULA, J

JULY 30, 2021
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(corrected and released on 17th August, 2021)

[2] Manalal Prabhudayal v. Oriental Insurance Co. Ltd., AIR 2006 SC 3026.
[3] AIR 2019 SC 5041.
[4] (2015) 3 SCC 49.