

(UNREPORTABLE)

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

+ OMP No. 295/2006

% Date of decision : February 27, 2008

#M/s Bajaj Food Products Pvt. Ltd.

..... Petitioner

! Through: Mr. Dalip Rastogi, Advocate

Versus

\$MCD & Anr.

.....Respondent

^ Through: Mr. Gurinder Pal Singh, Advocate

CORAM:-

*** HON'BLE MR. JUSTICE S.N. AGGARWAL**

1. Whether reporters of Local paper may be allowed to see the judgment?
2. To be referred to the reporter or not?
3. Whether the judgment should be reported in the Digest?

S.N.AGGARWAL, J (ORAL)

This order shall dispose of the objections filed against the arbitral award dated 31.03.2006 awarding an amount of Rs.21,05,866/- in favour of the contractor. The arbitral award directs the respondent/MCD to pay the award amount within 30

days from the date of the award failing which to pay 12% interest on the award amount from the date of award till payment.

2 The contractor being the petitioner herein does not dispute that he has already received the entire award amount in terms of the arbitral award dated 31.03.2006. His grievance against the award is on account of non-awarding of pendente lite interest by the learned Arbitrator.

3 Mr. Rastogi, the learned counsel appearing on behalf of the contractor/petitioner has contended that the amount awarded by the learned Arbitrator is based upon the admission of liability by the respondent/MCD made in the office notings of 12.9.2003 for releasing the amount of Rs.21,05,866/- on account of difference in the price of wheat for the period from 21.7.2000 to 29.11.2000.

4 Mr. Singh, the learned counsel appearing on behalf of the MCD has not disputed that the amount awarded by the learned Arbitrator is based upon the admission of the respondent contained in the office noting at page 49 of the paper book.

The learned counsel appearing for the petitioner has contended that the learned Arbitrator has legally misconducted himself in not awarding the pendente lite interest on the amount admittedly withheld by the MCD. He has submitted that to that extent there is an error apparent on the face of the record. Reliance has been placed by him on a Division Bench judgment of this Court ***Tata Motors Ltd. Vs. NDMC & Ors, 2006, RLR 105.*** Further relying upon a judgment of the Bombay High Court in ***Larsen and Toubro Ltd. Vs. Sunfield Resources Pvt. Ltd., 2006 (4) R.A.J. 401 (Bom)***, Mr. Rastogi has contended that this Court in exercise of its powers under Section 34 of the Arbitration Act can interfere in the arbitral award if it is shown that either there is an error apparent on the face of the record or that the finding suffers from violation of principles of natural justice. According to Mr. Rastogi, the award under challenge suffers from an error apparent on the face of the record because the learned Arbitrator has failed to deal with the claim of the petitioner/ contractor for award of pendente lite interest on the claim amount.

5 Mr. Singh, the learned counsel appearing on behalf of the

MCD has strongly argued that in view of provisions contained in Section 31 (7) (a) & (b) of the Arbitration Act, the matter regarding award of pendente lite interest is purely in the discretion of the learned Arbitrator and this Court in exercise of its powers under Section 34 of the said Act cannot interfere in the decision of the Arbitrator in such matter relating to grant of pendente lite interest. He has supported his said contention relying upon a Division Bench Judgment of Madras High Court in ***Sree Kamatchi Amman Constructions Vs. the Divisional Railway Manager/Works, Palghat Division, 2007 (4) Arb. Law Reporter 261 (Madras)***. The submission of Mr. Singh is that since the learned Arbitrator has not awarded the pendente lite interest, it should be presumed that the Arbitrator has refused the claim of the petitioner/contractor for pendente lite interest.

6 I have given my thoughtful consideration to the rival arguments advanced by the learned counsel for the parties. I could not persuade myself to agree with the submissions made by the learned counsel for the respondent. The arbitral award in favour of the contractor is based upon the admission of the

respondent/MCD. The admission of liability to the tune of award amount was made in the office noting dated 12.09.2003 produced by the Department itself before the learned Arbitrator. The Arbitration proceedings had commenced with the appointment of the Arbitrator on 08.04.2005. The award against which objections have been filed was published on 31.03.2006. Since the respondent/MCD has withheld the admitted payment of the contractor till the payment was made pursuant to the award dated 31.03.2006, the ends of justice require that contractor should also get interest for the period arbitration proceedings remained pending i.e. for the period from 08.04.2005 to 31.03.2006. Since the learned Arbitrator has not dealt with the question regarding grant of pendente lite interest, there appears to be an error apparent on the face of the record to this extent and therefore the said award is modified holding the petitioner/contractor entitled to pendente lite interest on the award amount @ 12% per annum. The respondent/MCD is given 30 days time for making the said payment of pendente lite interest to the contractor.

7 In view of the above, this objection petition stands

disposed of. Order dasti.

February 27, 2008
nks

S.N.AGGARWAL
[JUDGE]