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

+ **O.M.P. 985/2014**

AIRPORTS AUTHORITY OF INDIA ...Petitioner
Through: Mr. S.K. Chandwani and Mr. Sameer
Chandwani, Advocates

versus

BRITE-ARICON(CONSORTIUM) ...Respondent
Through: Ms.Anusuya Salwan and Mr Abhishek
Pundir, Advocates

WITH

+ **O.M.P. 1039/2014**

M/S BRITE ARICON ...Petitioner
Through: Ms.Anusuya Salwan and Mr Abhishek
Pundir, Advocates

versus

AIRPORTS AUTHORITY OF INDIA ...Respondent
Through: Mr. S.K. Chandwani and Mr. Sameer
Chandwani, Advocates

CORAM: JUSTICE S.MURALIDHAR

ORDER

% **16.03.2017**

1. These are the two petitions under Section 34 of the Arbitration and Conciliation Act, 1996 ('the Act') challenging the impugned Award dated 21st April, 2014 passed by the Sole Arbitrator in the disputes between the parties arising out of an agreement dated 27th August, 2008 entered into

between the Airports Authority of India ('AAI') and M/s. Brite Aricon (Consortium) ('BA') whereby the work relating to "Resurfacing of Runway, Taxiway and Apron etc. at Ludhiana Airport" was awarded to by AAI to BA.

2. While OMP No.985/2014 is filed by AAI, OMP No.1039/2014 is filed by BA.

3. The date of commencement of the work was 28th August, 2008 which was to be completed within a period of 8 months. The stipulated date of completion of work was 27th April, 2009. While AAI contended that the actual date of completion was 20th March, 2010, BA contends that it was completed on 29th December, 2009.

4. By a letter dated 3rd October, 2012, BA invoked the arbitration agreement and sought reference of the disputes between the parties to arbitration. By letter dated 27th November, 2012, the Member (Planning) of the AAI was appointed as Sole Arbitrator. Before the learned Sole Arbitrator, BA filed its claims as under:

Claim Number	Details	Amount claimed
Claim No.1	Balance amount of final bill and bonus	Rs.84,55,760/-
Claim No.2	Damages on account of under payments, unjustified recoveries and delayed payments,	Rs 7,13,790

Claim No.3	Extra expenditure on additional Overhead expenses due to breach of contract by AAI	Rs 98,04,200
Claim No.4	Loss of profit	Rs 1,09,81,350/-
Claim No.5	Refund of interest on mobilization advance	To be intimated later
Claim No.6	Expenditure incurred on BGs	Rs 6,72,000/-
Claim No.7	Expenditure incurred on idle/time related charges for machinery which remained idle or under-utilized due to initial delay in commencement of work and also during execution of work	Rs 72,00,000
Claim No.8	Payment made to labour sitting idle or remained under utilized due to initial delay in commencement of work during/ execution of work	16,25,100/-
Claim No.9	Abnormal-escalation in price of materials	Rs 30,19,460/-
Claim No.10	Any other relief that might accrue	To be intimated on receipts of documents as requested

Claim No. 11	Claim for payment of interest for the period from the date of cause of action to the date of payment	Interest @ 18% per annum
Claim No.12	Costs	Rs.10 lacs

5. Revised statement of claim in regard to claim nos. 1 and 2 was filed by BA. Under Claim No.1 Rs.93,74,700/- was claimed and under Claim No. Rs.31,50,900/- was claimed.

6. AAI filed its statement of defence. It also filed two counterclaims. Counterclaim no.1 was for Rs.100 lacs towards loss of reputation and Counterclaim No.2 was towards loss of traffic revenue. AAI also claimed costs of Rs.5 lacs.

7. By the impugned award dated 21st April, 2014, the learned Sole Arbitrator decided the claims of BA as follows:

Claim Number	Description	Amount awarded
Claim No.1	Balance amount of final bill and bonus	Rs 6,59,-985/-
Claim No.2	Under payments, unjustified recoveries and delays in payments,	Rs 3,18,175/-.
Claim No.3	Extra expenditure on additional Overhead expenses due to breach of contract	NIL
Claim No.4	Loss of profit	NIL

Claim No.5	Refund of interest on mobilization advance	NIL
Claim No.6	Expenditure incurred on extension of BGs	Rs 70,420/-
Claim No.7	Expenditure incurred on idle/time related charges for machinery which remained idle or under-utilized.	NIL
Claim No.8	Payment made to labour sitting idle or	NIL
Claim No.9	Escalation in price of materials	Rs.24,49,836/-
Claim No.10	Any other relief	Withdrawn
Claim No.11	Interest	12% simple interest from the date of invocation of arbitration
Claim No.12	Costs	Rs.1 lac

The counterclaims were rejected.

8. Aggrieved by the impugned award, both AAIs and BA filed the above petitions. While AAI has challenged the award insofar as it has allowed BA's claim nos. 1,2,6,9 and 11; BA has challenged the impugned award insofar as it has rejected claim no.s 3,4,7,8 and part of claim nos. 11 and 12.

9. The Court has perused the impugned award and finds that there are inherent contradictions and inconsistencies in it which do not justify the manner in which learned Sole Arbitrator has proceeded in deciding the claims. The reasons appear to be perfunctory. The impugned award cannot be sustained in law as it does not fulfil the requirements of 34(2) (b) of the Act.

10. The Court accordingly sets aside the impugned award insofar as the claims of BA are concerned. There is no challenge to the rejection of the counterclaims of AAI so that part of the award is not being interfered with.

11. The result is that it will be open to the BA to go in for a fresh arbitration in respect of all its Claim nos. 1 to 12 in accordance with law. For that purpose, BA will have the benefit of Section 43(4) of the Act.

12. Both the petitions are disposed of accordingly.

S.MURALIDHAR, J

MARCH 16, 2017

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