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IN THE HIGH COURT OF DELHI AT NEW DELHI

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O.M.P. No.474/2007

7th December, 2015

DELHI DEVELOPMENT AUTHORITY

..... Petitioner

Through: None.

versus

M/S JAI BHAGWAN GUPTA

..... Respondent

Through: None.

CORAM:

HON'BLE MR. JUSTICE VALMIKI J.MEHTA

To be referred to the Reporter or not?

VALMIKI J. MEHTA, J (ORAL)

1. This is a petition under Section 34 of the Arbitration and Conciliation Act, 1996 (hereinafter referred to as 'the Act') filed by the Delhi Development Authority (DDA) impugning the Award passed by the Arbitrator dated 27.04.2007. As per the grounds as contained in this objection petition, the petitioner/DDA impugns the Award with respect to claim nos.1, 2, 3 and 6 as also objects to the grant of interest by the Arbitrator. Objections have also been filed to awarding of claim nos.9, 10 and 12 in favour of the respondent towards damages awarded to the respondent for delays caused in completion of work by the petitioner.

2. As regards claim no.1 allowed by the Arbitrator, the petitioner has pleaded that the Award is without any reasons, and hence, hit by Section 31(3) of the Act. In my opinion, the Award with respect to claim no.1 cannot be said to be a non-speaking Award and for this purpose I reproduce the relevant portion of the Award with respect to claim no.1 as under:-

“Claim No. 1: Claimant claims refund/release of security deposit to the tune of Rs. 1 Lac made over by way of F.D.R.

While releasing the above claim, Claimants contended that stipulated period of work was nine months with date of start as 6-4-92 and date of completion as 5-1-93. However, the work could be completed on 2-11-94 due to the delays and lapses on the part of DDA in not providing drawings, designs and materials etc. in time. Claimants have filed various exhibits in support of their claim, vide which they had written to Respondents for delaying the decisions and not providing drawing and designs etc.

Respondents, while denying the claim stated that they had submitted the list of defects on 10-3-97 (Exhibit R-1) which the Claimants did not rectify.

I have perused all the documents exhibits and heard arguments of both the parties carefully and have reached to the conclusion that Respondents could not give any notice to the Claimants during execution of work and also during the maintenance period. It is also revealed that completion was recorded on 02-11-94 but the notice of defects was issued by them on 10-3-97 i.e. after more than two years. Since the notice of defects was issued after such a long time, I do not find any force in the argument raised by Respondents that Claimants could not rectify defects. Since no notice was issued during the execution of work and maintenance period, Respondents could not have withhold the Security Deposit.

Hence, I give an award of Rs. one Lac against this claim.”

3. A reading of the aforesaid portion of the Award pertaining to claim no.1 shows that the Arbitrator has given reasons for rejecting the notice issued by the petitioner for defective work on the ground that completion of work was recorded on 02.11.1994 and the notice of defects was issued more than two and half years later on 10.3.1997, and therefore, the contention of the petitioner for non-release of the security deposit on account of defective work was rejected. In my opinion, the reasons given with respect to the claim no.1 above are reasons in the eyes of law, and therefore, petitioner cannot object to claim no.1 awarding Rs.1 lakh on the ground that the Award is a non-speaking Award in this regard. Also, the contentions of the respondent with respect to defective work and the Notice dated 10.3.1997 have been duly considered and dealt with in the Award, and therefore, there is no reason to set aside the Award with respect to claim no.1 on the ground that the Award is a non-speaking one.

4. Claim no.2 allowed by the Arbitrator was for a sum of Rs.20,000/- on account of petitioner wrongfully withholding the amount of Rs.20,000/-. While dealing with the claim no.2, the Arbitrator has given the same reasons as given in claim no.1 that there was no reason for withholding the amount for the defective work because notice of defects has been given

more than two and half years after the completion of work. Clearly, therefore, Arbitrator has given his reasons and these reasons cannot be said to be illegal or perverse for this Court to interfere under Section 34 of the Act.

5. The next objection raised by the petitioner is with respect to claim no.3 of awarding Rs.11,360/-. Arbitrator has allowed this amount for interest by holding that there are delays in payment of running bills after having looked at various dates and calculations. On doing so the Arbitrator found that the respondent was in fact entitled to Rs.12,529/-, but since respondent had claimed only Rs.11,360/-, hence the Arbitrator awarded the amount of Rs.11,360/- under claim no. 3. The relevant portion of the Award with respect to claim no. 3 is as under:-

“Claim No. 3: Rs.11,360/- (Subject to verification) and unjustifiably recovered under the garb of rebate.

Claimants have raised the above claim on the ground that rebates for monthly payments, security deposit, EI/SI and final bill etc. as per provision of agreement were wrongly deducted from their bills. Since, Respondents had failed to fulfill the conditions for rebate they were not entitled to make any deductions on this account. Claimants also filed Annexure XY in support of their claim.

Respondents, while denying the claim argued that Claimants did not submit bill and the deduction of rebate was as per terms of agreement.

I have studied the relevant clauses of the agreement and carefully examined the exhibits filed by both the parties. I found that claim can be justified looking to the delays in payment on various occasions. I have computed the period of such delays and found that claim can be held justified to an extent of RS.12,529/-. However, Claimants have claimed Rs.11,360/- only. Therefore, I restrict the claim to Rs.11,360/-.

Hence, I give an award of Rs.11,360/- against this claim.”

6. There is no illegality or perversity in the Award with respect to awarding of Rs.11,360/- under claim no.3 inasmuch as the Arbitrator has himself made calculations and after considering the different dates of raising of bills and different dates of payments, he has accordingly awarded the claim no.3 for Rs.11,360/-. Therefore, since the Arbitrator has considered the relevant evidence and thereafter passed the Award, there is no illegality or perversity in the same for the same to be set aside by this Court.

7. The next objection raised by the petitioner is with respect to claim no.6 of respondent having been awarded by the Arbitrator higher cost on account of increase in the price of steel during the period of performance of the contract under Clause 10(C) of the agreement. The Arbitrator in this regard has noted that the respondent had specifically raised the claim by his Letter dated 16.07.1992 to which there was only a general and vague denial and hence the defence of the petitioner in the arbitration proceedings was

rejected. I agree with the conclusion of the Arbitrator not only because of the reasons given by the Arbitrator but also because petitioner is not justified in contending that respondent in the facts of the present case had to prove payment of increased cost of steel. Once steel has been utilized in the work and the cost of the steel has increased, obviously the respondent in such a case had to pay the increased cost of steel and the Arbitrator was hence justified in awarding Rs.23,040/- under claim no.6 for increase in the steel prices. Objection made by the petitioner with respect to Claim no. 6 is also therefore rejected.

8. With respect to claim of interest, I may note that it is now settled law that arbitrator has power to award pre-reference and post-reference interest in view of the Constitution Bench judgment of the Supreme Court in the case of *Secretary, Irrigation Department, Government of Orissa and Others Vs. G.C. Roy (1992) 1 SCC 508* which holds that by whatever name/heading called, once there is found to be wrongful retention of moneys by one person against the other, a person whose moneys have been wrongly withheld is rightfully entitled to be reimbursed under whatever name the same is called, be it damages or

respondent, and in fact, respondent had not issued the requisite notice for delays under the provisions of the contract.

11. The impugned Award deciding these claims for damages is in the following language:-

“After having carefully examined all aspects, documents, submissions and averments raised by both the parties, I have arrived at a conclusion that Respondents could not prove their defence and mere denial of claim without any reference to substance holds no good. I, therefore, find that claims merit considerations for award for the reason that Respondents committed breach of contract for delay in completion. Hence, a sum of Rs.8,15,000/- is awardable which amount shall cover the cost of claims under claim No.9, 10 and 12.

Therefore, I award a sum of Rs.8,15,000/- against claim No. 9, 10 and 12.”

12. In my opinion, the above discussion in impugned Award for awarding damages clearly falls foul of the law inasmuch as the Award with respect to the claim nos.9, 10 and 12 which have been awarded is by a non-speaking Award. As per Section 31(3) of the Act, the award of the arbitrator has to be a speaking Award. Speaking award means giving reasons as to why the conclusion given by the arbitrator is arrived at. The aforesaid portion of the impugned Award whereby damages have been awarded in favour of the respondent against the petitioner cannot be said to be

containing reasons, and which are *sine quo non* in law for an award to be legally valid. Therefore, so far as the Award pertaining to claim nos.9, 10 and 12 of the impugned Award granting a sum of Rs.8,15,000/- against the petitioner is set aside and so far as these claims are concerned, the matter is remanded back in arbitration proceedings for passing a fresh Award which shall be a speaking Award as required by law.

13. In view of the above, the claim petition is dismissed with respect to all the objections except objections with respect to claim nos.9, 10 and 12, and Award with respect to which claim nos.9, 10 and 12 is set aside and the matter is remanded back in arbitration proceedings for these claims to be decided afresh by passing a speaking Award.

DECEMBER 7, 2015
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VALMIKI J. MEHTA, J.