

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

+ **O.M.P. No.178/2010**

Date of decision : March 23, 2010

M/S BHARGAVA & ASSOCIATES PVT. LTD. ... Petitioner.
Through: Mr.S.S.Jauhar, Advocate

VERSUS

RITES LTD. Respondent
Through:

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?

% **JUDGMENT(ORAL)**

VALMIKI J. MEHTA, J

1 By this petition under Section 34 of the Arbitration and Conciliation Act, 1996, the petitioner company comprising of architects doing consultancy work challenge the Award of the sole Arbitrator dated 8.12.2009. By the Award, the Arbitrator has dismissed all the claims of the petitioner/consultant on the ground that it was guilty of delay in performance of its obligations under the contract. The Arbitrator however, benevolently, has given a payment of 10% with respect to whatever work was done by the petitioner under the contract. The Arbitrator

has upheld the findings of cancellation of the contract after issuing show cause notices by the respondent.

2 The scope for hearing a petition under Section 34 of the Arbitration and Conciliation Act, 1996 is now well settled. This court does not sit as an appellate court in the sense that when two views are possible, this court does not interfere with the view as taken by the Arbitrator, if the view of the Arbitrator is one plausible view. Before any adjudicating authority, including an Arbitrator, there are always two versions which are put up by the two contesting parties. The Arbitrator is indeed entitled to adopt and prefer one particular stand/version as compared to another stand/version in the case. In doing so, the Arbitrator commits no illegality. Before this court interferes with the Award under Section 34 it has to be clearly established that the Award is illegal or violative of the contractual provisions or the findings are so perverse that it shocks the judicial conscience. Finding of fact is in the domain of the Arbitrator and this court ordinarily does not interfere with the finding of fact as arrived at by the Arbitrator.

3 The facts of the case are that the petitioner was awarded the work on 24.9.2004 of providing sub-consultancy services in connection with the construction of rail terminal at Anand Vihar, Delhi. Rites/respondent was acting for and on behalf of the Northern Railways in this case. The stand of the respondent was that since the petitioner was unnecessarily delaying the work,

the respondent issued show causes notices, and thereafter terminated the contract of the petitioner. The petitioner was aggrieved by this action of the respondent in terminating the contract and therefore filed claims in arbitration which have been decided by the impugned Award.

4 The Arbitrator has succinctly crystallized the stand of both the parties as under:-

“The main issues raised by the claimant during the arbitration proceedings were –

- a) The documents to be made available by respondent, namely, conceptual drawings in hard & soft copy and site plan marked with all relevant information, were not complete.
- b) Conceptual plans provided by respondent were not approved by client.
- c) Claimant had to do extra work to make modifications in the conceptual plans. This took considerable time and the development of architectural drawings could be started only after finalization of conceptual plans.
- d) No payment was made by respondent against the bills submitted by claimant for revising the conceptual drawings and for first instalment of the payment schedule.

The respondent, RITES countered the claims made by the claimant by asserting that–

- a) The conceptual plans provided to the claimant were adequate enough for them to start the preparation of final designs and drawings.
- b) The client, Northern Railway, had selected concept plan nos. C-6.1, 6.2 & 6.3 for the terminal building and had informed RITES that further development should be taken up accordingly.
- c) The claimant was taking excessive time to incorporate the changes and ready the final designs, due to which submission of the drawings to client was getting delayed.
- d) The claimant entered into infructuous correspondence with respondent to cover up their delay.
- e) With target dates slipping, respondent had no choice but to issue the show cause notice. Respondent further stated that claimant was afforded ample opportunity to discuss the matter even after issue of the notice, and the claimant also

agreed to a meeting with respondent but finally did not attend the meeting. Subsequently, respondent terminated the contract.”

5 After bringing out the respective stands of the parties, the Arbitrator has arrived at a finding of fact that the petitioner was guilty of delay in performance of his obligations under the contract. If we look at the contract, between the parties, the contract was to be completed in three stages totalling to 12 weeks i.e in three months. The first stage was of three weeks in which the final design had to be made. The second stage was of five weeks when submission was to be made to the local bodies and the third stage was of four weeks with respect to the tender/working drawings stage. The relevant clauses of the contract are Clauses 7 and 13.

6 The Arbitrator while deciding the disputes between the parties has arrived at the following conclusions.

“While reviewing the documents & drawings, it was observed that the conceptual plans provided by RITES had to be modified by BAPL due to changes wanted by the client Northern Railway. The design that emerged and which was finally approved by client was different in some respects from the original one but that is to be expected in a project of such nature and changes in the concept are bound to take place as the detailed plans and elevations are being developed. There is no denying the fact that BAPL did have to put in some extra work to incorporate the modifications in the original plans, but it could be considered part of the process of development of the final design.

According to terms of the contract with specific reference to clause 14.2, it was incumbent upon the claimant to comply with requests from RITES for making changes, modifications, deletions etc. in the design & drawings. The compensation for such work was to be decided by RITES depending on whether such additional work was substantial or minor. BAPL has claimed that the work done by them in modifying the plans was additional and they deserve to be duly compensated for that. RITES view is that modifications were minor and hence no extra payment was payable.

Nonetheless it is a fact that BAPL did commit resources, time and effort in developing the final design drawings and therefore deserve to be compensated for that. There also appears to be enough evidence on record to conclude that BAPL took exceedingly long time in making the changes asked for in the drawings and in submitting the final drawings to RITES. Due to their poor response RITES was compelled to issue the show-cause notice. In terms of the contract first payment of 10% was due on the submission of final design drawings. Since the drawings submitted by them in September, 05 were still not complete in so far as the utilities had not been incorporated in the drawings, strictly speaking BAPL were not entitled for the first instalment of payment. However, in my opinion, BAPL should be compensated for the portion of work done by them upto the submission of the drawings to RITES.”

7 An Award does not have to be very elaborate and detailed. The thought process of the Arbitrator must be apparent from the Award. In the present case, I find that the Arbitrator after crystallizing the respective stand of the parties has thereafter given his findings. Ordinarily, the Arbitrator could have referred to in detail the contents of the correspondence between the parties, but, I do not find that the Arbitrator has committed any illegality or perversity if a finding is arrived at and the contents of the correspondence between the parties are not reproduced. This I am saying because I have gone through the show cause notices sent by the respondent and replies given by the petitioner. If each of these issues as stated in the show cause notices and the replies thereto were dealt with in the Award, then, the Award would have been just far far more longer than as presently found. All that I need to say is that having gone through the show cause notices and the replies to the show cause notices and as filed in this court, I find that the Arbitrator has not erred in giving the gist in his findings. There were contentions and counter-contentions between both the parties. The fact of the matter however is that for a contract which ought to have been completed in three months from the date of the awarding of the same

in September, 2004, the same had not even been completed qua its first stage when the contract was terminated after even one year by the show noticed dated 6th October, 2005. I have not found any perversity at all in the findings of the arbitrator in holding that the respondent is justified in terminating the contract on account of the delays committed by the petitioner. The arbitrator has duly noted that during the contract, such as present, alterations in designs and other consequential actions are very natural, however, the Arbitrator found that the petitioner was engaging in unnecessary correspondence and was in fact not doing the main work which it was required to do under the contract.

8 In view of the above, I am not inclined to interfere with the impugned Award in my jurisdiction under Section 34. I am also not reproducing herein all the details as contained in the show cause notices and the replies thereto because this will make the present judgment very bulky. The Arbitrator was a fact finding body. The finding of fact of delay, in the facts of the present case, is such that this court cannot interfere with the impugned Award under Section 34.

9 The petition is therefore dismissed without any order as to costs.

VALMIKI J.MEHTA, J

March 23, 2010
ib/J