

\* **IN THE HIGH COURT OF DELHI AT NEW DELHI**  
+ **FAO(OS) (COMM) 87/2017**

**Date of Decision: 18.04.2017**

VED PRAKASH MEHTA ..... Appellant

Through: Mr.Achin Mittal and  
Mr.Antony K. Joseph,  
Advocates

versus

GOVT OF NCT OF DELHI ..... Respondent

Through: Ms.Pritika, Advocate  
(Proxy) for Ms.Sakshi Popli,  
Advocate

**CORAM:**  
**HON'BLE THE ACTING CHIEF JUSTICE**  
**HON'BLE MS. JUSTICE ANU MALHOTRA**

**ACTING CHIEF JUSTICE (Oral)**

**CM No.14538/2017 (Exemption)**

Exemption allowed, subject to just exceptions.

**FAO(OS) (COMM) 87/2017 and CM No.14537/2017**

1. By way of this appeal, the appellant assails the order dated 15<sup>th</sup> November, 2016 passed by the learned Single Judge rejecting the OMP(COMM)162/2016 which was filed by the Government of NCT of Delhi under Section 34 of the Arbitration & Conciliation Act, 1996 and the arbitral award dated 10<sup>th</sup> September, 2009.
2. The factual matrix giving rise to the present appeal, to the extent necessary, is noted hereinafter:

(i) It appears that disputes arose between the parties with

regard to the contract between Sh. Ved Prakash Mehta (appellant herein) and the Govt of NCT Delhi (respondent herein), for increasing the capacity of the Najafgarh drain from Dhansa Bandh,;

(ii) the appellant claimed to have made arrangement of machinery, material, labour and staff to commence the work but a clear site was not provided and the drawings for commencing the work were not handed over by the respondent and the work was closed by the respondent;

(iii) this resulted in the appellant raising claims and seeking initiation of arbitration under the contract between the parties;

(iv) the claims of the appellant were referred to the sole arbitrator, Justice V.S. Aggarwal (retd.).

(v) the Arbitral Tribunal considered the matter and made arbitral award dated 10<sup>th</sup> September, 2009, awarding claim Nos. 2,3,5,7 9 and 10 in favour of the appellant, which was the subject matter of challenge under Section 34 of the Arbitration & Conciliation Act by way OMP(COMM)162/2016;

(vi) while considering the challenge, the learned Single Judge confined the notice in the objections to the award on Claim No.3 as well as claim No.10 with regard to the interest;

(vii) so far as the claim No.3 is concerned, the appellant had claimed an amount of Rs.2,34,900/- on account of labour

wages paid so far. Claim No.10 is related to award of interest on the impugned award.

(viii) so far as the award dated 10<sup>th</sup> September, 2009, is concerned, the award on claim No.3 deserves to be carefully extracted herein and reads as thus:

**“Claim No.3**

*In this regard the claimant seeks to recover Rs.2,34,900/- From(sic.) the statement of facts already given above, it is clear that keeping in view the exigency and the nature of the flood control the matter required urgent attention. Reinforced cement, concrete and labour was required. The contract had to be completed within a stipulated time. Necessarily the claimant had to mobilize the required labour and machinery as it was time bound contract. The reference has already been given above to different letters of the respondent. The respondent had been assuring that approved drawings shall be supplied shortly. Therefore, the claimant could not take the risk not to keep the labour etc. ready for the work. If he had not done so the whole position would have resulted in a condition that the moment drawings would be received the claimant would not be able to work properly. In fact reference has already been made to the letter of the respondent subsequently written that the claimant should go slow. In fact it is unfortunate that respondent*

*had called for tender without sorting out the anomalous Inter-State dispute with Haryana. Therefore, the claimant's version should be believed and on behalf of the respondent it was urged that no bills have been produced. There is no attendance register of the labour and there is no statement in terms of clause 19D of the contract, nor any copy of the Income Tax Returns has been filed. In the peculiar facts keeping in view the fact that the claimant appears to be a small contractor insisting on the labour bills and Income Tax Returns would be a folly. The amount claim appears to be on the face of it reasonable which any contractor would have incurred in view of the urgency of the matter. Resultantly an amount of Rs.2,34,900/- is allowed."*

(ix) in the award dated 10<sup>th</sup> September, 2009, the appellant was found entitled to a total sum of Rs.8,48,174/-. The learned Arbitral Tribunal noted that 234 months had expired since the date the contract stood terminated and found reasonable the award of interest @ 12% in the peculiar facts and circumstances. Interest was, thus, quantified at Rs.19,84,727/- from the date the contract had been terminated and;

(x) by the impugned order dated 15<sup>th</sup> November, 2016, the learned Single Judge has concluded that the award on Claim

No.3 was unsupported by evidence and, therefore, had to be termed as perverse and the impugned Award as regards Claim No. 3 was set aside.

3. Learned counsel for the appellant is unable to point out any material in support of the claim for labour, wages other than the award on claim No.2 wherein the Arbitrator has noted the availability of the machinery which had been mobilised by the appellant for the purposes of execution of the contract.

4. In view thereof, the finding of the learned Single Judge to the effect that there was no evidence at all to support the claim of the appellant with regard to the labour charges cannot be faulted with and has to be sustained.

So far as the award of interest on claim No.10 is concerned, the learned Single Judge has sustained the award by the Arbitral Tribunal.

5. In view of the above, the present appeal is wholly misconceived and is dismissed.

In view of the dismissal of the appeal on merits, the application for condonation of delay, does not survive for adjudication and is dismissed as such.

**ACTING CHIEF JUSTICE**

**ANU MALHOTRA, J**

**APRIL 18, 2017/sv**