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

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**OMP No. 374/2015**

**14<sup>th</sup> July, 2015**

DSC LTD.

..... Petitioner

Through: Mr. Sushil Kr. Kabra, Adv.

versus

EARTHCON SYSTEM (I) PVT. LTD.

..... Respondent

Through:

**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') challenging the Award passed by the sole Arbitrator on 4.3.2015. By the impugned Award, the Arbitrator has allowed the claim petition and granted amounts to the respondent herein, claimant in the arbitration proceedings, for the value of the work done as also interest thereon.

2, The arbitrator framed the following issues:-

“Issue no.1. Whether the Statement of Claim has been instituted in accordance with law and whether Mr. Rajiv Goel who has signed the claim petition is duly and

authorized to institute, sign and verify the Statement of Claim on behalf of the claimant?

Issue no.2. Whether the claims made by the claimant in the claim petition arise out of two separate and independent work orders/Purchase orders relating to the same projects issued by the respondent, if yes, whether the present arbitration proceedings arising out of claims which are based on two separate independent work orders/Purchase orders are maintainable?

Issue no.3. Whether the claimant is entitled to a sum of Rs.30,67,306/- on account of the work executed and supplies made by it under the work orders dated 14.07.2009 and 06.02.2010 and Purchase Order dated 20.03.2010?

Issue no.4. Whether the claimant is entitled to interest @ 18% p.a. w.e.f. the date on which the amount became due till the realization of amount, inclusive of pendente lite and future interest at the same rate?

Issue no.5. Whether the claimant is entitled to the damages of Rs.5,00,000/- on account of harassment suffered by it due to delayed payment of bills?

Issue no.6. Whether the claimant is entitled to a sum of Rs.5,00,000/- towards litigation cost?"

3. The Arbitrator then notes in the impugned Award that petitioner herein, respondent in the arbitration proceedings, has not cross-examined the witness of the claimant that no amount as claimed is payable. Arbitrator also notes that petitioner herein in spite of being given several opportunities did not lead evidence and ultimately the right of the petitioner herein to lead evidence was closed. Hence the claimant in the arbitration proceedings, respondent

herein, proved its case and consequently the Arbitrator allowed the claim with respect to the work executed by the respondent herein under the Work Orders dated 14.7.2009 and 6.2.2010 and the Purchase Order dated 20.3.2010. While awarding Claim No.1 the Arbitrator has noted the exact measurement of work which was done as per the petitioner herein, and for such measured work only Arbitrator has allowed the Claim No.1. With respect to Claim No.1 Arbitrator awarded an amount of Rs.25,81,566/- for the work done. Arbitrator has thereafter awarded interest at 9% per annum and which in the opinion of this Court is a reasonable rate of interest.

4. The grievances of the petitioner herein are two-fold. Firstly, it is argued that so far as the Purchase Order dated 20.3.2010 is concerned, there was no arbitration clause and hence the Arbitrator could not have passed an Award with respect to disputes which were not covered under the Arbitration Agreement.

5. This contention urged on behalf of the petitioner is misconceived because it is noted that disputes were referred to an Arbitrator pursuant to Section 11 petition filed in this Court being Arb. Petition No. 60/2013 and the Arbitrator has acted pursuant to the order of this Court dated 21.3.2013 referring the disputes to arbitration. This order dated 21.3.2013 has achieved finality. Whatever disputes were specifically referred to arbitration have only

been decided by the Arbitrator and therefore the decision under Section 11 of the Act operates as *res judicata* against the petitioner, and petitioner cannot contend that the Arbitrator was not competent to decide the disputes referred to the Arbitrator and accordingly decided by the Arbitrator. This argument urged on behalf of the petitioner therefore is hence rejected.

6. The second grievance of the petitioner is that the rate of interest which has been awarded has been awarded from a date which has no rationale or basis being 30.11.2011. However I note that the Arbitrator has rightly taken this date being the commencing date for payment of interest because part payment was made by the petitioner to the respondent herein on 30.11.2011 meaning thereby as on 30.11.2011, work was done, and payment was due to the respondent herein from 30.11.2011.

7. In view of the above, I do not find that the Arbitrator has committed any violation of law or violation of provisions of contract or that the Award is perverse for this Court to interfere with under Section 34 of the Act.

8. Dismissed.

**JULY 14, 2015**  
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**VALMIKI J. MEHTA, J.**