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

\+ FAO(OS) (COMM) 152/2017, C.M. APPL.26887/2017

MAHALAXMI LIGHT HOUSE ..... Appellant

Through : Sh. Suhail Dutt, Sr. Advocate with Sh. Roshan Kumar, Ms. Rishu Agarwal and Sh. Azhar Alam, Advocates.

versus

CHIEF ELECTORAL OFFICE & ANR ..... Respondents

Through : Sh. Ramesh Singh, Standing Counsel with Sh. Sandeepan Pathak, Advocate, for GNCTD.

CORAM:
HON'BLE MR. JUSTICE S. RAVINDRA BHAT
HON'BLE MR. JUSTICE SUNIL GAUR

O R D E R

% 20.09.2017

1. The only question urged before this Court in the present appeal under Section 37 of the *Arbitration and Conciliation Act, 1996* [hereafter "the 1996 Act"] is whether the learned Single Judge fell into error in affirming the Arbitral Tribunal's [hereafter "the Tribunal"] award to the extent it denied any interest on the main sum, i.e. ₹1,00,28,788.24/-.

2. The appellant had preferred a claim urging wrongful denial of its fees and charges for providing tent, furniture and lighting services in the *General Elections to the Lok Sabha* in 1999 at different locations in the two parliamentary constituencies of Delhi. It sought reimbursement of expenses and payment towards the services and sought to back the reimbursement claims with challans, copies of invoices etc. The Chief Electoral Officer

(CEO), i.e. the respondent rejected the bulk of these claims, but admitted the sum of ₹ 15,22,772/-.

3. Dissatisfied, the appellant invoked the arbitration clause, and the sole arbitrator was appointed.

4. Before the Tribunal, the CEO persisted with his stand, contending that the bills and charges claimed were unverified and did not reflect the correct position. These contentions were, however, negatived and the Arbitrator found favour for the appellant, awarding the sum claimed, i.e. ₹ 1,00,28,788.24.

5. The Tribunal, however, did not grant *pendente lite* interest, for the major portion of the amount and rather chose to do so in respect of the admitted sum of ₹15,22,772/-. The Tribunal reasoned as follows:

> *"Before 1 proceed to answer the question posed. 1 need to re-emphasize that it was the Returning Officer who was at the spot, it was he who was supervising the entire show and it was he and he alone, since no other "representative" had been appointed by the Chief Electoral Officer, to oversee the supplies ordered and supplied actually made and to scrutinize and verify the bills. And, pray, what do we find? We find that the bills were scrutinized and verified by them. They have sworn by their correctness. If we go through Clause 19 of the Agreement it would show that the required physical verification was necessarily to be done "before dismantling of the structures etc.". This was so done by the Returning Officer as per requirement of that clause. True, there were subsequent enquiries. True the reports so submitted dig holes into the bills and their veracity but then that exercise was done much after the dismantling of the structures. In fact, and admittedly, there was no physical verification at the site. In truth there could not be any such physical verification at that point of time, it was too late in the day. Ofcourse, the reports are disturbing. But then for what has been noticed above I feel they need to be ignored.*

> *The Respondent itself had found a sum of Rs. 1522772/- payable to the Claimant. Even that amount has not been paid and there is no reason why the payment has been withheld.*
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> *For what has been recorded above, I feel the Claimant has succeeded improving it case. Therefore, I pass an award for the recovery of Rs. 01,00,28,788.24 in favour of the Claimant and against the Respondent."*

6. The appellant's challenge to the award – to the extent it denied interest, was rejected by the learned Single Judge in proceedings under Section 34 of the 1996 Act. The learned Single Judge noticed that the grant of refusal of interest is a matter of discretion and entirely fact-dependent given the circumstances of each case and that broadly speaking, such exercise of discretion cannot *per se* result in invocation of jurisdiction under Section 34 of the 1996 Act.

7. The appellant highlights that the reasons furnished by the Tribunal for the denial of interest, in the form of exercise of discretion not to grant interest, are not only unpersuasive but illogical. It was submitted that such reasons amounted to palpable unreasonableness of the kind envisaged in the authorities on Section 34 of the 1996 Act, i.e. *Associate Builders v. Delhi Development Authority* AIR 2015 SC 620. It is submitted that given these facts, to say that since respondents admitted liability to the extent of ₹15,22,772/-, interest only on that component of the award was admissible, was wholly unreasonable.

8. Learned counsel for the State contested these submissions, arguing that in the present case, the exercise of discretion does not warrant interference at the stage of proceedings under Section 37 of the 1996 Act. It is submitted that the imperative of Section 31(7) of the 1996 Act is such

that the power to grant or refuse interest is primarily that of the Tribunal. The exercise of such discretion can never be considered as part of substantive reasoning which can be interfered by the Court under Sections 34 or 37.

9. Whilst there could be no dispute at all with respect to the proposition that Section 31(7) envisages judicious exercise of discretion and its scrutiny on case-by-case basis is what is involved in the present instance, the award in the present case rejected the CEO's defence that the bills were inflated and could not be satisfied because they were unverified. This position led to arbitration; in the arbitration proceedings too, the CEO persisted with the stand but did not meet with any success. In other words, the Tribunal decisively overruled, answering to the merits of the claim and granted the relief.

10. At the same time, while doing so, the Tribunal exercised its discretion not to grant any interest at all on the main amount but chose to award interest only on a small portion on the basis that it was admitted by the respondents. This plainly discloses an inconsistent, and if one may say, a irreconciliable approach in the award. On the one hand, the Tribunal rules that the rejection of the bills was wrong and that the claimant was entitled to it. That is the logic of the award. However, with respect to the exercise of jurisdiction and the refusal to grant any interest on the main amount, what is resorted to in the award is the admission by the respondents on a small portion of the amount claimed. This, in our opinion, clearly amounts to a patent and manifest unreasonableness of the kind talked about in the Supreme Court judgment in *Associate Builders (supra)*.

11. This Court is also conscious of the fact that the decisions of two Division Benches in *Puri Construction Pvt. Ltd. and Ors. v. Larsen and*

Toubro Ltd. and Ors. [FAO(OS)21/2009, FAO(OS)22/2009, FAO(OS)23/2009 and FAO(OS) 194/2009, decided on 30.04.2015] and *Delhi Development Authority v. Bhardwaj Brothers* AIR 2014 Delhi 147, have ruled that if there is an infirmity or an invalidating circumstance found by the Court under Section 34, the Court would not be left with discretion to modify the award or add to it.

12. In such circumstances, the matter would be remitted to the arbitrator and the parties relegated at the relevant stage. Therefore, the denial of interest on the sum of ₹1,00,28,788.24/- is set aside. The impugned judgment is accordingly set aside.

13. The parties shall apply to the arbitrator for adjudication on the pre-reference, interest and the question of interest for the *pendente lite* period.

14. All rights and contentions of the parties are reserved. The appeal succeeds to the above extent.

S. RAVINDRA BHAT, J

SUNIL GAUR, J

SEPTEMBER 20, 2017/ajk