IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

ARBITRATION PETITION NO. 734 OF 2016

Union of India .....Petitioner

**IN THE MATTER BETWEEN:**

Union of India ......Petitioner
(Orig. Respondent)

V/s.

M/s. EMCO Agencies .....Respondent
(Orig. Claimant)

* * * * * *

Mr. Yashpal Jain, Advocate for the petitioner.

Mr. Yogendra Singh i/by. Aurish Legal, Advocate for the respondent.

**CORAM :- SMT. R.P. SONDURBALDOTA, J.**
**DATED :- 19TH OCTOBER, 2016.**

**P.C. :-**

1). This petition filed under Section 34 of the Arbitration and Conciliation Act, 1996 challenges the Award dated 12th September, 2015 by the sole Arbitrator directing the petitioner to pay a sum of Rs.8,02,914.34/- together with interest at the rate of 12% p.a. from 12th January, 2013 till the date of the Award i.e. 12th September, 2015 and future interest at the rate of 18% p.a. till payment.

2). The dispute in the present petition, arose over work order awarded to the respondent by the petitioner being Work Order No. 8918/11/E8 dated 29th June, 2011. The Work Order was issued at its tender items rate of Rs.39,36,372.58/- for completion of repair work of toilet and kitchen in 24 flats in Harbour Heights Building in Colaba. The work order was to be completed within a period of 6 months commencing from 7th July, 2011. The petitioner made only 7 flats available to the respondent for the repair work. The respondent had therefore pointed out to the petitioner that the work in respect of the remaining 17 flats were being delayed due to non-availability of site. The petitioner then extended the time of completion of contract upto 31st May, 2012. The parties had agreed that, no claim or compensation would be paid by the petitioner in respect of the extension granted. On 9th April, 2013 the respondent determined the contract in part i.e. towards the balance work in respect of the 17 flats that had remained unexecuted and claimed the following amounts from the petitioner under various heads.

| Claim No. | Short Description | Claimed Amt. In Rs. |
|---|---|---|
| 1 | Work done remains payable | Rs.2,00,000.00 |
| 2 | Refund of Security Deposit and EMD and deposits | Rs.1,00,000.00 |

| | | |
|---|---|---|
| 3 | Material procured but could not be consumed | Rs.7,40,000.00 |
| 4 | Loss of Advance | Rs.90,000.00 |
| 5 | Loss of Profit | Rs.2,75,037.00 |
| 6 | Interest of delayed payment | Rs.50,000.00 |
| 7 | Escalation | Rs.1,20,000.00 |
| 8 | Underutilization of Overheads | Rs.7,64,180.00 |
| 9 | Underutilization of Labour force | Rs.17,63,489.00 |
| 10 | Loss of business opportunities | Rs.5,87,829.00 |
| 11 | Interest 24% p.a. | To be calculated |
| 12 | Cost | Rs.2,00,000.00 |

3). As recorded in the arbitral Award, Claims-1 and 2 were settled and the petitioner had agreed to pay and the respondent to accept a sum of Rs.1,68,801.34/- towards Claim-1 and a sum of Rs.1,32,350/- towards Claim-2. Further, Claims-6, 7 and 10 were withdrawn by the respondent. Consequently, these five claims went out of consideration of the Arbitrator. Of the remaining claims, the learned Arbitrator awarded only three, i.e. Claim-3 “For the material procured but could not be consumed”, Claim-11 “Interest @24% p.a.” and Claim-12 “For Costs”. As regards the interest, the learned Arbitrator has reduced the award of interest to 12% p.a. to be paid not from the demand of the respondent but from a subsequent date and the post-award interest to be paid at 18% p.a. The petitioner has been directed to pay costs quantified at Rs.2,00,000/- to the respondent. The last two claims being completely at the discretion of the learned Arbitrator, there cannot be any interference with the same by this Court in its judicial enquiry under Section 34 of the Arbitration Act.

4). That leaves Claim-3 to be considered which is "for material procured but could not be consumed". The respondent in his Statement of Claim had stated that, it had procured materials worth Rs.12,00,000/- being wash-basins, tiles, flush-tanks, deco grills, aluminium channels including E/M materials at site which was to be consumed for the work under the contract. The petitioner had released part payment of Rs.4,60,000/- towards it. Therefore, according to the respondent, the balance amount payable was of Rs.7,40,000/-. The reply to this claim of the petitioner as stated in the written statement was "All the materials procured by the Claimant as on the date of the payment have been paid which has become property of the respondent and there is no loss to the claimant, hence claim is not agreed to". Before the Arbitrator, however, the petitioner had admitted not only its liability to make the payment for unused material but also the quantum of payment. According to the petitioner, only an amount of Rs.2,25,689.32/- is due and payable towards the Claim 3. Mr. Jain, the learned Advocate appearing for the petitioner, sought to revert to the claim in the written statement by stating across the bar that, the entire amount has already been paid to the respondent. In view of the subsequent admission, as has been rightly held by the learned Arbitrator, the claim of the petitioner that the entire amount has been paid and hence there is no liability under the claim cannot be accepted. The Arbitrator, on appreciation of the material before it, has held that the evidence produced by the respondent has indicated that the value of the material received by the respondent was of Rs.1,68,673/-. The documents to support this amount, at Exhibit-C-51 to Exhibit-C-57, were not disputed by the petitioner. Taking these amounts into consideration, the learned Arbitrator has awarded a sum of Rs.5,01,763/- to the respondent. This being fair and plausible view of the learned Arbitrator, requires no interference at the hands of this Court. It was sought to be argued by Mr. Jain, that the amount of Rs.5,01,763/- awarded by the learned Arbitrator would include the price of the material already utilised by the respondent and therefore any payment made would amount to double payment to it. The petitioner has not even made an attempt before the learned Arbitrator, much less, before this Court to establish as to how much of the amount out of Rs.5,01,763/- was towards the price of the material used.

5). The second argument which is also sought to be advanced is that the petitioner is not liable to pay any interest to the respondent because as required under Clause-16A of the agreement, the respondent has not submitted the final bills to the petitioner at any point of time and the bills were produced for first time before the learned Arbitrator. Since the bills were not produced before the petitioner, the liability to pay interest does not arise. There is no dispute that the bills were produced before the learned Arbitrator. Besides, the learned Arbitrator has not awarded interest from the date of the claim made by the respondent but from a much subsequent date. In the circumstances, there is no infirmity whatsoever in the impugned order. Hence, the petition is dismissed.

6). With the dismissal of the petition, the Notice of Motion does not survive. The same is accordingly disposed off.

(SMT. R.P. SONDURBALDOTA, J)