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IN THE HIGH COURT OF DELHI AT NEW DELHI

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OMP No.101/2003

27th January, 2010.

M/S IRCON INTERNATIONAL LIMITED

...Petitioner

Through: Mr. K.R.Gupta and Ms. Kiran
Dharam and Ms. Shilpa Bansal,
Advocates.

VERSUS

M/S SURESH CHANDRA & ORS.

...Respondents

Through: Mr. J.P.Gupta, 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)

VALMIKI J.MEHTA, J

1. By this petition under Section 34 of the Arbitration and Conciliation Act, 1996 the petitioner challenges the Award only with respect to three claims viz Claim Nos.15 and 16 and the claim with respect to the interest awarded.

2. The contract in question was for earthwork for four laning of Delhi-Mathura Section of National Highway No.2 in UP Sector, Package IV (KM 122 KM to 138.4 KM), awarded by the petitioner to the respondent.
3. Claim No.15 is the claim for charges towards idle labour and machinery for the period from April, 1994 till July, 1995. The Arbitrator has awarded under this claim a sum of Rs.2.12 lacs.

Mr. K.R.Gupta, counsel for the petitioner, has very vehemently opposed the awarding of this Claim, because, as per Mr. Gupta, the contractor had waived all his claims of every nature by a letter dated 17.6.1997 which is subsequent to the period of April, 1994 to July, 1995. This letter reads as under:-

“No.IRCON/NH2/UP/457

Dated:17.06.97

The General Manager/Roads,
Delhi-Mathura Highway Project,
IRCON International Limited,
F-4&5, Madhavpuri, Mathura.

Sub:Earth work of Delhi-Mathura Road Section Km 122 to
Km138+400:workorderNo.IRCON/NH2/UP/457/EW/PKG IV Dated 12.07.93.

Dear Sir,

This has the reference to my letter dated 06.09.1996 and 15.11.1996 and discussion held in your office subsequently on the subject matter.

In this connection I undertake to accept the contract rate of M/s Gyan Chand Jain (Earth work Km.93+830) to Km 1041000) W.O.No. IRCON/NH2/UP/457/Tenders dated 20.12.1994 with escalation to be frozen on 30th April 1997 for making all payment under my contract for the quantities executed or under execution after 4th November 96 (20th RA bills) till completion of the contract, in the eventuality of this I further undertake that I shall not have any other claim whatsoever against IRCON International Limited as far as this contract for Earth work under reference is concerned.

Thanking you,

Yours faithfully,
(Suresh Chandra)”

4. In my opinion, the contention of Mr. Gupta is well founded. A reference to this letter dated 17.6.1997, shows that the contractor specifically stated that except for taking the contract rate of M/s Gyan Chand Jain for earth work with escalation to be frozen on 30.4.1997, the contractor shall have no other claim whatsoever against the present petitioner.

A reference to relevant portion of the Award dealing with Claim No.15 shows that the Arbitrator has given a complete go-bye to this letter which showed the vital defence of the petitioner and the consequent disentitlement of the respondent to the amount under this Claim.

It is not disputed by Mr. J.P.Gupta, counsel for the respondent, that the letter dated 17.6.1997 was in fact written by the respondent to the petitioner.

If that be so, the Award is totally perverse while dealing with Claim No.15 because this letter of 17.6.1997 was a complete answer to the claim of the respondent under this head. In my opinion, the Arbitrator, if he would have dealt with this letter, he was bound to decline this claim, however, he has preferred the route of not referring to this vital correspondence.

Accordingly, objection to this claim is accepted and this part of the Award pertaining to Claim No.15 is set aside.

5. The next claim which was objected to was Claim No.16. This claim pertains to the cost incurred by the respondent towards maintenance of the earth work in the extended period of the contract. It is not disputed by any of the parties that after completion of the work, there was a one year warranty in which the respondent was bound to maintain the work so done.

6. The Arbitrator has awarded a sum of Rs.1,95,634/- under this claim. In my opinion, once it is admitted that the contract in question was extended up to July, 1997, and consequently, the warranty period ended in July, 1998, that being so, the cost towards maintenance of this work in the extended period and the warranty period has necessarily to be to the account of the respondent/contractor. This is also so, because of the letter dated 17.6.1997 already adverted to while discussing Claim No.15. Since, as stated above, it is not disputed that the letter dated 17.6.1997 has in fact been written by the respondent to the petitioner, the respondent therefore waived its rights and accordingly, the Arbitrator could not have awarded any amount under Claim 16. Once again the Arbitrator has failed to refer to this letter of the respondent by which the respondent agreed to waive all his rights except those as mentioned in the letter. Objection to this claim is accepted and Claim No.16 awarded is set aside.

7. That takes me to the final issue which was urged before this court pertaining to the rate of interest. The Supreme Court in the recent chain of judgments

reported as *Rajendra Construction Co. Vs. Maharashtra Housing & Area Development Authority & ors.* 2005 (6) 678, *McDermott International Inc. Vs. Burn Standard Co. Ltd. & ors* 2006 (11) SCC 181, *Rajasthan State Road Transport Corpn. Vs. Indag Rubber Ltd.* (2006) 7 SCC 700 and *Krishna Bhagya Jala Nigam Ltd. Vs. G. Harischandra*, 2007 (2) SCC 720 and *State of Rajasthan vs. Ferro Concrete Construction Pvt. Ltd* (2009) 3 Arb. LR 140(SC) has held that the courts must be alive to the changed economic scenario and liberalization of the interest regime whereby there has been a consistent fall in the rates of interest. The Supreme Court has mandated the courts to grant lesser rates of interest. This court also has been accordingly awarding interest at the rate of 9% per annum uniformly. Accordingly, the rate of interest which is awarded by the Arbitrator at 14% per annum is reduced to 9% per annum. Accordingly, the amount which would be payable under Claim 20, would be now calculated for the purpose specified under that claim, at 9% per annum simple and not 14% per annum. I am however not changing the period for which interest has been granted.

8. While dealing with this Claim No.20 of interest, I also note that future interest has been awarded by the Arbitrator at 18% per annum simple from the date of publishing of the Award till payment. This rate of interest also, in accordance with the aforesaid Supreme Court judgments, I am reducing to 9% per annum simple.

9. Since the petitioner has been fair in only pressing three claims which, I have allowed, I leave the parties to bear their own costs.

10. Those claims of the Award to which objections have not been pressed are sustained and Award to that extent stands.

The petition stands disposed of.

VALMIKI J. MEHTA, J

January 27, 2010

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