

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

+ **CS(OS) No.2146/1997**

18th November, 2009.

NANGIA CONSTRUCTION PVT. LTD. ...Petitioner

Through: Mr. D.R.Bhatia, Advocate
VERSUS

RAIL INDIA TECHNICAL & ECONOMIC SERVICES Respondent.

Through: Mr. Jagjit Singh, Advocate.

CORAM:

HON'BLE MR. JUSTICE VALMIKI J.MEHTA

1. Whether the Reporters of local papers 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?

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JUDGMENT (ORAL)

VALIMIKI J. MEHTA, J.

I.A.No.5460/1996 & CS(OS) No.2146/1997

1. These are objections under Sections 30 & 33 of the Arbitration Act, 1940. The challenge is to the Award dated 15.9.1997 of the sole arbitrator. At the outset, I must say that the counsel for the objector has very fairly only pressed

certain claims and counter claims which have been detailed hereinafter and has not pressed objections to various other claims.

2. The claims which have been objected to by the counsel for the objector are claim nos.1, 2 and 4. The counsel for the objector has more particularly objected to claim no.1 with its sub- items being item no. 2, item no.8, item no.9, item no.10, item no.11, item no.12 and item no.13. The basic contention of the counsel for the objector is that each of these pertain to items of the additional measurement claims when the measurements have already been recorded in the measurement book during the progress of the work and to which measurement, the only procedure to challenge was under Clause 8A and if no objection was raised, as per the clause, the contractor shall thereafter not have the right to dispute the same. The counsel for the objector has further argued that the final bill also records these very measurements and consequently claims for additional measurement beyond the measurement book and the final bill ought not to have been allowed by the Arbitrator. I find force in the contention of the objector because undoubtedly these claims are with respect to measurement beyond the measurement book and the measurements as recorded in the final bill. The final bill has been duly accepted by the contractor by putting his signatures on the same, therefore, no further claims on the basis of additional

measurements showing the measurements more than the recorded measurement ought to have been allowed by the Arbitrator.

3. The next claim which has been objected to by the objector is with respect to claim no.6 which pertains to payment claimed by the contractor under clause 10CC for increased charges towards labour and material. The contention of the counsel for the objector was that as per the contract, this clause will not apply because the original period of contract was for less than 12 months. I find that this argument is not sustainable because, though originally the contract was for a period of 10 months, but it is not disputed that this contract was extended for a much longer period than the original contractual period. I note that the Arbitrator has disallowed any escalation during the original period of the contract and has given escalation only for the extended period of the contract on account of the increased rates. This approach of the Arbitrator therefore, cannot be faulted with and consequently, the objection with regard to this claim is not sustainable.

4. I may note at this stage that the counsel for the objector has also sought to press and argue claim nos. 12,13 and 17 as awarded by the Arbitrator, but during the course of the arguments it was realised that not much fault could be found with the reasoning and the findings as arrived at by the Arbitrator because

when during the course of the arguments on various queries being put by the court, no answers could be given to the same. Therefore, since this court hearing objections under Sections 30 and 33 cannot go to the reasonableness of the reasons given by the arbitrator and cannot hold a different view merely because another view is taken by the Arbitrator, I consequently do not find that the arguments as raised by the objectors qua these claims are therefore justified. Accordingly, the objections as regard these claims are therefore dismissed.

5. That takes me to the final issue which is raised with respect to the award of interest. The arbitrator by the Award has awarded interest at the rate of 18% per annum. I may note that in various judgments which have been passed by this court reference has been made to various Division Bench judgments and also various Supreme Court judgments which have held that the high rates of interest which has been granted by the Arbitrator in the Award ought to be reduced in view of the consistent fall in the rates of interest in the changed economic scenario. The judgments of the Supreme Court in this regard are *Rajendra Construction Co. v. Maharashtra Housing & Area Development Authority and others*, 2005 (6) SCC 678, *McDermott International Inc. v. Burn Standard Co. Ltd. and others*, 2006 (11) SCC 181, *Rajasthan State Road Transport Corporation v. Indag Rubber Ltd.*, (2006) 7 SCC 700 & *Krishna Bhagya Jala Nigam Ltd. v. G.Harischandra*, 2007 (2) SCC 720 and *State of*

Rajasthan vs. Ferro Concrete Construction Pvt. Ltd (2009) 3 Arb. LR 140(SC). Accordingly, in the facts and circumstances of the case, the interest of justice requires that the rate of interest as granted by the Arbitrator should be reduced from 18% to 9% per annum simple. Therefore, subject to the modification with respect to sub items of Claim No.1 which are rejected and the lesser rate of interest awarded of 9% per annum simple, the Award is made rule of the court. Parties in the circumstances of the case are left to bear their own costs. In case the payment under this judgment is made within a period of 90 days from today then the rate of interest shall continue at the rate of 9% per annum simple till payment. In case, the payment is not made within 90 days from today's date then from the date of this judgment, interest shall be at 11% per annum simple till payment. Interest from date of this judgment is in terms of Section 29 of the Arbitration Act 1940. The suit and the objections are accordingly disposed of.

November 18, 2009
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VALMIKI J.MEHTA, J