

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

% *Date of Judgment: 20.02.2013*

FAO(OS) NO.100/2013 & C.M. No.2992/2013 (for stay)

VEDA RESEARCH LABORATORIES LTD. Appellant

Through: Mr. Rajesh Banati, Adv.

versus

SURVI PROJECTS Respondent

Through: None.

CORAM:

HON'BLE MR. JUSTICE SANJAY KISHAN KAUL

HON'BLE MS. JUSTICE INDERMEET KAUR

INDERMEET KAUR, J. (Oral)

1. Appellant is aggrieved by the order of the learned single Judge dated 07.11.2012 whereby the objections filed by him under Section 34 of the Arbitration and Conciliation Act, 1996 (hereinafter referred to as the said Act) impugning the Award dated 28.9.2006 had been dismissed.

2. Disputes between the appellant and the respondent arose out of an agreement dated 31.01.1998 entered into between the parties for the construction of a factory building of the appellant at Noida. Work was to commence on 01.2.1998 and was to be completed by 30.9.1998. It was valued at Rs.1,25,56,948 after adjusting a rebate of 2% of the value

of the work. The work could not be completed in time and time period of the work was accordingly extended. Four claims were raised by the claimant before the Arbitral Tribunal. According to him the work could not be completed on account of the delays and breaches of contract committed by the appellant which had led to the prolongation of the work; in spite of his communications dated 17.02.1998, 23.02.1998 as also meeting held on 06.3.1998, 06.5.1998 necessary facilities as requested by the claimant were not provided by the appellant. Appellant had filed a counter claim; submissions being that the claims of the claimant were baseless; work was only substantially completed; it was not fully complete; the appellant had to get the work completed through a third party.

3. Claim No.1 was on account of the total value of the work executed. The Arbitral Tribunal had noted that the certification by the Architect up to the 10th running bill and the 11th and 12th bills having been verified by the site engineer of the appellant which had been duly passed, an amount of Rs.1,23,04,565/- was payable under this head. TDS deductions and adjustments of mobilization advances had also been dealt with in detail. The evidence filed by the claimant which included two affidavits of one of its partner and the cross-examination conducted on this account as also the documents filed by the claimant in support of this claim had been adverted to. So also the evidence produced by the appellant. Testimony of each of these witnesses as also the amounts payable under the different running bills has been discussed. The submission of the appellant that a cash payment of Rs.6

lacs towards 10th running bill had been accepted by the claimant was rejected by the Arbitral Tribunal after an in depth analysis. It had been noted that business relations between the parties had become bitter; parties had gone for arbitration. Payment of Rs.5 lacs in cash to an employee in these circumstances would be implausible; the signature of Govind Sharma on these receipts was doubtful and un-corroborated. The submission of the learned counsel for the appellant that the report of the handwriting expert has not been obtained qua this payment which by itself would disentitle the claimant to the benefit of this amount was rightly rejected by the Arbitral Tribunal; report of a handwriting expert can only be one piece of evidence; there was otherwise sufficient evidence before the Arbitral Tribunal to reject the payment of Rs.6 lacs purported to have been made by the appellant. The learned single Judge has endorsed the finding on this claim and in fact in para 6 of the judgment has quoted the finding given by the Tribunal on this count. The facts and the evidence adduced on this count was appreciated in the correct perspective.

4. Claim No.2 was for unwarranted deductions in respect of six items and was raised by the claimant for the sum of Rs.12,03,455/-. Item No.1 was rejected which was qua the excavation of the surplus earth. For fixation of the steel windows, the Arbitral Tribunal awarded a sum of Rs.47087/-. The clauses of the contract had been adverted to; it was explicit that what had been quoted for and awarded to the appellant was the fixation of windows and as such the submission of the learned counsel for the appellant raised before the learned single Judge

and which has been raised even before this Court that the windows had been supplied by appellant and the claimant had only affixed these windows was rightly rejected. Under this claim item no.3 which was towards paintings, item no.4 towards sanitary works, item no.5 for the painting of the roof and steel windows and item no.6 for electric work were all noted to be supported by cogent evidence. Learned single Judge rightly did not interfere on this count either.

5. Claim No.3 was towards escalation. Clause 7 of the agreement has been pressed into service by the learned counsel for the appellant. A perusal of this clause shows that is limited. It is contained in a narrow compass. Escalation is not payable if it is on account of market fluctuations and governmental action. The Arbitral Tribunal had computed escalation at 9% for the prolongation of the work; the supply of the material was delayed, drawings from the Architect and decisions of the Architect were also not received in time. The escalation of 15% had not been agreed to but had been reduced to 9%. This claim also calls for no interference.

6. Claim No.4 was the return of the retention amount of Rs.5 lacs. This retention money was meant for one year which period had already expired; the appellant was to refund 50% of the retention money (in terms of the contract) on completion and balance 50% after expiry of the defect liability period. There was no dispute about the completion of the work; since there was also no direction in writing to remove any defect, which period had come to an end, the award qua this claim also did not suffer from any infirmity.

7. This court is not an appellate body. The scope of objections under Section 34 of the Act are limited; the scope of the next hierarchy which is an appeal under Section 37 of the said Act cannot enlarge the scope of the objections which have already been dealt with by the learned single Judge in detail. Where a reasoned Award has been passed by the Arbitrator there is little scope for interference as the Arbitral Tribunal is the sole judge of the quality as also quantity of the evidence and it is not for the court to take upon itself the task of being a judge on the evidence which has been adduced before the Arbitrator. Unless and until there is an error apparent on the face of the Award, the Award may not be interfered with.

8. Impugned order calls for no interference. Appeal is without any merit. Dismissed.

9. In view of the order passed in the appeal, the stay application has become infructuous, it is accordingly disposed of.

INDERMEET KAUR, J.

SANJAY KISHAN KAUL, J.

FEBRUARY 20, 2013
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