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IN THE HIGH COURT OF DELHI AT NEW DELHI

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O.M.P. (COMM) 128/2016

UNION OF INDIA

..... Petitioner

Through: Ms. Arti Bansal, Advocate.

versus

PANDIT CONSTRUCTION CO.

..... Respondent

Through: Mr. Raman Kapur, Senior Advocate with
Mr. Aviral Tiwaril, Advocate.

CORAM: JUSTICE S. MURALIDHAR

ORDER

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06.02.2017

1. The challenge in the present petition by the Union of India to the impugned Award dated 8th July, 2013 passed by the sole Arbitrator has been confined to the Award in respect of Claim No. 8 and the corresponding interest awarded on the said claim in favour of the Respondent.

2. Claim No. 8 was for the 5% bonus claimed by the Respondent under Clause 2-A of the agreement. Such bonus would be available to the Respondent if it completed the work 5 months ahead of the scheduled date of completion. The amount claimed under Claim No. 8 is Rs.44,03,000. Clause 2-A of the agreement reads as under:

“Incentive for early completion- In case, the contractor completes the work ahead of scheduled completion time, a bonus @ 1% (one per cent) of the tendered value per month computed on per day basis, shall be payable to the contractor, subject to a maximum limit of 5% (five per cent) of the

tendered value. The amount of bonus, if payable, shall be paid along with final bill after completion of work. Provided always that provision of the Clause 2A shall be applicable only when so provided in 'Schedule F'."

3. The case of the Respondent was that in the tender amount of Rs. 9,28,44,193, the component of civil work was Rs.892.52 lakhs. The date of completion was extended up to 6th June, 2007 whereas the original date of completion was 13th February, 2007. It appears that the reason for the work not proceeding was the suspension of the work by the Petitioner on 15th March, 2007 due to non-availability of funds. In other words, the suspension of work was not on account of any default on the part of the Respondent Contractor.

4. The learned Arbitrator has in para 8.10 of the impugned Award correctly noted that there were only three reasons under Clause 15 of the contract which permitted suspension of the work. None of those three reasons existed in the present case. The categorical finding is that the suspension of the work was not due to fault of the Contractor. Therefore, the suspension of the work by the Petitioner was held to be a patent and illegal breach of the contract.

5. Ms. Arti Bansal, Learned counsel for the Petitioner submitted that bonus was not admissible under Clause 2-A unless the entire work was completed at least 5 months ahead of the scheduled date of completion. According to her, since the work was suspended, the essential condition in Clause 2-A was not fulfilled since the work could not be taken to be completed.

6. Mr. Raman Kapur, learned Senior counsel appearing for the Respondent, on the other hand, referred to the factual determination by the learned Arbitrator that the entire civil work, as per the original terms of the contract, was actually completed 7 months ahead of the revised date of completion.

7. The Court finds that in para 8.11 of the impugned Award, the learned Arbitrator has discussed in detail this aspect of the matter. The reasoning of the learned Arbitrator is as follows:

“8.11 As per the amount of final bill paid, civil work of Rs.906.44 lac was executed which basically pertains to the work executed up to 15.03.2007 as no work was done after 15.03.2007. In absence of any materials procured after 01.12.2006, very little work would have been done after schedule date of completion of 13.02.2007. Therefore, civil component of work to the full contract value of civil work of Rs.892.52 lac was already done by original schedule date of completion. As such, the work of full contract value was completed by seven months ahead of revised schedule of completion.”

8. As a result of the above factual determination, the learned Arbitrator concluded that the entire work already stood extended by the original scheduled date of completion in terms of Clause 12.1 of the contract. The Respondent was in fact entitled “for extra time in the proportion which the additional cost bears to the original value of tender plus 25% of the extra time so worked out.” In other words, for the work that was left incomplete at the time of suspension of work, the Contractor was entitled to time. Further, as per Clause 15, the Contractor was also entitled to extension of time equal to the period of suspension plus 25% extra time for completing the work which remained suspended.

9. In that view of the matter, the learned Arbitrator concluded as under:

“8.13 In view of my findings above, I conclude that full contract value of civil component of Rs.89252321/- was already executed by original schedule date of completion ahead of seven months of revised schedule date of completion falling on 06.09.2007 and even if the work is to be treated as completed on 15.03.2007, completion of work is more than five months ahead of revised schedule date of completion. Therefore, the claimant is entitled for bonus of 5% which works out to Rs.4462616/- but I restrict the amount to Rs.4403000/- as claimed by the claimant.”

10. The Court finds that the view taken by the learned Arbitrator on an interpretation of Clauses 2-A, 12.1 and 15 of the contract is a plausible one. It cannot be said to be suffering from any legal infirmity. Nothing has been shown to the Court to conclude that the learned Arbitrator overlooked any material piece of the evidence or a clause of the contract before arriving at the above conclusion. No ground is made out for interference with the impugned Award insofar as it allows Claim No. 8 in favour of the Respondent.

11. It is then submitted that the award of interest @ 9% per annum on the claimed amount is excessive. The Court is unable to agree with the above submission as the said rate of interest can hardly be said to be exorbitant.

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

S. MURALIDHAR, J

FEBRUARY 06, 2017/dn