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IN THE HIGH COURT OF DELHI AT NEW DELHI

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O.M.P. 116/2015

AIRPORTS AUTHORITY OF INDIA

..... Petitioner

Through: Mr. Sunil Ahuja, Advocate.

versus

M/S SIKKA ASSOCIATES

..... Respondent

Through: Mr. Virender Kumar Sharma, Advocate.

CORAM: JUSTICE S. MURALIDHAR

ORDER

09.01.2017

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1. The challenge in this petition under Section 34 of the Arbitration and Conciliation Act, 1996 ('Act') by the Airports Authority of India ('AAI') is to an Award dated 10th October, 2014 passed by the learned sole Arbitrator in the disputes between the parties arising out of an agreement dated 7th April, 2006 whereby the Respondent was awarded a contract of construction of a New Integrated Passengers Terminal Building at Mangalore Airport.

2. When disputes arose between the parties with regard to the payment of entitlement of consultation fees in terms of Clause 12 of the agreement, the disputes were referred to the sole Arbitrator. The arbitration was in respect of the following five claims of the Respondent:

- (i) STP (Civil) & rain water harvesting;
- (ii) Horticultural work;
- (iii) False ceiling in the skylight area;

(iv) Baggage Handling Area and;

(v) Additional work of glazing work on Apron Side and for laterite stone masonry.

3. Apart from the above, disputes relating to the relief of compensation at 1% for delay and penalty at 10% for deviated quantity were also examined by the sole Arbitrator.

4. AAI preferred three counter-claims – (i) relating to refund of excess payment made to the Respondent consultant of his professional fee; (ii) interest thereon; and (iii) further the cost of the arbitration/litigation. These counter-claims were rejected by the sole Arbitrator.

5. By the impugned Award, the learned Arbitrator awarded a sum of Rs. 80,22,124 as regards Claim No. 1 (towards pending final bill amount) in favour of the Respondent and the calculations in respect thereof were appended to the Award as Annexure A-1. As regards Claim No. 2 which was for reimbursement of a sum of Rs. 82,500 on account of payments made to Karnataka State Pollution Control Board, that was allowed in toto by the learned Arbitrator. As regards Claim No. 3 which was for interest, the learned Arbitrator granted 12% simple interest for the period from 27th December, 2006 till the date of reference i.e. 8th October, 2012 and *pendente lite* interest on the amounts under Claim Nos. 1 and 2 at the same rate and even future interest after the expiry of 60 days from the date of the Award at the same rate.

6. The Court has heard the submissions of Mr. Sunil Ahuja, learned counsel appearing for the Petitioner and Mr. Virender Kumar Sharma, learned

counsel appearing for the Respondent.

7. As regards claim arising out of STP (Civil) and rain water harvesting, the submission of Mr. Ahuja was that no such work was carried out nor any GFC drawings or additional documents were prepared and placed on record by the Respondent to justify the award of said claim in his favour. It is submitted that the learned Arbitrator has overlooked Clauses 2, 5 and 9.1 of the agreement. It is submitted that the learned Arbitrator gave weightage to the Respondent's email dated 27th April, 2009 which was 'a bogus document' filed at the final argument stage. This work had been done by AAI in-house as was pointed out by the Engineer.

8. The Court finds that in the impugned Award, the learned Arbitrator has referred to the fact that the Respondent forwarded drawing No. PL-01 dated 22nd April, 2009 for rain water harvesting. The said document was marked as Exhibit S-2. While the Respondent in its synopsis before the learned Arbitrator contended that the drawings were a self-created bogus document, they did not deny the email dated 22nd April, 2009 which had the drawing attached to it. The Respondents also did not produce any material to show that the said drawing had been rejected. Throughout, AAI was giving the impression that their drawings were acted upon. It was only at the closure of the arbitration that it was pointed out that the work was done in-house.

9. These are pure findings of fact which are not required to be reversed only because another view is possible on the evidence. The Arbitrator has gone by what was produced before him and on that basis has come to the above conclusion. This part of the Award, therefore, does not call for any

interference.

10. In respect of the claim for the consultancy work pertaining to horticulture work, AAI proposed to pay the Respondent only Rs. 12,566 instead of Rs.1,25,660 as claimed. The Respondent was able to demonstrate that 14 drawings had been issued as GFC landscape drawings. This was unable to be disputed by AAI. The argument of the Respondent was that the fee for Stage V had to be for the full value of work and that sequence required Stages I to IV to be completed before the Stage V was arrived at. It was for this reason that the learned Arbitrator awarded the Respondent the full fee of 5% on the awarded costs which worked out to Rs. 1,25,660. The Court is unable to find any error having been committed by the learned Arbitrator in coming to the above conclusion.

11. Item 11 was in respect of the false ceiling in the skylight area. The primary drawings and estimate submitted by the Respondent was not accepted at the initial stage. However, the learned Arbitrator found that the drawings were in fact proper working drawings. No document was again produced by AAI to show that the said drawings were rejected. Clause 9.1 required the Respondents to be paid for those stages which had been completed by him and approved by AAI. Here again, the learned Arbitrator held that the Respondent was entitled to Stage-IV payment fees i.e., 45% of the 5% fee and this worked out to Rs.1,52,126. The reasons given by the learned Arbitrator are clear and cogent and do not call for any interference.

12. Under Item No. 14 regarding electrical layout for the basement, the learned Arbitrator found that whereas some of the work was done in-house,

GFC drawings were also supplied by the Respondent herein. Nothing was produced by AAI before the learned Arbitrator to show that the Respondent had been asked to stop further work on the drawings or that the drawings submitted were rejected. The learned Arbitrator has awarded only 50% of the fee worked out at 5% of the value of the work minus the cost of escalators. A sum of Rs.4,15,911 was thus awarded. Learned counsel for the Petitioner was unable to point out any defect in the said finding.

13. In respect of the false ceiling in the skylight area, it was submitted that the learned Arbitrator failed to take note of Clauses 7, 8 and 9 of the agreement. It is stated that the Arbitrator wrongly cast the burden on AAI to reject the non-approval of drawings. Again, in respect of the baggage handling area, the sole Arbitrator gave weightage to the drawings prepared by the Respondent till 2007 whereas this part of the package was conceived at a much later date.

14. In this context, a perusal of the impugned Award shows that the Arbitrator has in fact set out Clause 9.1 of the contract and discussed it. No document was produced by AAI to show that the drawings attached by the Respondent had been rejected. It was only at the stage of the arbitration proceedings that first time such a stand was taken. The Respondent was never informed of such deduction. As regards the baggage handling area, the learned Arbitrator had discussed this part of the claim in great detail and only awarded 50% of the fee to the Respondent. Here again, no document was produced by the AAI to show that the Respondent had been asked to stop working on the drawings.

15. Item No. 23 of Claim No. 1 pertained to additional work of glazing on apron side of grid V-31 and laterite stonemasonry work in the basement on city side including its plastering. Here again the learned Arbitrator discussed the evidence in light of Clause 9.4. The argument that the consultant had done this work on his own was strange and did not stand to reason. A sum of Rs.1,08,700 being the value for 5% of the admitted cost of work was awarded.

16. As regards laterite stonemasonry work, what has been awarded is Rs.67,799. As regards compensation for the delay, the sole Arbitrator discussed Clause 10 which stated that if no justified reasons were found for delay, the Consultant would be liable to pay compensation. In case of justified reasons, the compensation for delay was to be decided by the Chairman, AAI. The learned Arbitrator found that no process of giving the Respondent an opportunity to give a justification for the delay was afforded. Although what was produced was a letter dated 7th June, 2011 containing a proposal to levy compensation for only Stage 6(b), since this was violative of principles of natural justice, the learned Arbitrator decided in favour of the Respondents and directed that no deduction should be made from the final bill of the Respondents on this account.

17. The penalty @ 10% could not be said to be excessive or unreasonable. Likewise, the interest and costs awarded also could not be said to be unreasonable.

18. Claim No. 2 pertaining to reimbursement of Rs. 82,500 being the

amount payable to the Karnataka State Pollution Control Board was allowed in toto since AAI accepted the claim during the hearing. The counter-claims of the Respondents stood covered under Claim No. 1 and, therefore, had to be rejected.

19. For the aforementioned reasons, the Court finds no ground having been made out for interference with the Award. The Award is made Rule of the Court.

20. The petition is dismissed but, in the circumstances, with no order as to costs.

S. MURALIDHAR, J

JANUARY 09, 2017
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