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

Judgment delivered on 10.03.2015

+ **FAO(OS) 93/2015 , CM 3731/2015 & CM 3732/2015**

**M/S NATIONAL HIGHWAYS AUTHORITY
OF INDIA**

..... Appellant

versus

M/S NCC-VEE (JV)

..... Respondent

Advocates who appeared in this case:

For the Appellant : Ms Tanu Priya Gupta with Mr Mukesh Verma

For the Respondent : Mr Krishna Vijay Singh

CORAM:

HON'BLE MR. JUSTICE BADAR DURREZ AHMED

HON'BLE MR. JUSTICE SANJEEV SACHDEVA

JUDGMENT

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BADAR DURREZ AHMED, J (ORAL)

1. This appeal has been filed against the impugned judgment dated 17.12.2014, whereby a learned Single Judge of this Court dismissed the objections under Section 34 of the Arbitration and Conciliation Act 1996 (hereinafter referred to as 'the said Act'), which had been preferred by the appellant. The objections were in respect of the award dated 24th November, 2012.

2. We need not go into the details, as the same have been set

out in the impugned judgment. The only point of controversy is with regard to the note after sub para (xi) of sub clause 70.3 of the conditions of particular application. The controversy was with regard to the manner, in which the price adjustment was to be given to the respondent. Elaborate formulae have been prescribed in the said sub clause 70.3 for adjustments of the labour component, the cement component, the steel component, the plant and machinery and spares component, the bitumen component and adjustment of other local materials.

3. Sub para (xi) of sub clause 70.3 reads as under:

“(xi) The following percentages will govern the price adjustment for the local currency portion (R) of the contract:

2. Plant and Machinery and Spares –P _p	20%
3. POL-P _f	10%
4. Bitumen – P _b	X%
5. Cement – P _c	Y%
6. Steel – P _s	Z%
7. Other Materials - P _m	50 – (X + Y + Z)%

Total	----- 100% -----
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{Note: X, Y, Z are the actual percentage of cost of bitumen, cement and steel respectively used for execution of work as per the Interim Payment Certificate for the month.)”

4. From the above sub para (xi) it is evident that percentages

ascribed to labour, plant, machinery and spares and POL are constant (fixed). Insofar as bitumen, cement and steel are concerned, the percentages are variable and have been depicted as X %, Y % and Z %. Insofar as other materials are concerned, the formula prescribed is $50 - (X+Y+Z)\%$. The total of all components is 100%. It is evident that the percentage of other materials is a balancing item. Therefore, it may be positive and it can also be negative. This is so, because the total must always be 100%.

5. Insofar as 'X', 'Y' and 'Z' are concerned the note appended to sub para (xi) stipulates that they are the actual percentages of cost of bitumen, cement and steel respectively, used for execution of work, as per the interim payment certificate for the month.

6. The entire controversy in the present case relates to the meaning of the expression 'cost' of bitumen, cement and steel. According to the learned counsel for the appellant the expression 'cost' denotes the quantity of bitumen, cement and steel used in a particular month multiplied by the base rate (i.e. the rate prevailing 28 days prior to the submission of the bid).

7. On the other hand, the contention raised by the respondent is that the expression 'cost' refers to the quantity of the bitumen, cement and steel used during a particular month multiplied by the prevailing rate in that month. This is the limited scope of the controversy in this case.

8. The Arbitral Tribunal has examined this aspect of the matter

in detail in paragraphs 57 to 85 of the award. The Arbitral Tribunal concluded that a plain reading of the note below sub clause 70.3 (xi) does not suggest that the cost of bitumen, cement and steel mentioned therein, has to be considered as the cost of these materials prevailing 28 days prior to the last date of submission of the bid. It was further concluded that on a joint reading of the relevant clauses and sub clauses, it was clear that the cost of bitumen, cement and steel to be considered in the said note was the actual/current cost and that contract does not mention that the definition of cost of this particular sub clause had to be understood differently.

9. We may also point out that in the general conditions of contract, Clause 1.1 (g) (i) defines 'the cost' to mean expenditure properly incurred or to be incurred, whether on or off the site including over and above charges properly allocated thereto and does not include any allowance of profit. The said definition does not refer to any base cost as the appellant wants us to interpret the said note.

10. We have also examined the judgment of the learned Single Judge. We find that the interpretation given by the Arbitral Tribunal is not an impossible view. Although, there may be some substance, in what the learned counsel for the appellant submits by way of interpretation of the said note, but that would only be one of the possible interpretations. Another possible interpretation is the one, adopted by the Arbitral Tribunal.

11. It is well settled that the interpretation of a term of contract is within the domain of the Arbitral Tribunal and if the Arbitral Tribunal interprets a particular clause in a particular manner, which is a possible interpretation, then the court ought not to interfere in its jurisdiction under Section 34 of the said Act. The only exception being where the interpretation results in a perversity and shocks the conscious of the Court, the latter eventuality has not happened in the present case.

12. In view of the foregoing, we do not find any reason to interfere with the impugned judgment or the award.

13. The appeal is dismissed. There shall be no orders as to costs.

BADAR DURREZ AHMED, J

SANJEEV SACHDEVA, J

MARCH 10, 2015

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