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IN THE HIGH COURT OF DELHI AT NEW DELHI

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O.M.P. (COMM) 5/2017

PRITHVI ASSOCIATES

..... Petitioner

Through: Mr. S.K. Maniktala with Mr. R.K.
Chaudhary, Mr. Vinod Kumar, Advocates.

versus

SOUTH DELHI MUNICIPAL CORPORATION Respondent

Through: Ms. Mini Pushkarna, Standing counsel
with Ms. Anushruti, Ms. Vasundhara Nayyar,
Advocates.

CORAM: JUSTICE S.MURALIDHAR

ORDER

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09.01.2017

1. Notice. Learned counsel for the Respondent accepts notice.
2. There are four grounds of challenge raised by Mr. S.K. Maniktala, learned counsel for the Petitioner in this petition under Section 34 of the Arbitration & Conciliation Act, 1996 ('Act') to the Award dated 5th October, 2016 passed by the sole Arbitrator in a dispute between the Petitioner Prithvi Associates and the South Delhi Municipal Corporation ('SDMC'), arising out of the award of contract for "illuminated display of advertisements through unipoles" by agreement dated 4th September, 2006, entered into between the parties.
3. The first ground urged is that although a specific claim was made by the Petitioner for interest @ 24% pa on the claim amount "for the period

comprising of the pre-reference, *pendente lite* and post award period”, the learned Arbitrator has granted interest @10% pa only for *pendente lite* and post award period. It is pointed out that no reasons have been given for rejecting the claim in respect of the pre-reference period.

4. Having heard learned counsel for the parties, the Court finds that indeed under Issue No. 6 concerning relief, the learned Arbitrator awards the interest @ 10% pa in the impugned Award under Claim Nos. 1 and 2 for *pendente lite* and post award period and makes no mention of the claim of interest for the pre-reference period. Under Section 31(3) of the Act, the learned Arbitrator is mandated to give reasons, unless otherwise agreed to by the parties. In that view of the matter, the Court holds that the Arbitrator ought to have given reasons if he was going to decline the relief of interest for the pre-reference period. It will now be open to the Petitioner to seek arbitration on this issue in accordance with law.

5. The next ground of challenge is to the denial of Claim No. 3 concerning loss of profit in the sum of Rs. 3,90,00,000. The learned Arbitrator has rejected this claim on the ground that the Petitioner did not lead any convincing evidence except filing an affidavit of the sole witness for the claim i.e. CW-1. Mr. Maniktala has taken the Court through the said affidavit. Apart from stating that in such type of contracts there would normally be a profit of Rs.10,00,000 per month, there was nothing placed along with the said affidavit to justify such a plea. In the circumstances, the Court is of the view that the learned Arbitrator was justified in coming to the conclusion that no convincing evidence has been placed to support such a

claim for Rs.3,90,00,000. The rejection of Claim No. 3 therefore does not call for any interference.

6. The next ground of challenge is that the Petitioner has claimed interest @ 24% pa and what is awarded is interest @10% pa and, therefore, there was no justification for not awarding the higher rate of interest as claimed by the Petitioner. The award of interest @10% pa cannot be said to be arbitrary and unreasonable and, in any event, does not seem to be contrary to the fundamental of Indian law for the purposes of Section 34 of the Act. The challenge in this regard is, therefore, rejected.

7. Finally, it is submitted that costs of only Rs. 1 lakh has been awarded. This, again, does not constitute a valid ground to attract Section 34 of the Act.

8. The petition is, accordingly, disposed of.

S.MURALIDHAR, J

JANUARY 09, 2017

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