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

DECIDED ON : JULY 14, 2017

+ **FAO(OS) (COMM) 132/2017**

UNION OF INDIA

..... Appellant

Through : Mr.Jaswinder Singh, Advocate.

versus

M/S G P M LOOMBA SA JV

..... Respondent

Through : Mr.Joydeep Mazumdar with
Mr.Debjyoti Bhattacharya and
Mr.Kamlesh Kumar, Advocates.

CORAM:

HON'BLE MR. JUSTICE S. RAVINDRA BHAT

HON'BLE MR. JUSTICE S.P.GARG

S. RAVINDRA BHAT, J. (OPEN COURT)

CAV 591/2017

Mr.Joydeep Mazumdar, learned counsel for the Caveator has put appearance. The caveat accordingly stands discharged.

CM APPL.22977/2017 (delay)

1. The present appeal questions a judgment and order of the learned Single Judge dated 8.11.2016, rejecting the application under Section 34 of the Arbitration and Conciliation Act, 1996 (hereinafter 'the Act').
2. The appeal is highly belated by 110 days. The ground urged in support of the application for condonation of delay is that the certified copy of the order dated 8.11.2016, which was applied on 25.11.2016 was made available on 1.12.2016. After that, the concerned dealing officer was on leave for the period from 2.4.2017 to 25.4.2017. Thereafter, the learned counsel appearing in this case was handed over the papers on 26.4.2017 and the appeal was filed on 3.5.2017.
3. The court notices that the application is bereft of any explanation as to why the concerned officers delayed the handing over the file and chose to forward it to the concerned counsel only in the end of April.
4. In these circumstances, explanation cannot be considered to be sufficient for condoning the delay of 110 days.
5. The application is dismissed.

FAO(OS) (COMM) 132/2017 & CM APPL.22975-76/2017

1. Apart from the issue of delay, the court considered the case on merits. The respondent (hereinafter 'the consultant') had successfully tendered for consultancy contract in respect of which an agreement was entered into on 22.5.2009.
2. The consultancy was for building dwelling units for the Army, Navy and Air Force in various places of Andaman and Nicobar Islands.
3. The contentious issue was in respect of Car Nicobar. The consultant complained that the appellant had not adhered to the terms of

the contract. The consultant sought a reference under Arbitration Clause which led to the setting up of a Tribunal. The claim was made in respect of the fee said to have been wrongfully withheld in so far as the report (at the stage of payment) of the Car Nicobar (AF) port of the contract was concerned.

4. The subject matter of the Arbitration was that 10% fee was payable on the submission of the DPR and 10% was payable after its approval. The defence urged on behalf of the appellant was that DPR was never approved by the concerned ASC.

5. The Tribunal considered the rival claims and by its Award dated 5.9.2014 (in paras 20 and 34) upheld the consultant's submissions and directed a sum of ₹2,17,42,232/- to be paid with interest. The appellant's objections under Section 34 were rejected by the impugned order dated 8.11.2016.

6. Mr. Jaswinder Singh, learned counsel for the appellant argues that the Tribunal as well as the learned Single Judge fell into error in overlooking that the proposal pertaining to Car Nicobar had never been approved in as much as the report was not accepted, unlike in the case of other three ports of the Consultancy i.e. Port Blair (Army) Port Blair (Navy) and Port Blair (Air Force). Though the Car Nicobar (AF) proposal was accepted by the Station Commander, it was not ultimately forwarded for approval to the ASC. This meant that the Tribunal went by an assumption that despite non-acceptance by the Contractor's work, it was entitled to fee claimed by it.

7. Learned counsel referred to the terms of the Notice Inviting Tender (NIT) which disclosed that the project's cost (indicative) was

₹202 crores. He submitted that as a consequence of the project report, the project costs was increased to ₹1,057.48 crores of which Car Nicobar component was ₹303 crores. In short, it was submitted that in the absence of any approval with respect to the consultancy proposal and Project report, the consultant could not have legitimately claimed the amounts, as it did successfully, before the Tribunal.

8. This Court has considered the submissions of the appellant. Besides the issue of delay that has been dealt with, it is evident that both the Arbitral Tribunal and the learned Single Judge considered and dealt with the appellant's submissions which have been reiterated in these proceedings. The bone of contention as far as the appellant is concerned is two-fold, i.e. the estimated project cost was 1/5th of what finally made out in the report and that Car Nicobar proposal was never approved, thus, disentitling the consultant to the amount claimed by it.

9. This Court is of the opinion that these submissions cannot be gone into under Section 34- much less under Section 37 of the Act. As to the nature of the work done, there is no dispute that the project reports were accepted so far as the other three ports/phases are concerned. This meant that the project cost was necessarily much more than what was estimated.

10. So far as the submission with respect to the consultant's work is concerned, this Court is not persuaded with the appellant's argument. The consultant performed what it was tasked to do and the appellant's agents and officials chose not to forward that part of the report for final approval something that was beyond the control of the consultant who performed the task which was assigned to in the Agreement.

11. In these circumstances, there is no patent illegality or unreasonableness in the Award that could have persuaded the learned Single Judge to interfere with it.

12. For the above reasons, the appeal fails and is dismissed.

**S. RAVINDRA BHAT
(JUDGE)**

**S.P.GARG
(JUDGE)**

JULY 14, 2017/sa

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