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

+ **O.M.P. 672/2008**

GAMMON INDIA LTD.

..... Petitioner

Through: Mr. Subramaniam Prasad, Senior Advocate
with Mr. Sumit Goel, Ms. Raveena Rai, Mr.
Akash Jindal, Advocates.

versus

DELHI DEVELOPMENT AUTHORITY

..... Respondent

Through:

CORAM: JUSTICE S. MURALIDHAR

ORDER
16.12.2016

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1. This is a petition by Gammon India Limited ('GIL') under Section 34 of the Arbitration and Conciliation Act, 1996 ('Act') challenging an Award dated 22nd August 2008 passed by the sole Arbitrator in the disputes between the parties arising out of a contract awarded by the Respondent Delhi Development Authority ('DDA') to the Petitioner for the construction of Trumpets, flyovers, grade separators at various places in Delhi.

2. This Court has heard the submissions of Mr. Subramaniam Prasad, learned Senior counsel appearing for the Petitioner. Despite the matter being listed on several occasions, none appeared for the DDA. Nevertheless, the reply filed by the DDA has been taken into consideration by the Court.

3. A perusal of the impugned Award reveals that the Petitioner submitted six claims for the sum of Rs.18,11,601 against balance dues from the final bill for

the work of Flyover/Grade Separators at Jail Road-Maya Puri Marg ('Part-I'). The Petitioner also submitted ten claims amounting Rs. 64,71,742 against balance dues from the final bill for the work of Trumpet at Intersection of Ring Road-Road No. 41 (Part - II) and five claims amounting Rs.98,61,055 against balance dues from the final bill for the work of Flyover/Grade separator at Nelson Mandela Marg, Maharauli, Mahipalpur Road (Part - III) besides seeking refund of Rs.7,42,528 recovered by the Respondents towards interest on alleged excess payment. The Petitioner also claimed for interest against the amounts claimed and cost of arbitration.

4. By the impugned Award the learned Arbitrator has awarded claim No.1 of Part - I, partly allowed claim No.3 of Part - II and rejected all other claims.

5. In the present petition the challenge is to the impugned Award to the extent of rejection of all the claims except claim No.1 and part of claim No.3 as mentioned hereinabove.

6. One of the principal grounds of challenge is that the Award does not give any reasons for rejecting the claims. All that the learned Arbitrator has done in respect of each of the claims that has been rejected is to state "I agree with the contention of the Respondents." Indeed a perusal of the impugned Award bears out the above contention. For instance, claim No.2 of Part - I, which is for 'Extra for breaking of R.C.C. Slab at P-3 Pile cap' in the sum of Rs.27,300 is rejected by the learned Arbitrator by simply stating: "After going through the submissions made by the parties including oral arguments, documents and conditions of the contract, I agree with the contention of the Respondents and find that this claim has no merit, therefore, I reject this claim."

7. Claim No.3 of Part - I in the sum of Rs.4,50,000 was for 'Extra for redesigning of flyover from twin pier system to single pier'. Here again after simply noting the respective contentions, the learned Arbitrator holds:

"The Claimants contended that they have offered their rates based on data provided by the Respondents. They were required to design the structure with twin pier system. The claimants did the designing as per terms of the contract. After-words, the claimants were required to re-design the flyover by twin pier system to single pier system. This extra cost for re-designing was also claimed by them vide Exhibit C-68. The redesigning of the structure is beyond the scope of the work as per agreement. Hence, the extra cost i.e. Rs.4,50,000/- be allowed in favour of the Claimants.

The Respondents contended that the project was to be executed on "Design and construct basis". Hence, all the work is well with in the scope of work and nothing extra is admissible on this account.

The Respondents also referred clause 5.21 (para 6 page 331) of the agreement (Exhibit R-15) which states that if during the scrutinizing of detailed design calculations and working, any change if required and found necessary in the opinion of the competent authority shall be incorporated without altering the lump-sum quotation. Hence, this claim is liable to be rejected.

After going through the submissions made by the parties including oral arguments, documents and conditions of the contract, I find that the Claimants re-designed the structure from twin pier system to single pier system which is within the scope of the work as per Clause 5:21 of the agreement. Hence, no extra payment is admissible. The claim has no merit. Hence, I reject this claim."

8. As noted hereinbefore, for each of the remaining claims the learned Arbitrator has rejected the said claims on the same basis without giving any reasons whatsoever. Further, as already noted, except claim No.3 in Part - II, which has been allowed in part by awarding Rs.3 lakh to the Petitioner none of the other claims have been accepted.

9. In *Associate Builders v. Delhi Development Authority (2015) 3 SCC 49* while discussing the importance of “judicial approach”, which constitutes “fundamental policy of Indian Law”, it is observed in para 29 as under:

“29. It is clear that the juristic principle of a “judicial approach” demands that a decision be fair, reasonable and objective. On the obverse side, anything arbitrary and whimsical would obviously not be a determination which would either be fair, reasonable or objective.”

10. In addition it must be noted that under Section 31(3) of the Act unless the parties have agreed to the contrary, an arbitral Award should state the reasons upon which it is based. The impugned Award clearly does not satisfy the requirement of Section 31(3) of the Act.

11. The impugned Award is also lacking in ‘judicial approach’ as explained by the Supreme Court in *Associate Builders v. Delhi Development Authority (supra)*. It is accordingly vulnerable to being set aside under Section 34(2)(b)(ii) of the Act read with Explanations thereto.

12. For the aforementioned reasons the impugned Award is set aside to the extent it rejects the claims of the Petitioner i.e. claims other than claim No.1 of Part I and part of claim No.3 of Part II is hereby set aside.

13. The petition is disposed of in the above terms but in the circumstances no orders as to costs.

S. MURALIDHAR, J

DECEMBER 16, 2016

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