

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

+ **FAO No. 424/2017**

% **31st October, 2017**

GAIL INDIA LTD. & ORS.

..... Appellants

Through: Mr. Sacchin Puri, Sr. Advocate
with Mr. Vikrant Panchanda
and Ms. Mehak, Advocates.

versus

M/s PRERNA ENTERPRISES & ANR.

..... Respondents

Through: Mr. Aman Bhalla, Advocate.

CORAM:

HON'BLE MR. JUSTICE VALMIKI J. MEHTA

To be referred to the Reporter or not?

VALMIKI J. MEHTA, J (ORAL)

C.M. Appl. No. 39161/2017 (for exemption)

1. Exemption allowed, subject to all just exceptions.

The application stands disposed of.

C.M. Appl. No. 39160/2017 (for delay)

2. Considering that there are issues of huge monetary liability upon the appellant, and delay is not of over one year, and is only of 228 days, therefore, applying the ratio of the judgment of the

Supreme Court in the case of *N. Balakrishnan Vs. M. Krishnamurthy* **AIR 1998 SC 3222** delay of 228 days in filing the appeal is condoned but subject to payment of costs of Rs.10,000/- to counsel for the respondents within two weeks from today.

C.M. stands disposed of.

FAO No. 424/2017 and C.M. Appl. No. 39159/2017 (for stay)

3. This first appeal under Section 37 of the Arbitration and Conciliation Act, 1996 (hereinafter referred to as 'the Act') is filed by the appellant/objector impugning the judgment of the court below dated 26.11.2016 by which objections filed by the appellant under Section 34 of the Act have been dismissed whereby challenge was laid to the Award of the Arbitrator dated 19.12.2014.

4. It is seen that the appellant had passed orders dated 7.2.2011, 11.4.2011, 9.3.2012, 20.9.2012 and 6/17.9.2012 whereby the appellant had claimed amounts from the respondent no.1/house-keeping service provider charges not only with respect to the extant contract dated 20.2.2010 which was granted for a period of two years with a three months extension, but also the appellant sought to recover monies under an earlier contract dated 22.10.2007 which was for a

period of two years with one extension of four months. Total amounts of Rs.88,000/-, Rs.2,00,000/-, Rs.2,54,889/- and Rs.4,40,432/- were sought to be recovered from the respondent no.1 by the appellant. An amount of Rs.4,40,432/- was already recovered by the appellant by invoking and encashing a bank guarantee furnished by the respondent no.1.

5.(i) So far as the challenge by the appellant with respect to its entitlement of claim of deductions for the earlier contract dated 22.10.2007, the claim of the appellant was based on the charge against the respondent no.1 that the respondent no.1 had provided a chef not having requisite qualifications and that the staff of the respondent no. 1 was found sleeping in the guest house premises of the appellant.

(ii) In this regard the undisputed position which emerges on record is that there is no clause of liquidated damages either under the contract dated 22.10.2007 or the subsequent contract dated 20.2.2010 and appellant has not led any evidence to show that any loss was caused to it by the breach of the contract of the respondent no.1 in not providing a qualified chef or that it was found that the respondent no.1's staff was sleeping on the premises, and therefore once neither

there is a clause of liquidated damages under Section 74 of the Indian Contract Act, 1872 nor are the losses proved to have been caused to the appellant, hence no adjustments or deductions or claims of the appellant could have been allowed by non-payment on account of the alleged dues of the respondent no.1 under the contract dated 22.10.2007.

6. So far as deduction made by the appellant under the extant contract dated 20.2.2010, deductions were made on the ground of alleged excess payment. Once again no evidence was led on behalf of the appellant before the Arbitrator as to how the so called excess payment was made to the respondent no.1. Therefore, Arbitrator denied the claim of the appellant as there was nothing on record to show how and in what manner excess payment was made to the respondent no.1 by the appellant.

7. Accordingly, it is seen that there is no basis for sustaining the impugned orders, and learned senior counsel for the appellants at this stage during the course of arguments does not very seriously press the appeal so far as these aspects are concerned.

8. Learned senior counsel for the appellant however very emphatically questions the grant of high rate of interest by the Arbitrator under the Award at 15% per annum. Learned senior counsel for the appellants has placed reliance upon various judgments of the Supreme Court which observe that since there is consistent fall in the rate of interest courts could not award high rate of interest. These judgments of the Supreme Court are ***Rajendra Construction Co. v. Maharashtra Housing & Area Development Authority and Others***, (2005) 6 SCC 678, ***McDermott International Inc. v. Burn Standard Co. Ltd. and Others***, (2006) 11 SCC 181, ***Rajasthan State Road Transport Corporation v. Indag Rubber Ltd.***, (2006) 7 SCC 700, ***Krishna Bhagya Jala Nigam Ltd. v. G. Harischandra Reddy and Another***, (2007) 2 SCC 720 & ***State of Rajasthan and Another Vs. Ferro Concrete Construction Private Limited*** (2009) 12 SCC 1.

9. At this stage, learned counsel for the respondent no.1 states that the respondent no.1 if not be held entitled to 15% rate of interest, it should yet be awarded a reasonable rate of interest which should be much higher than 6% per annum as passed by the appellants, and therefore in the facts of this case I am of the opinion,

and so agreed by counsels for both the parties, that the rate of interest under the Award would stand reduced from 15% per annum to 9% per annum, of course without in any manner interfering with the period for which interest is payable by the appellant to the respondent no.1.

10. In view of the aforesaid discussion this appeal is disposed of by sustaining the impugned judgment dated 26.11.2016 and the Award of the Arbitrator dated 19.12.2014, except that the rate of interest will stand reduced to 9% per annum simple.

11. The appeal is disposed of accordingly. Parties are left to bear their own costs.

OCTOBER 31, 2017

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VALMIKI J. MEHTA, J