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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
#F-121 & 121A

+ **CS (OS) 169 of 2007**

M/S ANANT RAJ AGENCIES Plaintiff
Through: Mr. Neeraj Malhotra and Ms. Eshita
Baruah, Advocates.

Versus

DELHI DEVELOPMENT AUTHORITY & ORS. Defendants.
Through: None.

AND

+ **O.M.P. 112 of 2008**

DELHI DEVELOPMENT AUTHORITY Petitioner
Through: None.

Versus

M/S ANANT RAJ AGENCIES Respondent.
Through: Mr. Neeraj Malhotra and Ms. Eshita
Baruah, Advocates.

CORAM: JUSTICE S. MURALIDHAR

% **ORDER**
09.05.2012

1. These are objections under Sections 30 and 33 of the Arbitration Act, 1940 ('Act') filed by the Delhi Development Authority ('DDA') to the Award dated 10th January 2007 of the sole Arbitrator in the disputes between DDA and the Plaintiff M/s Anant Raj Agencies arising out of the award of contract of

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By:AMULYA
Instruction of 112 SFS flats in Katwaria Sarai by a letter of award dated 30th
CS (OS) No.169 of 2007 & OMP No.112 of 2008

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December 1983.

2. This Court has heard the submissions of Mr. Neeraj Malhotra, learned counsel for the Plaintiff. None appeared for DDA despite pass over. This Court has accordingly considered the objections filed by DDA.

3. The first objection raised is to the award under Claim No.1 which concerned the final bill submitted by the contractor. Under Claim No.1, one of the items was for recoveries made by DDA for excess rebate. A perusal of the impugned Award shows that although DDA agreed that a sum of Rs.3,11,746 was payable on the final bill of the Plaintiff contractor, before arriving at the said figure, DDA made deduction of Rs.1,36,767 on account of rebate and Rs.87,879.03 on account of deduction items. This was discussed in detail and it was held that the sum of Rs.87,879.03 on account of deduction items did not call for interference. As regards the recovery of Rs.1,36,767 on account of rebate, the learned Arbitrator held as under:

“After carefully considering the contentions of both the parties, I find that in order to avail the rebate, the Respondents ought to have prepared the running account bills on stipulated dates and ought to have released the payments in time. From R-40, I find that monthly payments have not been made regularly and even then the Respondents have availed the rebate. The Respondents are not entitled to avail the rebate when the payments have been delayed.

Further, the Respondents have wrongly availed the rebate on the estimated cost put to tender. After perusing R-40 and C-126, I find that the Respondents have availed excess rebate of Rs.60,544. The said excess amount of Rs.60,544 is payable to the Claimants.

Accordingly, a sum of Rs.60,544 is to be added to the credit of the Claimants.”

4. The learned Arbitrator then proceeded to consider the other recoveries made in the final bill including the penal rate recovery. It was held that DDA had failed to establish that there was any pilferage of the material at any stage, and, therefore, there was no basis for making penal recovery. Accordingly, a sum of Rs.26,618 was liable to be added to the credit of the Plaintiff. It was then held as under:

“After giving the effect of the above adjustments the balance now amount payable to the Claimants as per the final bill prepared by the Respondents is Rs.1,13,780.”

5. The first objection by DDA to the above determination is that a total sum of Rs.60,554 plus Rs.26,618 which worked out to Rs.87,162. There is no merit in the above objection since the amount awarded was after adjustment of the above two sums and not their aggregate.

6. The next objection of DDA was that the Plaintiff was required to submit its

own bills for the work executed during the month in terms of Clause 8 of the Agreement. It was submitted that the Plaintiff had no alternative option and the rebate reduced was in order and not refundable. As pointed out by the Plaintiff, Clause Nos.7, 8 & 9 had to be read together. DDA was not entitled to rebate as the delay was on its part. This Court finds no error having been committed by the learned Arbitrator in accepting the above plea of the Plaintiff.

7. The next objection is to the agreement Item Nos.3.9(b) and 3.9(f) for centering and shuttering of beams in the items of slabs for which the Plaintiff was awarded Rs.1,33,661. It is submitted that there is a separate item for beams in the Agreement and that the learned Arbitrator misconstrued the provisions of the contract in awarding the aforementioned sums. It is pointed out by the Plaintiff that the learned Arbitrator had rightly interpreted Item Nos.3.9 (b) and 3.9(f). The shuttering made for roof could not be treated as shuttering for beams. The shuttering for beams is left open after 48 hours. There is no dispute as regards the measurement. The view taken by the learned Arbitrator on Clause Nos.3.9(b) and 3.9(f) in the light of the CPWD Specifications, cannot be said to be erroneous.

8. The next objection is to agreement Item Nos. 3.13(a) and 3.13(b) for overweight steels. The learned Arbitrator awarded a sum of Rs.3,45,442 as

against Rs.3,50,756.75 as was claimed by the Plaintiff. The DDA's objection is that the payment had been earlier made on the basis of standard weight per meter and what was awarded to the Plaintiff was not in terms of the contract.

The learned Arbitrator considered the above aspect and observed as under:

"I have heard both the parties in detail and have considered their respective submissions made in this regard. It is admitted fact that as per the practice in DDA, steel is issued by weight and payment is made by applying the standard weight per meter length of steel measured. The Respondents admitted that the weight of steel paid has been calculated on the basis of standard co-efficient. The Respondents have failed to produce the Test Register for steel. The Respondents have also not disputed the total quantity of steel issued to the Claimants.

I have perused the quantity of steel claimed for payment i.e. 20900 Kg. of mild steel against 21230 Kg. issued and 823000 Kg. of tor steel against the 832080 Kg. issued. The Respondents have paid only 15139.55 Kg. of mild steel and 79203.38 Kg. of tor steel against agreement item No.3.13(a) and 3.13(b) respectively. There is no dispute regarding the quantity of steel issued by the Respondents to the Claimants. There is also no allegation on the part of the Respondents that there was any wastage or pilferage at the site. The difference in quantity issued and quantity paid has come because of the different methods adopted by the Respondents in issuing and measuring steel. The steel was overweight as is clear from the quantities issued and paid even after giving credit of permissible variations. The Claimant is

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entitled for the payment of difference of quantities due to overweight of mild steel and tor steel issued by the Respondents.”

9. The above reasoning and conclusion of the learned Arbitrator is consistent with the clauses of the contract and cannot be said to be erroneous. No ground is made out for interference.

10. The next objection as regards the agreement Item Nos. 11.8(a) and 11.8(b) was towards the length of SCI pipes and what was paid. A sum of Rs.19,320 was awarded to the Plaintiff. According to DDA, this claim did not reflect in the original reference made to the Arbitrator. It is stated that it is also against the CPWD Specifications where it was mentioned that pipes shall be measured after fixing them in running length.

11. On the above aspect, the learned Arbitrator observed as under:

“I have carefully perused the submissions of both the parties. I have examined the exhibits filed by both the parties. The Respondents have not denied that two methods have been adopted for issuing pipes and measuring pipe for payment. I am of the opinion that the mode of issue and measuring the pipes for payment should have been the same. I have examined the details of the quantity claimed by the Claimants in Exhibit C-125 which I find is in order. The amount as per the agreement rates and after contractors enhancement @ 53% work out as under:- .

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Item No.11.8(a)	Rs.11,624.34
Item No.11.8(b)	<u>Rs. 1,003.38</u>
	<u>12,627.72</u>
Add 53%	
Contractors enhancement	<u>6,692.69</u>
	<u>19,320.41</u>

Accordingly, I award a sum of Rs.19,320 under this claim.”

12. This Court is unable to find any error in the above determination of the learned Arbitrator.

13. Under Claim No.1 (Part-1), for payment toward idle labour, the Plaintiff had claimed Rs.8,82,000 at Rs.7,000 per day and the learned Arbitrator had awarded 4,27,000. The learned Arbitrator examined the documents and Cement Register and observed that the work was actually started on 9th May 1984 and the actual period of delay was 122 days. It was then held as under:

“On going through all the documents filed by both the parties, I am of the considered opinion that the fault in the present case is attributable to the Respondents. The work was delayed in handing over the site due to non-completion of piling work by the piling contractor, delay in handing over the architectural and structural drawings delay in removal of discrepancy in the alignment of pile foundation and non-availability of approach to site. Whenever there is a delay, the contractor is bound to suffer losses on account of infructuous expenditure & overheads. The Claimants in Appendix C-1 has given details of expenses per day as Rs.7,000

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which according to me is on higher side. The expenses per day onsite staff and establishment and on T&P and machinery should not be more than Rs.3,500 per day. Accordingly, amount payable to Claimants for 122 days works out to Rs.4,27,000. I, therefore, award a sum of Rs.4,27,000/- in favour of the Claimants under this part.”

14. It is obvious from the above para that the learned Arbitrator rendered the finding after examining the documents on record. There is no arbitrariness in awarding of Rs.3,500 per day for work of 122 days.

15. Claim No.1 (Part-3) was for straightening of steel bars. The learned Arbitrator has awarded Rs.4,03,588. This Court has already held that the work of straightening of steel bars does not form part of the contract and had to be paid for separately. The award in respect of Claim No.1 (Part-3), therefore, cannot be said to be erroneous.

16. As regards Claim No.1 (Part-5) for difference in cost of coarse sand the learned Arbitrator considered Additional Condition No.14 of the Agreement and the fact that DDA had not refuted the quantity and rate of coarse sand brought by the Claimant from other sources. The learned Arbitrator further considered that the quantity of coarse sand used in the work was 6000 Cu. Mt. i.e. 1000 trips as against the 2200 claimed trips. The learned Arbitrator

awarded the Claimant a sum of Rs.3,05,800 as against Rs.6,72,760 that was claimed. This Court is unable to find any error on the face of the award as regards the above claim.

17. Claim No.1 (Part-6) was for hire charges of centering and shuttering for suspended floors. As against the amount claimed i.e. Rs.3,80,000, the learned Arbitrator awarded Rs.2,40,000. Again, the learned Arbitrator examined various exhibits and noticed that in its letter dated 5th January 1995, DDA had admitted that there was shortage of steel. It had also not disputed the quantity and rate claimed by the Plaintiff. Nevertheless, the learned Arbitrator awarded the sum only at the rate of Rs.4 per day for 150 days for 80 sq.m. The said part of the impugned Award cannot be said to be suffering from any illegality.

18. Claim No.1 (Part-8) was for damages for the work executed beyond the stipulated time. According to DDA, the Plaintiff had applied for grant of extension of time under the relevant clause where it was voluntarily stated that they did not suffer any loss and damages due to delay in completion of work. It was pointed out by the Plaintiff that the work was delayed because of DDA and escalation was payable as a consequence thereof. The learned Arbitrator discussed this claim in great detail and accepted the plea of the Plaintiff that since they were hard-pressed and they had no option but to give an



undertaking as required by DDA. This plea was accepted by the learned Arbitrator, who held as under:

“The bare fact that in the absence of any such requirement the said undertaking was taken clearly proves the coercion. The Claimants stated that huge amount were due from the Respondents and if the Claimants had not agreed to give such letter the Respondents would not have finalized and released the payment due to the Claimants and it was under the financial duress, the Claimants were left with no other alternative than to give the said undertaking. They further stated that the present claim regarding the escalation is calculated on the basis of cost indices and as such no other evidence is required. Claimants stated that such as undertaking is even contrary to the records of the case as prior to giving the said undertaking and Claimants had time and again asked for compensation on account of delay and accordingly stated that such an undertaking cannot be used against the Claimants.”

19. The learned Arbitrator then went by the past indices and worked out the amount in great detail before awarding the sum of Rs.13,27,052. DDA has been unable to point out what precisely was the error in the above determination by the learned Arbitrator. The undertaking given was obviously not voluntary.

20. The other substantial claim is Part-21 of Claim No.1 for maintenance of staff and artisans till the handing over of the flats to the allottees. As against

Rs.5,10,000, the learned Arbitrator awarded the Plaintiff Rs.2,94,000. This was again a factual determination based on evidence on record. After examining the details given in Annexure-10, the learned Arbitrator held that the Plaintiff was entitled to claim what expended from 1st May 1988 to 31st January 1990. The learned Arbitrator did not accept the total claim as regards employees having to be engaged for the period when the flats had to be handed over to the allottees. The approach of the learned Arbitrator was a reasonable one to take.

21. Given the limited scope of interference by this Court in exercise of its jurisdiction under Sections 30 and 33 of the Act, as explained by the Supreme Court in *Union of India v. A.L. Rallia Ram AIR 1963 SC 1685* and *Arosan Enterprises Ltd. v. Union of India (1999) 9 SCC 44*, this Court is unable to be persuaded to interfere with the impugned Award. The objections of DDA are hereby rejected and the Award is made rule of the Court.

22. O.M.P. No.112 of 2008 and CS (OS) No.169 of 2007 are disposed of. The decree sheet shall be drawn up accordingly.

S. MURALIDHAR, J

MAY 09, 2012

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