$~
* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
22
\+ **O.M.P. (COMM) 105/2016**

UNION OF INDIA .... Petitioner
Through: Mr. Jaswinder Singh, Advocate.

versus

M/S GPM-LOOMBA-SA JV ..... Respondent
Through: Mr. Joydeep Mazumdar, Advocate.

CORAM: JUSTICE S.MURALIDHAR

ORDER
% **08.11.2016**

1. The present petition under Section 34 of the Arbitration and Conciliation Act, 1996 ('Act') is by the Union of India (UOI), against the Respondent, M/s. GPM-LOOMA-SA JV, challenging the impugned Award dated 5th September, 2014 passed by the sole Arbitrator in the disputes between the parties arising out of the Contract dated 22nd May, 2009 for Detailed Engineering & Projects Management Consultancy Services ('DEPMCS') for construction of residential accommodation for Defence Personnel under Phase-II on five locations at Brichganj, Port Blair (Navy), Port Blair (AF).

2. The tender was floated by the Directorate General Management Account Project ('DGMAP) on 12th February, 2009. Ten Consultants were pre-qualified out of which five Consultants submitted their bids.

3. The contract document dated 22nd May, 2009 under Appendix 'C'

‘Approximate Nos. Of Dwelling Units’ indicated that the DEPMCS was to prepare the Detailed Project Report (DPR) for not only the four locations but also Carnicobar (AF).

4. The first question that arises is whether the work in respect of the Carnicobar (AF) formed integral part of the contract. The letter inviting bid dated 12th February, 2009 itself stated as under:

> “4. The Consultant is required to quote his rates in financial proposal duly signed and the tender is required to be submitted in sealed covers marked ‘Quotation for Detailed Engineering and Project Management Consultant for Married Accommodation Project at Brichganj, Port Blair (Army), Port Blair (Navy), Port Blair (15 FBSU), Port Blair (AF), Carnicobar (AF) addressed to DGMAP, Army Headquarters, Kashmir House, Rajaji Marg, New Delhi – 110 011 so as to reach the DGMAP on or before 1430 hours on 3rd March 2009.”

5. As mentioned earlier, Appendix ‘C’ to the Contract contains Carnicobar (AF) as one of the Stations where dwelling units were to be constructed. Appendix ‘C’ clearly mentioned the stations of Brichganj, Port Blair (Army), Port Blair (Navy), Port Blair (15 FBSU), Port Blair (AF) and Carnicobar (AF).

6. Learned counsel for the Petitioner, UOI, sought to submit that the learned Arbitrator erred in holding that Carnicobar (AF) was a part of the scope of the work. However, the factual determination by the learned Arbitrator in this regard is completely substantiated by the contract document itself. It is then submitted that the learned Arbitrator erred in awarding the Respondent firm more than what is entitled to. In the first place, it was sought to be submitted that no DPR was submitted for Carnicobar (AF). The Court is

unable to appreciate the above submission. The impugned award noted that a DPR was prepared for Carnicobar (AF). The relevant paragraph of the impugned Award in this regard reads as under:

> "20. I have heard, examined and considered the submissions and arguments written as well as oral made during hearing of both the parties. It is an admitted fact that under the contract in dispute, Claimant was required to submit DPRs for four stages i.e. Port Blair Army, Port Blair Navy, Port Blair Air Force and Carnicobar Air Force besides other scope of the Contract. It is also an admitted fact that Claimant had submitted all the four DPRs duly recommended by respective station Commanders for approval. DPRs for Port Blair Army, Navy and Air Force were put up to ASC for approval but that for Carnicobar was not processed to ASC due to purely administrative reasons not attributable to the Claimant at all. In the additional documents submitted by Claimant vide letter dated 09 Aug 2014, it is seen that Respondent has admitted the fact of submission of DPR for Carnicobar Air Force but to use it in Phase III or IV as the case may be and the payment of the work carried out in terms of agreed conditions of the Contract cannot in any way be considered as in fructuous expenditure. Even, for argument sake, if it is considered as in fructuous expenditure, Respondent cannot deprive the Claimant of its legitimate payment in terms of agreed conditions of Contract for the work carried out as per the contracted scope. The Claimant has fulfilled its obligations under the Contract and non- payment of legitimate dues by Respondent is considered as a serious breach of Contract on the part of Respondent going to the root of the Contract. Respondent has though not denied the payment but has not made it also. Non-payment of legitimate dues for the works carried out in terms of agreed conditions of the Contract has definitely an adverse effect on the financial position of the Claimant. Timely running payments is a factor which is taken into consideration by any party which submitting any quotation / tender and as such non-payment of legitimate dues does effect financial standing of any party. This fact will be taken into consideration while deciding the Claims of the Claimant."

7. Further, the failure was on behalf of the Petitioner to process the DPR submitted by the Respondent for Carnicobar (AF). In para 34 of the impugned Award, it is factually determined as under:

> "The DPRs for Port Blair Army, Port Blair Navy and Port Blair Air Force were got approved from ASC on 10 Sep 2010 whereas DPR for Carnicobar of the same package was not processed to ASC for approval not account of any reason attributable to Claimant. The Claimant has carried out work in terms of agreed conditions of Contract. This fact has not been denied by the Respondent that DPR for Carnicobar Air Force has not been submitted by Claimant. DPR for Carnicobar Air Force was not got approved by Respondent from ASC for reasons not attributable to the Claimant. Thus the payment for the work done cannot be denied to the Claimant in terms of agreed Conditions of Contract. Action of Respondent is thus considered as uncontractual, illogical and illegal and a serious breach of agreed conditions of Contract going to the root of Contract. The Respondent cannot deny the payment to the Claimant as per the agreed conditions of Contract."

8. Learned counsel for the Petitioner is, therefore, not justified in contending that the payment ordered by the learned Arbitrator at 20% was excessive. In terms of the Payment Conditions contained in the Financial Proposal for Remuneration for the Consultancy Services, 10% payment was supposed to be made on the submission of DPR and 10% after its approval. If the approval was not obtained on account of failure of the Petitioner, the Respondent cannot be deprived of its legitimate dues on that score.

9. The impugned award is a very detailed and reasoned one. Learned counsel for the Petitioner was unable to point out any serious illegal

infirmity in any of the findings given in the impugned award by the learned Arbitrator.

10. The petition is, accordingly, dismissed with no orders as to costs.

S.MURALIDHAR, J

NOVEMBER 08, 2016
Rm