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

% Judgment delivered on: 01.05.2015

\+ **FAO (OS) 243/2015 & CM No.7983/2015**

DELHI STATE INDUSTRIAL INFRASTRUCTURE & DEVELOPOMENT CORPORATION .... Appellant

versus

M/S ROSHAN REAL ESTATES PVT. LTD. ..... Respondent

Advocates who appeared in this case:

For the Appellant : Mr Moni Cinmoy, Advocate
For the Respondent : Mr Sandeep Sharma, Advocate.

CORAM:-
HON'BLE MR JUSTICE BADAR DURREZ AHMED
HON'BLE MR JUSTICE SANJEEV SACHDEVA

JUDGMENT

BADAR DURREZ AHMED, J (ORAL)

CM No.7982/2015 (exemption)

Exemption is allowed subject to all just exceptions.

CAV. No.437/2015

The learned counsel for the respondent/Caveator is present

The caveat stands discharged.

FAO (OS) 243/2015 & CM No.7983/2015

1. This appeal is directed against the order dated 05.02.2015 passed by a learned Single Judge of this Court in OMP 1671/2014. The said OMP was a petition under Section 34 of the Arbitration & Conciliation Act, 1996 (hereinafter referred to as "the said Act") and was in respect of an Award dated 12.09.2014 passed by a learned arbitrator. The respondent had been awarded the work for construction of Academic

Building, Fashion Centre and Hotels at National Institute of Fashion Technology, Hauz Khas Institutional Area, New Delhi by a Letter of Acceptance of Tender dated 06.04.2010. The project did not take off. The case of the respondent was that because of the delays in sanctioning of drawings etc., the respondent incurred costs and damages as also loss of profit. The learned arbitrator held in favour of the respondent and against the petitioner.

2. The only point which requires our attention in this appeal is with regard to the quantum of loss of profit. There is no dispute that some loss of profit was occasioned to the respondent. The dispute is with regard to the quantum. According to the appellant, the learned arbitrator had, merely on the basis of an estimate, which was not supported by any evidence, awarded 2% of the value of the work as the loss of profit. The contract value was Rs 27,40,70,627/- and 2% of the same came to Rs 5,41,81,412/-. This is what was awarded by the learned arbitrator.

3. On this issue of 2% of the contract value being awarded on account of loss of profit, the learned Single Judge held as under:-

> "14. It is seen that the aforementioned decision was not in the context of challenge to an Award under Section 34 of the Act. The scope of interference by the Court with an arbitral Award has been considerably narrowed down by the Supreme Court in several decisions, including ***Oil and Natural Gas Corporation Ltd. v. Western Geco International Ltd. (2014) 9 SCC 263*** and ***Associate Builders v. Delhi Development Authority 2014 (13) SCALE 226.*** None of the said decisions have been discussed in the aforesaid

> decision of the Madhya Pradesh High Court in ***Mukesh Kumar Singhal*** *(supra)*[1]**.** In any event, the Court finds that the learned Arbitrator has adopted a reasonable approach after noting that the Respondent did deploy personnel and machinery pursuant to the award of the work.
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> 15. The Court does not find any merit as regards the objection to Claim No. 2 on account of losses and damages due to idling of engineering staff, establishment, watch and ward is concerned. The Arbitrator adopted a reasonable yardstick in proceeding to award an amount accordingly. The determination by the learned Arbitrator of the other claims of the Respondent also does not call for interference. The impugned Award is neither against the public policy of India nor shocks the judicial conscience warranting interference under Section 34 of the Act."

4. As pointed out above, it is the case of the appellant that in the absence of any evidence, the learned arbitrator could not have awarded 2% of the contract value only on the basis of an estimate on account of loss of profit. On the other hand, Mr Sandeep Sharma, appearing on behalf of the respondent submitted that the claim was to the extent of 10% of the contract value. He further submitted that an OMP has also been filed by him challenging this aspect of the matter that the learned arbitrator has not awarded 10% of the contract value but has only awarded 2% of the contract value. That petition is OMP No.44/2015 which is pending before the learned Single Judge.

5. Insofar as the present appeal is concerned, we do not find any

[1] 2006 (3) RCR (Civil) 180.

infirmity either in the conclusion arrived at by the learned arbitrator or by the learned Single Judge. It is very clear that there is no dispute with the finding that there was a loss of profit occasioned on account of the acts of omission/commission on the part of the appellant. The only dispute is with regard to the quantum of the loss of profit. As pointed out above, the respondent's claim of 10% of the contract value that has been rejected by the learned arbitrator on the ground that the stand taken by the respondent is ambivalent in the sense that at one point of time the respondent had even gone to the extent of claiming 20% of the contract value. Therefore, the learned Arbitrator rejected the claim of percentage of loss of profit as set forth by the respondent. There being no other quantifiable measures for arriving at a figure, the learned Arbitrator then estimated a figure on the basis of 2% of the contract value assuming that normally the profit margins were within the range of 5% to 7%. We feel that the appellant cannot have a grouse with the quantification of 2% of the contract value as the loss of profit. The figure arrived at by the learned Arbitrator and confirmed by the learned Single Judge is not unreasonable and, as such, would not shock the conscience of this Court. Therefore, in our view, no interference is called for.

6. The appeal is without any merit. The same is, therefore, dismissed. There shall be no order as to costs.

BADAR DURREZ AHMED, J

SANJEEV SACHDEVA, J

MAY 01, 2015/st