

\$~16

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **CM(M) 159/2015**
CHRISTOPHER PACHECO

..... Petitioner

Through Mr. Prakash Gautam and Mr. Ankur
Singhal, Advs.

versus

JSM CORPORATION PRIVATE LIMITED & ANR

..... Respondents

Through Mr. Saurabh Sharma, Adv. for R-1.
Ms. Mishika Singh, Adv. for R-2.

CORAM:
HON'BLE MS. JUSTICE INDERMEET KAUR

ORDER

% **19.02.2016**

Impugned order dated 18.11.2014 suffers from no infirmity. The application filed by the defendant under Section 8 of the Arbitration and Conciliation Act, was allowed and rightly so. Admittedly there is a work order between the plaintiff and the defendant. This work order is dated 01.02.2010. Attention has been drawn to various clauses of the work order and particularly clause 22 which reads herein as under:-

“22. Delay in Execution/Stoppage of work: In the event of the work being stopped/suspended during the schedule completion time due to reason not attributable to you, suitable extension of time will be granted in the completion time. The Employer reserved the right to delete/modify any of the items during the course of the contract. The Employer reserved the right to delay the work in full or in part for

some reason, which are not attribute to you but suitable extension of time will be granted.”

Learned counsel for the petitioner submits that although admittedly delay had been envisaged in this work order but clauses 6 & 9 clearly show that this work order had to be executed by 31.03.2010 and the value of the contract was only Rs.12,48,495/-. The suit which has been filed by the plaintiff in the Trial Court is of a value over and above Rs.12 lacs. The three invoices relied upon by the petitioner in the Trial Court accumulate a sum of Rs.42 lacs. Arbitration Clause (as contained in para 27 of the work order) does not envisage this situation.

Relevant would it be to extract clause 27 which reads herein as under:-

“Arbitration in case any dispute or difference arises between the contractor and the Client or any matter within the scope of this contract, except as the matter left entirely to the discretion of the Consultants under the provisions of this agreement, then either party shall forthwith give to the other written notice of such dispute or difference and such dispute or difference shall be referred to arbitration of an Arbitrator or Arbitrators, one to be nominated by the Client and the other by the Contractor or failing agreement between the said arbitrators, by an Umpire appointed by them and such award shall be binding on both the parties. The procedures laid down under the provision of the Arbitration and conciliation Act, 1996 shall be followed and the proceedings shall be conducted within the jurisdiction of Mumbai City.”

This Court is not in agreement with the submission of the learned counsel for the petitioner as clause 22 specifically provides a contingency that in case of delay in execution of work, in that eventuality suitable extension of time will be granted in the completion time and right to modify any of the items during the course of contract had also been granted to the employer.

The subject matter of the present suit which speaks of work executed by the plaintiff after the date of 31.03.2010 in terms of an oral agreement and payments claimed in lieu of the same are adequately encompassed in clause 22 and the arbitration clause as contained in clause 27 would be the proper forum to answer these disputes.

The impugned order staying the suit thus calls for no interference. Petition is without any merit. Dismissed with costs quantified at Rs.10,000/-.

INDERMEET KAUR, J

FEBRUARY 19, 2016

A