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IN THE HIGH COURT OF DELHI AT NEW DELHI

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O.M.P. 1055/2013

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Date of decision : 21st September, 2015

UNION OF INDIA

..... Petitioner

Through: Dr. Ashwani Bharadwaj, Advocate.

versus

S KUMAR MULTI PRODUCTS PVT LTD

..... Respondent

Through: Mr. S. Ravi Shankar, Ms. Sangita
Singh and Mr. C.M. Goyal,
Advocates.

CORAM:

HON'BLE MR. JUSTICE J.R. MIDHA

JUDGMENT(ORAL)

1. The petitioner awarded the contract for supply of MPCM stickers to the respondent for the year 2009-2010. The total value of the contract was Rs.44,26,377/-. The respondent supplied the MPCM stickers to the petitioner. However, there was delay in supply and therefore, the petitioner levied penalty and withheld the payment of Rs.35,15,939/- whereupon the respondent invoked the arbitration.

2. The learned arbitrator has passed an award holding that there was no justification for the petitioner to levy the penalty for the delayed supply and withholding Rs.35,15,939/-. The learned arbitrator held that the entire supplies were received by the petitioner without any protest and the petitioner has not suffered any loss due to the delayed supplies. Learned arbitrator further held that no mandatory notice was issued or served upon respondent before invoking the penalty clause and withholding the amount.

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The learned arbitrator therefore held that petitioner's action of levying penalty and withholding the payment to be unjustified. Learned arbitrator awarded Rs.35,15,939/- along with interest @ 15% per annum from the date the amount became due.

3. The petitioner has challenged the impugned award on various grounds, *inter alia*, that the respondent had failed to make the delivery in time; the petitioner validly levied the penalty; time was the essence of the contract; the arbitrator relied on file notings which are a part of the decision making process and only the final decision by the competent authority is to be considered; the respondent was not entitled to interest; the conditions of contract cannot be resiled by the parties, and the award was in contradiction with the express terms of the agreement. Learned counsel for petitioner submits that the rate of interest awarded by learned arbitrator is highly exorbitant. It is submitted that the learned arbitrator should not have awarded interest more than bank rate of 9% per annum.

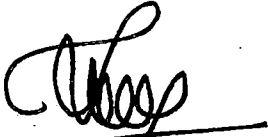
4. No ground for interfering in the award is made out under Section 34 of the Arbitration and Conciliation Act. Even on merits, no case for interference is made out considering that the petitioner received the entire supply without any protest; the stickers meant to be affixed on the speed post and other articles of postal department were used by the department and no loss or damage has been proved by the petitioner. However, the interest awarded by the learned arbitrator is certainly exorbitant.

5. At this stage, learned counsel for respondent on instructions from the respondent agrees to claim *pendente lite* and future interest @ 9% per annum from the petitioner. The consent of the respondent is taken on record that the respondent agrees to claim *pendente lite* and future interest @ 9% per annum from the petitioner.

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6. The petition is dismissed. However, the respondent shall remain bound by the statement made before this Court that the respondent restricts his claim to Rs.35,15,939/- along with *pendente lite* and future interest @ 9% per annum.

7. Copy of this order be given *dasti* to counsels for the parties under signature of Court Master.


J.R. MIDHA, J.

SEPTEMBER 21, 2015

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