IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
ARBITRATION PETITION NO. 729 OF 2016

You Broadband India Private Limited (formerly known as You Broadband and Cable India Limited) having its address at Plot No. 54, Marol Co-op Industrial Estate, Makwana, Andheri (E), Mumbai-400 059. ......Petitioner/ Orig. Respondent

V/s.

Cozy Interiors Pvt. Limited Having its address at Adhyaru Industrial Premises Co-operative Society Limited, Unit No. 205, 2nd floor, Sun Mill Compound, Lower Parel, Mumbai-400 013. ....Respondent/ Orig. Claimant

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Mr. Gautam Ankhad i/by. Hemant Sethi, Advocate for the petitioner.
Mr. Vishal Kanade a/w. Ms. Mallika Taly i/by. S. Mahomedbhai & Co., Advocate for the respondent.

CORAM :- SMT. R.P. SONDURBALDOTA, J.

DATED :- 21ST SEPTEMBER, 2016.

P.C. :-

1). This petition filed under Section 34 of the Arbitration and Conciliation Act, 1996 ("the Arbitration Act" for short) challenges the order dated 29th April, 2015 by which the petitioner has been directed to pay a sum of Rs.22,90,431/- being the principal amount due to the respondent and interest thereon at the rate of 12% p.a. from 9th March, 2009 till the date of the Award. The petitioner has been further directed to pay future interest at the rate of 15% p.a. and the costs and fees of the arbitration.

2). Briefly stated, the facts of the dispute referred to the arbitration were, that the petitioner had engaged the respondent as a Contractor to carry out certain interior works in its office premises i.e. reception area on the ground floor, executive area on the first floor and the staff area on the second floor. The total value of the service order dated 11th May, 2007 was of Rs.1,46,42,737.64p. The service order was revised and amended on 15th November, 2007 in respect of the works pertaining to air conditioning and the security system. On 3rd January, 2008 the petitioner made payment of Rs.18,92,658/- towards 20% of the contract value. According to the respondent, during execution of the work on the second floor there were major changes in the plan and also instructions issued for holding the work for finalisation of the plans. The respondent had raised two bills, both dated 9th March, 2009 bearing Invoice No.26

and 27 of the aggregate value of Rs.1,12,20,764/-. The petitioner had made part payment of Rs.86,51,484/- and deducted the TDS to the tune of Rs.2,78,849/-. After the invoices were tendered, correspondence ensued between the parties as regards the verification of the invoices. However, the balance payment was not forthcoming. Then, the respondent issued notice dated 13th February, 2010 calling upon the respondent to pay outstanding amount of Rs.22,90,431/- alongwith interest at the rate of 18% p.a. When the petitioner failed to make the payment the respondent sent notice dated 13th February, 2010 and thereafter invoked arbitration for recovery of Rs.31,18,374/- with further interest at the rate of 18% p.a.

3). The petitioner disputed the respondent's claim contending that the work done by the respondents was beyond the time fixed for completion of the service order. The work of the respondent was insufficient and and defective and the demand for payment was made without issuance of work completion certificate. As regards directions for “hold”, the same were not given from time to time as alleged and until 19th January, 2008 there were no changes in the work to be carried out on the second floor. According to the petitioners, the respondents had failed to perform as per the Clauses-6.2, 6.3, 6.4, 7.2, 7.6, 16.1, 19.1 of the Annexure to the service order. It was lastly contended that as the building drawings had not indicated the work completion, the entire claim of the respondents was false. The petitioner had also filed counter-claim claiming liquidated damages, loss of goodwill, loss of reputation etc.

aggregating to Rs.6,18,42,182.50p.

4). The respondent had led evidence of two witness, whereas,the petitioner examined one witness. On appreciation of the evidence produced before it, the Arbitrator found that, the work that had initially started on the second floor was completed on or around 22nd January, 2008. Thereafter, the staff of the petitioner sitting on the first floor was shifted to the second floor and the first floor made available for the work. The entire work i.e. the work on the ground floor, first floor and the second floor was completed on 21st April, 2008. Thereafter certain snags were listed which were also attended to by the respondent and duly rectified in April, 2008. As regards the security system, it was alleged by the petitioner that, the same had not been properly installed by the respondent and it was not working. On the evidence before him, the Arbitrator found that the job of the respondent was only to transfer the security system. It was neither to un-install from the old office nor to reinstall in the present office. Therefore, any complaint as regards non-completion of the work within the time granted and improper completion of installation of the security system was found without merit.

5). As regards the petitioner's complaint that, as per Clause-16 of the contract, the respondent had to secure Certificate of completion of work before raising an invoice, the learned Arbitrator held that since joint measurements had been carried out by the parties and the joint measurement sheets were also signed by the representative of the parties, there was no question of issuance of any separate Certificate of completion of work. Besides, the Bank

Guarantee submitted by the respondent for due completion of the work was neither demanded by the petitioner to be renewed nor was it invoked by it. On the contrary, when the respondent had made a request for discharge of the bank guarantee, the petitioner had acceded to the request.

6). The third contention of the petitioner was about the quality of the work, the defect in the work and breach of conditions of service. The learned Arbitrator found that, these three allegations were nothing but an afterthought. He noted that, after the two invoices were received by the petitioner in March, 2009 there was no correspondence by the petitioner raising any dispute as regards the quality of the work or breach of conditions of service order. Such disputes were raised for the first time after the petitioner received demand notice dated 13th February, 2010. Besides, the petitioner had failed to lead evidence as regards the rectification of the defects. It was not even the case of the petitioner that, it had engaged any other agency to rectify the defects or deficiencies. Also, the petitioner had been regularly operating from the office since April, 2008. The learned Arbitrator also noted that no evidence was produced by the petitioner of breach of the terms and conditions of the contract and hence there was no merit in cross-objections.

7). The petitioner had claimed before the Arbitrator that, time was the essence of the contract and because the respondent was unable to maintain the time limit does not entitle for the amount claimed. The Learned Arbitrator noted that, since the contract between the parties involved execution of certain interior works in the office and since even after lapse of the time fixed under the contract, the respondent not only allowed the work to be carried out but also issued directions from time to time in relation to the on-going work, the parties had mutually acquiesced and allowed the work to be carried out under the contract. Therefore, there was no merit in the claim of the petitioner that because the time was the essence of the contract, non-maintenance of the time limit will disentitle the respondent for its dues under the contract.

8). Careful perusal of the impugned Award shows that all the inferences drawn by the learned Arbitrator are fully supported by the evidence led by the parties. The impugned Award extensively quotes from the deposition of the witnesses. It is thus seen that there is no infirmity whatsoever in the impugned Award, much less, any infirmity falling within the ambit of Section 34 of the Arbitration Act. Therefore, the petition is dismissed.

(SMT. R.P. SONDURBALDOTA, J)