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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

ARBITRATION PETITION NO.1242 OF 2012

Max Aerospace & Aviation Ltd.	...Petitioner
V/s.	
The Airports Authority of India Ltd.	...Respondent

Mr.Rajesh Gehani with Mr.Vikas Khanchandani for the Petitioner.

Mr.Omprakash Jha with Mr.Himanshu Kode i/b The Law Point for the Respondent.

CORAM : R.D. DHANUKA, J.
DATE : 15TH SEPTEMBER, 2015.

P.C. :-

1. By this petition filed under section 34 of the Arbitration & Conciliation Act, 1996 the petitioner has impugned the arbitral award dated 26th April, 2010 rendered by the learned arbitrator rejecting the claims made by the petitioner. Some of the relevant facts for the purpose of deciding this petition are as under :

2. Pursuant to an advertisement issued by the respondent inviting Expression of Interest for construction of airport hangars on BOT basis, on 7th June, 2001, the petitioner submitted its bid. On 30th September, 2002 the petitioner issued unconditional letter of acceptance. On 19th December, 2002, the the parties entered into an agreement. On 20th January, 2003, the respondent handed over

possession of the land admeasuring 40 mtrs. X 25 mtrs. to the petitioner. There was a meeting held between the parties on 20th December, 2001 in which the respondent clarified that normally the permissible height would not be less than the height of the existing building nearby hangars of the proposed site. It was also clarified that for exact maximum permissible height, clause 2.3(a) of the Tender Documents may be referred wherein it had been clearly stated that the Concessionaire shall submit one set of necessary drawings to the Directorate of Operations of the respondent who would examine the operational matters, including permissible height and would issue the NOC. It is not in dispute that the minutes of the said meeting were forming part of the tender document.

3. The parties held another meeting on 22nd April, 2003. In the said meeting, the Regional Executive Director advised the members to submit the elevation of the site dimensions and other details and made it clear that the assessment would be made to find out the approximate height for the proposed hangars. The representative of the petitioner promised that it would submit the details at the earliest. On 29th April, 2003, the respondent informed the petitioner that as per the records available with it, the site elevation of existing Mesco Hangar Site at C.A. Juhu was 3.515 mtrs. above mean sea level (AMSL) as recorded in October, 1994 and that

the height of the existing structure of hangar was 20 mtrs. AMSL 16.35 mtrs. or 16.435 mtrs. AGL.

4. On 14th May, 2003, the Architect of the petitioner furnished the relevant documents to the respondent for grant of NOC for the height. On 26th August, 2003, the respondent informed the petitioner that its case was examined and informed that no height was permissible on the proposed site. The petitioner thereafter made further representation to the respondent.

5. On 4th November, 2003 the respondent informed the petitioner that the height was 13 mtrs.

6. It is not in dispute that the petitioner thereafter commenced the construction and completed the project within the time prescribed under the contract. The project was also put in operation within the time prescribed.

7. The dispute arose between the parties and the matter was referred to arbitration. In the notice invoking arbitration agreement, the petitioner had made claims, including for refund of the license fee paid by the petitioner in the sum of Rs.30,83,495/- for the period between 20th January, 2003 to 31st March, 2006. The respondent resisted the claims.

8. The learned arbitrator in the impugned award has rejected the entire claim. Learned counsel for the petitioner fairly submits that

the other claims for compensation which were made by the petitioner before the learned arbitrator and which were rejected have not been impugned in the arbitration petition.

9. Learned counsel for the petitioner invited my attention to the documents annexed to the petition and would submit that even according to the respondent there was substantial delay on the part of the respondent in granting approval of height. He submits that though there was delay on the part of the respondent, admittedly the learned arbitrator rejected the entire claim for refund of the license fee merely on the ground that there was no such provision in the contract.

10. Learned counsel for the respondent on the other hand invited my attention to clause 14.3 of the Special Condition of Contract and would submit that under the said provision, the respondent had granted lease land to the petitioner on payment of land licence fee which was to be paid till Commencement of Operations Date (COD) of the hangar. The parties had agreed that discounted licence fee shall be charged thereafter. He submits that thus the payment of licence fee was a fixed fee payable under the said clause 14.3 irrespective of any alleged delay in granting approval to the height. He submits that even if according to the petitioner there was any delay on the part of the respondent in approving the height, the petitioner would have made a claim for compensation for delayed

commencement of the use of the structure and no claim for refund of the licence fee could have been made. He submits that the learned arbitrator has interpreted the terms of the contract and has rightly rejected the claim.

11. Insofar as the other claims made by the petitioner, including the claims for compensation is concerned, he submits that since the other claims were not proved before the learned arbitrator, the same were rightly rejected. He submits that the petitioner has not even impugned that part of the award in the arbitration petition.

12. A perusal of the statement of claim clearly indicates that the petitioner had made a claim for refund of the licence fees on the ground of alleged delay on the part of the respondent. In my view, even if there was any delay on the part of the respondent in approving the height, the fact remains that the petitioner completed the project within the time prescribed in the contract. The petitioner has been operating such hangar as per the terms and conditions agreed upon by the parties.

13. In my view, even if there was any delay on the part of the respondent in granting approval to the height, the petitioner could not have made any claim for refund of fees which was a fix payment of licence fees payable under the contract. Though the petitioner had made some claim for compensation in the arbitral proceedings, since

the same were not proved before the learned arbitrator, the same were rightly rejected. The petitioner has not challenged that part of the award in the arbitration petition.

14. In my view, the interpretation of the learned arbitrator of the terms and conditions of the contract while rejecting the claim for refund of the licence fees is a possible interpretation and cannot be substituted by any other interpretation. In my view, the learned arbitrator has rightly rejected the said claim for refund of the licence fee.

15. The petition is devoid of merits and is accordingly dismissed. No order as to costs.

(R.D. DHANUKA, J.)

“Certified to be true and correct copy of original signed order.”