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

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28th July
Date of Decision: 1, 2017

+ **FAO (OS) 112/2017 and CM 19313/2017**

M/S. WIANXX IMPEX PVT. LTD.

..... Appellant

Through: Mr. Ratan K. Singh with Mr.
Aishwary Kr. Tiwari, Mr. Rajat
Bharadwaj and Ms. Somya
Priyadarshini, Advocates.

versus

**MODERN (INDIA) ARCHITECTS
(PVT.) LTD.**

.....Respondent

Through: Mr. Abhijat and Mr. Nikhil,
Advocates.

CORAM:

HON'BLE MR. JUSTICE J.R. MIDHA

HON'BLE MR. JUSTICE C. HARI SHANKAR

J U D G M E N T

1. The appellant has challenged the order dated 3rd March, 2017 whereby the learned Single Judge dismissed the appellant's objections to the arbitral award dated 10th November, 2016 under Section 34(2) of the Arbitration and Conciliation Act, 1996.
2. On 31st July, 2004, the appellant appointed the respondent as consultant for architectural and allied services for their project to construct a multi-dimensional hotel and business centre-cum-

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By:AMULYA

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multiplex at Plot No.39, Industrial Area, Site No.4, Madan Mohan Malviya Nagar, Sahibabad, Industrial Area, District Ghaziabad, Uttar Pradesh. The terms of appointment are recorded in the agreement dated 13th September, 2004. Disputes arose between the parties whereupon the respondent invoked the arbitration clause of the agreement by filing a petition under Section 11 of the Arbitration and Conciliation Act before this Court. Vide Order dated 25th April, 2007, this Court appointed Mr. Alakh Kumar as Sole Arbitrator to adjudicate the disputes between the parties. The respondent raised a claim of Rs.3,00,54,958/- and the appellant raised a counter-claim for Rs.154,56,00,000/-.

3. Vide award dated 10th November, 2016, the learned arbitrator held that the respondent completed the work upto Stage III and the appellant breached the agreement by not making payments within time. Learned arbitrator rejected the appellant's claim that the work performed by the respondent was deficient. The learned arbitrator held that the respondent was entitled to Rs.54 lakh upto Stage III out of which the respondents has already received Rs.11,70,000/-. The learned arbitrator awarded the balance amount of Rs.42,30,000/- along with the interest @ 18% per annum to the appellant.

4. The learned Single Judge held that the finding of fact by the arbitrator that the respondent had completed the work till Stage III are based on the evidence led and the material produced before the arbitrator. The learned Single Judge further held that the arbitrator had relied upon the various documents to show that the work was completed upto Stage III and the arbitrator's finding was neither

perverse nor patently illegal. With respect to the minutes of meeting dated 16th December, 2004, the learned Single Judge held that the said document cannot be held to be determinative of the controversy at hand. The learned Single Judge further held that they were sufficient material on record to indicate that the respondent had completed the work upto Stage III and the finding cannot be said to be based on no evidence at all. The relevant portion of the impugned judgement of the Single Judge is reproduced hereunder:-

“20. The arbitrator has found, as a fact, that Modern Architects had completed the work till Stage-III. The said finding being a finding of fact cannot be interfered with by this Court by reappraisal of the evidence lead and material produced before the arbitrator. A bare perusal of the impugned award indicates that the arbitrator had accepted the evidence produced by Modern Architects to establish the extent of work done.

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22. As mentioned above, a bare perusal of the impugned award indicates that the arbitrator had listed out various documents that were relied upon by Modern Architects to show that it had completed the work till Stage-III. It is not permissible for this Court to re-appreciate the evidence and to supplant its view over that of the arbitrator. This Court is also unable to accept that the arbitrator's finding that Modern Architects had completed the work till Stage-III is either perverse or unsupported by any evidence. Modern Architects had listed the documents indicating the work performed at each stage; the arbitrator had accepted the same. The minutes of the meeting dated 16.12.2004 referred to by Mr Garg is a disputed document and in any event it is only one of the many documents placed on record and cannot be held to be determinative of the controversy at hand. As stated hereinbefore, it is not open for this Court to re-examine and re-appreciate the evidence in these

proceedings. This Court is satisfied that the finding is not based on no evidence at all and there is sufficient material on record to indicate that Modern Architects had completed works upto Stage-III. Therefore, the finding of the arbitrator in this regard is final and warrants no interference in these proceedings.

23. There is no dispute that Wianxx had not paid the bills raised by Modern Architects for work done upto Stage-III. The arbitrator had found that the failure of Wianxx to do so constitutes a breach of the Agreement between the parties. The contention that the work performed by Modern Architects was deficient and wanting has not been accepted by the arbitrator. The finding of the arbitrator in this regard is final and since it is based on appreciation of evidence and material on record, the same cannot be interfered with.

24. It is also not disputed that Wianxx had altered its projections several times. The arbitrator had found the same to constitute a breach of the Agreement. Although Wianxx was entitled to give inputs and Modern Architects was obliged to carry out the changes, the same does not entitle Wianxx to change projections repeatedly. Thus, the arbitrator's finding that Wianxx had breached the Agreement cannot be held to be perverse or patently illegal.

25. In the aforesaid circumstances, the impugned award cannot be set aside on the grounds available under Section 34(2) of the Act and this Court declines to do so."

5. Learned counsel for the appellant urged at the time of hearing that the services rendered by the respondent were deficient and the respondent had not completed the work upto Stage III and respondent was not entitled to the amount awarded by the learned arbitrator. Reliance is placed on the minutes of meeting dated 16th December, 2004 to contend that the respondent had not submitted conceptual interior drawings till that date. It was further submitted that the interest of 18% awarded by the learned arbitrator is on a higher side and be

reduced.

6. Learned counsel for the respondent submitted that the finding of fact by the learned arbitrator based on evidence cannot be interfered in objections under Section 34 of the Arbitration and Conciliation Act. With respect to the rate of interest of 18% awarded by the learned arbitrator, learned counsel for the respondent submitted that the appellant did not raise any challenge to the same before the learned Single Judge.

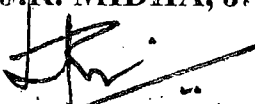
7. The findings of the learned arbitrator that the respondent completed the work upto Stage III; that there was no deficiency in the services of the respondent and that the appellant defaulted in making the payment to the respondent upto Stage III, are based on the evidence and cannot be said to be perverse or not supported by evidence. This Court agrees with the learned Single Judge that the findings of fact by the learned arbitrator cannot be re-appreciated under Section 34 of the Arbitration and Conciliation Act.

8. During the course of the hearing, it was put to learned counsel for the appellant whether the appellant appointed any other agency for completion of work upto Stage III and if so, what amount was paid to the said agency and whether any evidence was led on this aspect. Learned counsel for the appellant fairly conceded that neither any pleadings were made nor any evidence was led to show that any agency was appointed to complete the work upto Stage III or any amount was incurred by the appellant for completion of Stage III. In that view of the matter, there is no infirmity in the finding of the learned arbitrator and upheld by the learned Single Judge that the

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respondent completed the work upto Stage III. This Court is of the view that the interest awarded by the learned arbitrator does not warrant any reduction.

9. There is no merit in the appeal which is hereby dismissed. The pending applications are disposed of.


J.R. MIDHA, J.


C. HARI SHANKAR, J.

JULY 28, 2017
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