

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

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Judgment reserved on: 10th August, 2015
Judgment delivered on: 01st September, 2015

+ **FAO(OS) 438/2015 & CM No.14256/2015 (stay)**

UNION OF INDIA

.... Appellant

versus

M/S N N BUILDCON PVT. LTD.

.... Respondent

Advocates who appeared in this case:

For the Appellant : Ms Arti Bansal, Advocate.
For the Respondent : Mr V.K. Jhanji, Sr Advocate with Ms Deekshal Kakar
and Ms Jyoti Mendiratta, Advocates.

CORAM:-

HON'BLE MR JUSTICE BADAR DURREZ AHMED

HON'BLE MR JUSTICE SANJEEV SACHDEVA

JUDGEMENT

SANJEEV SACHDEVA, J

1. This appeal has been filed by the appellant impugning the order dated 21.04.2015 whereby the petition under Section 34 of the Arbitration & Conciliation Act, 1996 (hereinafter referred to as 'the Act') filed by the appellant against the Award dated 28.11.2014 has been dismissed.

2. The learned counsel for the appellant submitted that though objections had been filed to the entire award, however, the appellant is now

restricting the challenge only to Claim No.5 and is not impugning the Award in respect of the other claims.

3. Under Claim No. 5, the respondent had claimed bonus for completion of the work prior to the stipulated period for the contract. It is contended by the counsel for the appellant that admittedly, there was a delay in completion of the work, which as per the Arbitrator was attributable to the appellant and as such, escalation was awarded to the respondent for the delay period. It was contended that as there was an admitted delay in the completion of the work, so the claim for bonus was not sustainable inasmuch as admittedly the work had been carried on beyond the original stipulated date of the completion of the contract.

4. The date of start of work as stipulated by the contract was 05.10.2007. The stipulated date of completion was 04.12.2008. The stipulated period of completion was mentioned as 14 months. The actual date of completion was 11.05.2009.

5. As per the provisions of Clause 2A of the contract, the contractor is entitled to bonus @ 1% of the tendered value calculated on day-to-day basis subject to maximum of 5% for completing the work earlier to the stipulated date of completion.

6. The work that was stipulated to be completed on 03.12.2008 was actually completed on 11.05.2009 with a delay of 5.3 months. The Arbitral Tribunal on appraisal of the evidence and the material placed before it, held

that the scope of the work had been increased considerably and under Clause 12 of the contract, the contractor was entitled for additional time of four months. There had been further hindrances because of various reasons attributable to the appellant leading to a delay of 12.04 months because of the said reasons. The Arbitral Tribunal in great detail examined the various hindrances and the periods during which the hindrances occurred and returned a finding of fact that the sum total of all the hindrances worked out to 9.7 months i.e. 4.2 months on account of additional work and 4.7 months as admitted by the appellant for various reasons plus additional 23 days as calculated by the Arbitral Tribunal. The Arbitral Tribunal thus worked out that the work had been completed with a delay of 5.3 months over and above the original stipulated date of completion and by excluding the period of 5.3 months out of 9.7 month, the contractor had completed the work ahead of time by 4.4 months. The Arbitral Tribunal accordingly found the claimant entitled to 4.4% bonus on the tendered value of the work.

7. We are of the view that the Arbitral Tribunal has correctly interpreted the bonus provision and applied the principles of calculation of the bonus. If the stipulated period awarded to the contractor for completion of the work, as in the present case, was 14 months then the contractor was entitled to complete 14 months for completion of the work. If the commencement of the work is delayed or there are hindrances in the completion of the work, which lead to a delay of a particular period, then the period by which the commencement is delayed and/or the period during which the hindrances occurred have to be excluded from the period stipulated for

completion of the work. The total period available to the contractor to complete the work would be the stipulated period of completion plus the additional period during which the hindrances occurred. If after exclusion of the delay period so computed the work is completed by the contractor in a period lesser than the stipulated period for completion, the contractor would be entitled to bonus.

8. In the present case, the period of completion available to the contractor was 14 months. Because of additional work awarded to the contractor, the contractor would be entitled to additional time of four months i.e. the total time available to the contractor to complete the originally stipulated work and the additional work was 18 months. In addition, the contractor would be entitled to the benefit of the time during which delay occurred on account hindrances caused by the employer. In the present case, the delay in completion of the work as held by the Arbitrator is 5.3 months only. While computing the period taken by the Arbitrator to complete the work, the period of hindrances and delay have to be excluded from the time taken by the contractor. The Arbitrator has accordingly worked out the period of delay comprising of hindrances as 9.7 months from which 5.3 months have been excluded and the balance left was 4.4 months. This period of 4.4 months will enure to the credit of the contractor and clearly, the contractor has completed the work in a period less than the period available to the contractor. The originally stipulated period available to the contractor was 14 months and the period of hindrances (including time for extra work) as worked out was 9.7 months thereby totaling to 23.7

months. The work has been completed with a delay of 5.3 months. This added to the stipulated period of 14 months would make it 19.3 months. If this is excluded from the total period as available to the contractor (i.e. 23.7 month), the balance left is 4.4 months.

9. As per Clause 2A, the contractor would be entitled to bonus if the work is completed ahead of the stipulated date. Clearly, the Arbitral Tribunal has correctly computed the period and has rightly held that the claimant was entitled to bonus. We find no infirmity in the impugned judgment whereby the learned Single Judge has affirmed the findings of the Arbitral Tribunal and dismissed the objections raised by the appellant.

10. In view of the above, we find no merit in the appeal. The same is accordingly dismissed leaving the parties to bear their own costs.

SANJEEV SACHDEVA, J

BADAR DURREZ AHMED, J

September 01, 2015
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