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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **FAO(OS) (COMM) 147/2017 & CMs 25689-91/2017**

Date of decision : 24th July, 2017

UNION OF INDIA Appellant
Through: Ms.Aarti Bansal, Adv.

versus

M/S PANDIT CONSTRUCTION CO Respondent
Through:

CORAM:
HON'BLE MR. JUSTICE SANJIV KHANNA
HON'BLE MR. JUSTICE NAVIN CHAWLA

SANJIV KHANNA, J. (Oral)

CM 25691/2017

Exemption allowed subject to all just exceptions.

Application is disposed of.

FAO(OS) (COMM) 147/2017 & CMs 25689-90/2017

This intra-court appeal impugns the order dated 6th February, 2017 passed by the learned Single Judge dismissing objections filed by the appellant challenging the award dated 8th July, 2013, in respect of in respect of Claim no.8.

2. The appeal is belated and application for condonation of 71 days delay has been filed.

3. Before issuing notice on the application, we have deemed it appropriate to examine the appeal on merits and find that

there is no justification and reason to interfere with the impugned order which upholds the decision of the Arbitrator in respect of claim no.8.

4. The respondent was awarded contract for construction of Admn. & Training Block for Group Centre & Academy for CRPF at Kadarapur, Gurgaon. The total value of the contract was Rs.928.44 lacs. This included civil work component of Rs.892.52 lacs. Initially, the contract was to be completed by 13th February, 2007 but this date was extended by the appellant to 6th June, 2007. To this extent, there is no dispute.

5. As per the award, the respondent had completed civil work of Rs.906.44 lacs as on 15th March, 2007 when the work was suspended. The suspension was at the request of the appellant as they did not have sufficient funds to complete the work. On 18th August, 2008, the work was foreclosed and final bill was thereafter paid on 21st July, 2009. The quantum of work executed by the respondent was calculated and quantified by the appellant at Rs.906.43 lacs.

6. The contention of the appellant is that as the work never got completed and was foreclosed, the arbitrator could have not granted bonus @5% under clause 2A of the agreement amounting to Rs.44.03 lacs.

Clause 2A of the agreement reads:

“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“.

The clause postulates payment of incentive in the form of bonus @ 1% of the tendered value per month computed on daily basis subject to maximum of 5% on early completion.

7. The claim relying on clause 2A was examined by the Arbitrator who has referred in detail to the factual matrix and has pointed out and held that the fault was of the appellant. The appellant did not have funds and had actually stopped payments as was admitted by the appellant vide letter dated 28th December, 2006 asking the respondent to curtail execution of the civil component of work within Rs.849 lacs to avoid non-payment for want of funds.

8. Thus, the appellant was guilty for not arranging required funds to execute the work.

9. The aforesaid findings have been affirmed by the learned Single Judge who has referred to clauses 2A, 12.1 and 15 of the contract.

10. The appellant has not placed on record before us the copy of the letter dated 26th April, 2006 written by the respondent or highlighted the reasons why time for completion was extended from 13th February, 2007 to 6th June, 2007. This letter dated

26th April, 2006 was also not relied upon before the learned Single Judge. The Arbitrator had dealt with the question of extension of time in paragraph 8.9 of the award, which findings have not assailed and specifically challenged.

11. In the absence of any specific assertion and allegation relating to fault of the contractor as being the reason why the work was extended up to 6th June, 2007, we do not think the respondent should be denied and deprived the amount allowed under Claim no.8. In the factual matrix as found by the Arbitrator, the respondent had substantially executed the work by December, 2006, when he was asked to go slow and curtail the civil component. Finally, the work was suspended on 15th March, 2007 and thereafter foreclosed for want of funds. The closure was on account of lapse or fault of the appellant i.e. absence of funds.

12. In these circumstances, we are not issuing notice on the application seeking condonation of delay. The said application and the appeal will be treated as dismissed.

SANJIV KHANNA, J

NAVIN CHAWLA, J

JULY 24, 2017

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