

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

+ **FAO No.44/2007**

% **3rd July, 2017**

DELHI DEVELOPMENT AUTHORITY Appellant

Through: Mr. M.K. Singh, Advocate.

versus

M/S. SATYA PRAKASH & BROTHERS Respondent

Through: None.

CORAM:

HON'BLE MR. JUSTICE VALMIKI J.MEHTA

To be referred to the Reporter or not?

VALMIKI J. MEHTA, J (ORAL)

1. This first appeal has been filed under Section 39 of the Arbitration Act, 1940 (hereinafter referred to as 'the Act') impugning the judgment of the court below dated 1.4.2003 whereby objections filed by the appellant under Sections 30 and 33 of the Act have been dismissed.

2. The facts of the case are that the appellant awarded the respondent/claimant working of providing and laying "dense asphaltic concrete works" in J.J. colony at Kalkaji, New Delhi. With regard to this work awarded, disputes and differences arose between the parties which were referred to arbitration by the letter dated 27.11.1990 of the

competent authority. The Arbitrator entered into the reference on 30.11.1990 and after hearing the parties and considering the evidence passed the impugned Award dated 28.7.1992. By the impugned award, the respondent/claimant has been awarded under claim no.1 an amount of Rs.1,94,696.84/- towards balance payment due for work done and an amount of Rs.14,444/- under claim no.2 by releasing of security of the respondent/claimant with the appellant. Claim no.3 of damages was dismissed and claim no.4 with respect to interest was awarded at 12% per annum simple in favour of the respondent/claimant instead of 18% per annum as claimed by the respondent/claimant. Interest has been awarded from 2.12.1987 till the date of the Award. The court below by the impugned judgment has awarded interest at 8% per annum simple from the date of the Award till realization.

3. As regards claim no.1, the issue was as to whether or not any work was done by the respondent/claimant after 7.10.1980. In this regard, the Arbitrator has referred to the Measurement Book of the appellant itself which held that the work was done after 7.10.1980 as shown by the entries in the Measurement Book on 10.10.1980 and 13.10.1980. In fact the entry in the Measurement Book no. 722 on 13.10.1980 shows the work having been completed. The Arbitrator in the Award also notes that the claim of the appellant was that the work

was defective but this defence was unjustified because there was no notice issued of defective work and that in fact payment was also released with respect to the first running bill at reduced rates and which would not have been done if the work was defective i.e the first running bill payment was made at part rates only. The relevant observations of the Arbitrator with respect to claim no.1 reads as under:-

“My findings are as under:

The contention of the respondents to the effect that since no work was executed after 7.10.80 as there was no entry of issue of bitumin in bitumin register, and, further no bitumen was available at site, and also that the work was not completed by the claimants are found to be factually incorrect in view of the following:

Firstly the entries of tack coat made on 10.10.80 in M.B. no.722 at pages 75-76 for final bill (Ext.R-4) prove that the work was certainly executed after 7.10.80, which in turn means that bitumin had to be there at site after 7.10.80.

Secondly, the entry on page-78 of M.B. No.722 says that the work was complete on 13.10.80 (Ext.R-4) whereas in their C.S.F. the respondents have stated that the work had not been completed. Apart from the above, in their C.S.F. dt. 15.3.91, the respondents have said that final bill was being prepared whereas the final bill eventually produced by the respondents on 21.8.91 shows that it had long been prepared on 2.4.81.

The claimants vide their letter dt.18.9.84 (Ext.C-2) demanded balance payment of Rs.1,95,000/- on the basis of the final bill submitted by them in the year 1982 which was neither refuted nor questioned.

The respondents' argument to the effect that the final bill not paid because of the defects also no legs to stand because, apart from no notice for defects being there, the final bill eventually submitted by the respondents says that the work had been done as per specification. This is also evident from the fact that the amount retained in 1st R/A bill by way of part rates has been released.

In view of the above, I am inclined to believe that it is a clear case of execution of the work by the claimants which has been supported by documentary evidence and detailed measurements as well as levels etc. On the other hand the respondents have failed to place on record any cogent document/evidence in support of their denial of the claim. Rather the statements made by them have been found to be factually incorrect and contrary. So much so they, the respondents, were unable to produce the

levels on the basis of which the bills were prepared besides, other very vital documents as already discussed in the beginning.

Under the circumstances and considering carefully the evidence and arguments advanced by both the parties, I find the claim to be justified and, I award a sum of Rs.1,94,696.84 in favour of the claimants.”

4. (i) It is settled law that Courts do not sit as an appellate court over the Awards passed by the Arbitrators. Once the Arbitrator on the basis of existing evidence takes one possible and plausible view then a Court hearing objections under Sections 30 and 33 of the Act will not set aside such an Award. In my opinion, the Arbitrator has relied upon the evidence being the Measurement Book of the appellant itself to hold that not only work was done after 7.10.1980 but more importantly that in fact work was completed on 13.10.1980. Arbitrator has also rightly held that there was no issue of defective work because whatever was the work as per the first running bill was not paid as it is but was only paid as per the part rates. Arbitrator also notes that final bill though was in fact prepared by the appellant itself way back on 2.4.1981, but the same was only much subsequently produced on 21.8.1991. Accordingly, in my opinion, the Arbitrator has given sufficient reasons for holding that work was done by the respondent/claimant and which had to be paid for in terms of the entries of the Measurement Book of the appellant itself and as per the final bill prepared by the appellant itself.

(ii) Since claim no.1 was allowed of work done hence the claim no.2 has been rightly allowed by the Arbitrator as it was for the return of the security deposit repayable on the completion of the work.

(iii) Once claim nos.1 and 2 were payable with respect to the balance due, then, respondent/claimant was entitled to interest and Arbitrator has given 12% interest. Though in my opinion grant of interest by the Award is justified, however, in my opinion the rate of interest of 12% per annum is very high in current banking finance scenario inasmuch as Supreme Court has observed in various judgments that in view of the consistent fall in the interest rates, Courts should not award high rates of interest. The judgments of the Supreme Court in this regard are *Rajendra Construction Co. v. Maharashtra Housing & Area Development Authority and Others*, (2005) 6 SCC 678, *McDermott International Inc. v. Burn Standard Co. Ltd. and Others*, (2006) 11 SCC 181, *Rajasthan State Road Transport Corporation v. Indag Rubber Ltd.*, (2006) 7 SCC 700, *Krishna Bhagya Jala Nigam Ltd. v. G. Harischandra Reddy and Another*, (2007) 2 SCC 720 & *State of Rajasthan and Another Vs. Ferro Concrete Construction Private Limited* (2009) 12 SCC 1. Accordingly, in my opinion, interest instead of 12% should be at 8% per annum simple from 2.12.1987 and right till

payment is made by the appellant to the respondent/claimant and it is ordered accordingly.

5. In view of the above, while the appeal is dismissed with respect to making of the Award as rule of the Court by the impugned judgment dated 1.4.2003, however, the appellant is granted relief of reduction of the rate of interest of 12% as granted by the Arbitrator to 8% per annum simple. Appeal is accordingly dismissed but partly allowed to the extent of reduction of interest as stated above. Parties are left to bear their own costs.

JULY 03, 2017
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VALMIKI J. MEHTA, J