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

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+ **O.M.P. (COMM) 24/2017**

PUNJ LLOYD LIMITED

..... Petitioner

Through: Ms. Gurkamal Hora Arora, Advocate.

versus

RATTAN SINGH BUILDERS PRIVATE LIMITED..... Respondent

Through: Mr. Prabhjit Jauhar, Ms. Ankita Gupta
Advocates.

CORAM: JUSTICE S. MURALIDHAR

ORDER

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19.01.2017

CAV No. 58 of 2017

1. Since learned counsel for the Respondent has put in appearance, the caveat is discharged.

IA No. 748 of 2017(exemption)

2. Allowed, subject to all just exceptions.

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3. The challenge to this petition under Section 34 of the petition is to an Award dated 28th September, 2016 passed by the learned sole Arbitrator in a dispute between the parties arising out of an agreement dated 6th April, 2010 whereby the Respondent agreed to execute the civil and plumbing works for construction of land system facility at a plot in the industrial area Ghirongi (Malanpur) Madhya Pradesh at a contracted sum of Rs. 21,62,00,000.

4. As far as the present petition is concerned, it is confined to only one issue concerning a sum of Rs. 25,81,500 deposited by the Petitioner in the Registry of this Court in compliance of the order dated 29th January, 2014 in a company petition. This constituted the alleged amount deducted by the Petitioner from the running bills of the Respondent. In terms of Clause 7.7 of the contract, for a period of twelve months commencing immediately after completion of the work by the contractor, it was the contractor's liability to replace the defective parts, rectify/reconstruct the defective work arising solely from faulty material or workmanship or for any other reason. The Petitioner appointed SEMAC Pvt. Ltd. ('SPL') as Architect, and it was the responsibility of the Architect to issue the certificate of completion.

5. The learned Arbitrator noted that on 1st November, 2011, the Architect issued a certificate in respect of the various sites handed over to them after completion of construction by the Respondent. A punch list was prepared which noted the defects/deficiencies in the work carried out by the contractor. The record produced before the learned Arbitrator revealed that the Respondent had rectified the defects in the punch list and that this list was updated in on different dates having signatures of the representative of the Petitioner and the Respondent. The learned Arbitrator also referred to the emails exchanged between the parties in this regard and came to the finding that "the contractor (claimant) had duly attended to the Punch List points brought to its notice during the Defect Liability Period and had rectified the defects barring one or two which in my opinion were negligible".

6. The learned Arbitrator also referred to the certificate issued by SPL after

the Respondent had raised the final bill. SPL had issued a certificate that the Respondent had become entitled to payment of Rs. 2,14,94,273. The Arbitrator noted that “no remarks were given by the architect that the project had not been completed as per the contract or that the payment of the amount which had become due and payable could be withheld on any ground”.

7. The learned Arbitrator referred to the exchange of emails and noticed that the Petitioner had never taken a stand that the amount that was withheld was not released because the Respondent failed to attend to the punch list. He also referred to the cross-examination of the witness of the Petitioner and held that it was only in reply to the notice served on the Petitioner by the Respondent on 12th July, 2012 that the Petitioner took a stand that the punch list points had not been rectified.

8. The learned Arbitrator noted that in terms of Clauses 1.17 and 7.7 of the notice inviting tender, it was important for the Petitioner to have got the defects and deficiencies rectified from a third party and then claim the cost of the same from the contractor. However, this was not done. Here again, the learned Arbitrator referred to the cross-examination of the witness of the Petitioner. After analysing the evidence in sufficient detail, the learned Arbitrator came to the conclusion that the Petitioner was not entitled to withhold the payment of a sum of Rs. 25,81,500 on account of the cost of the rectification of the defects allegedly not carried out by the contractor.

9. Learned counsel for the Petitioner took the Court again through the

documents on record to demonstrate that the above finding and conclusion could not have been reached by the learned Arbitrator. The Court is not persuaded to agree with the counsel for the Petitioner. This is not one of those cases where the reasoning and conclusion reached by the learned Arbitrator could be said to be perverse, warranting interference on any of the grounds under Section 34 of the Act. No case is made out for interference.

10. The petition is dismissed.

S.MURALIDHAR, J

JANUARY 19, 2017/mg