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IN THE HIGH COURT OF DELHI AT NEW DELHI

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**Reserved on: 21st November, 2017
Pronounced on: 28th November, 2017**

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O.M.P. (COMM) 411/2017, IA No.13656/2017

SOUTH DELHI MUNICIPAL CORPORATION

..... Petitioner

Through : Mr.Rakesh Kumar Dudeja with
Mr.Akshay Kapuria, Advs.

versus

M/S PRITHVI ASSOCIATES

..... Respondent

Through : Mr.S.K.Maniktala, Adv.

CORAM:

HON'BLE MR. JUSTICE YOGESH KHANNA

YOGESH KHANNA, J.

1. This petition is under section 34 of the Arbitration and Conciliation Act for setting aside the impugned award dated 11.08.2017 passed by Sh.S.K. Tandon (Retd. Additional District Judge), sole arbitrator in arbitration case No. DAC/655/11-14 titled as M/s Prithvi Associates vs. South Delhi Municipal Corporation.

2. On 04.09.2006 the petitioner had awarded to the respondent firm a contract granting "Rights for illuminated display of Advertisements through Unipoles" and to this effect an Agreement dated 04.09.2006 was entered into between the parties.

3. On 11.09.2006 an allotment letter No.ADC (Advtt.)/2006/D-468 dated 11.09.2006 was issued by the petitioner to the respondent.
4. On 11.09.2006 in furtherance of said allotment/Contract, the respondent had deposited security amount of Rs.1,04,62,500/- with the petitioner vide receipt No.940010 dated 11.09.2006 and also paid Rs.2,50,000/- to the petitioner by way of Caution Money.
5. The allotment was initially for a period of three years commencing from 15.09.2006 to 15.09.2009 and was extendable upto five years. During the extended period of the contract the monthly license fee was liable to increase at the rate of 10% each year. The respondent was required to deposit an amount equivalent to three months license fee as refundable security deposit with the petitioner. The contract was extended till 15.09.2011 and upon its completion, the petitioner's officials informed the respondents about the factum of defaults of payment of licence fee on various occasions and on account of which certain amounts become due from the respondent to the petitioner.
6. The matter was referred to arbitration wherein the petitioner corporation were proceeded ex-parte and an award dated 15.10.2016 was passed by the sole arbitrator wherein *pendentelite* and post award interest at the rate of 10% per annum on the amount of Rs.83,99,759/- (that is Rs.81,49,759/- the balance security deposit plus Rs.2,50,000/- the caution money) was granted, besides other reliefs.
7. On 09.01.2007 the respondent filed an OMP (COMM) 5/2017 challenging the award dated 05.10.2016 on various counts and this Court vide order dated 09.01.2017 observed as under:

"the learned Arbitrator awards the interest @ 10% pa in the impugned award under claim nos. 1 and 2 for pendent lite and post award period and makes no mention of the claim of interest for the pre-reference period. Under Section 31(3) of the Act, the learned Arbitrator is mandate to give reasons, unless otherwise agreed to by the parties. In that view of the matter, the court holds that the arbitrator ought to have given reasons if he was going to decline the relief of interest for the pre reference period. It will now be open to the petitioner to seek arbitration on this issue in accordance with laws".

8. The matter was taken up by the learned arbitrator and on 11.08.2017 an additional arbitral award was given wherein the arbitrator awarded 10% per annum for pre reference period. The relevant portion is as under:

"While deciding Issue No.4 i.e. whether claimant is entitled for interest as prayed or not, I have already held that the claimant is entitled for interest @ 10% per annum under the provisions of Section 31 (7) of the Arbitration and Conciliation Act, 1996 for the reasons mentioned in the award. Reiterating the same reasons i.e. taking into consideration that respondent had retained security amount and caution money and also earned interest upon the same, I have no hesitation to hold that claimant is entitled for interest @ 10% per annum for the pre reference period i.e. from 15.09.2011 to 30.06.2014, in view of the provisions under Section 31 (7) of the Arbitration and Conciliation Act, 1996."

9. It is the case of the petitioner herein that the interest for the pre reference period has been awarded on the security deposit and caution

money against the terms of the contract viz. clause 7, which runs as under:

“7. Every successful advertiser shall furnish by bank draft/pay order one month's licence fee as ground rent and an amount equivalent to three months' licence fee/ground rent as security within 2 days of acceptance of tender, which shall be refunded only after the successful performance of the contract and after settlement of all dues/accounts with the department. The security money will not carry any interest.”

10. Before analyzing clause 7 of the agreement it would be appropriate to refer to the facts and reasoning given in the award. The award dated 05.10.2016 notes the claim made by the respondent as under:

“CLAIMS:

The Claimant prays that, therefore, it is entitled for the recovery of the following amounts from the Respondent:

- a. A sum of Rs. 1,04,62,500/- on account of refund of the refundable security deposit.*
- b. A sum of Rs. 2,50,000/- on account of refund of Caution Money.*
- c. A sum of Rs. 3,90,00,000/- towards loss of opportunity / profit owing to arbitrary / illegal withholding of the refundable security deposit over the last 39 months.*
- d. Interest @ 24% per annum on the claimed amount for the period comprising of the pre-reference, pendentelite and post award period*
- e. Amount towards cost of litigation / arbitration.”*

11. The claimant had thus claimed the interest even for pre reference period. The learned arbitrator then framed the following issues:

- “1. Whether the Claimant is entitled to an amount of Rs. 1,04,62,500/- as mentioned in Claim No. 1 of the Claim Petition? OPC*
- 2. Whether the Claimant is entitled for refund of Rs.2,50,000/- as mentioned in Claim No.2 of the Claim Petition? OPC*
- 3. Whether Claimant is entitled for recovery, of Rs.3,90,00,000/- from the Respondent as mentioned in Claim No. 3 of the Claim Petition? OPC*
- 4. Whether Claimant is entitled for interest as prayed? OPC*
- 5. Whether Claimant is' entitled to cost of litigation/arbitration as mentioned in Claim No. 5 of the Claim Petition? If yes, how much? OPC*
- 6. Relief ?”*

12. The learned arbitrator noted the claim for interest while dealing with issue no.4:

“ISSUE NO.4

Whether Claimant is entitled for interest as prayed? OPC

The Claimant has claimed interest @24% per annum on the due and outstanding amounts from the dates the respective amounts had fallen due for payment and till the date of actual payment thereof.”

13. The learned arbitrator after noting the claim for interest on the due and outstanding amounts from the dates it had fallen due, then proceeded to decide issues, including that of interest (issue 4) but granted relief only to *pendentelite* and post award period as follows:-

“ ISSUE NO. 6 - RELIEF

In view of the aforesaid discussion, I make the Award as follows:

1. Claimant is entitled to recover a sum of Rs.81,49,759/- from the Respondent as held while deciding Claim No.1.

2. Claimant is entitled to recover a sum of Rs.2,50,000/- from the Respondent as held while deciding Claim No.2.

3. On the aforesaid amount of Rs. 83,99,759/- (Rs.81,49,759/- + Rs. 2,50,000/-) Claimant is entitled for pendentelite interest @ 10% per annum.

4. Claimant is entitled for a sum of Rs. 1,00,000/- towards cost of litigation.

5. The aforesaid amount shall be paid by the Respondent within 30 days from the date of the receipt of copy of the Award failing which, on the amount so arrived at, Respondent shall be liable to pay interest @ 10% per annum from the date of award till payment.”

14. Since there was an ambiguity in the award as pre reference interest was not awarded, the claimant challenged the award for grant of pre reference interest, in OMP (COMM) 5/2017 and on 11.08.2017 the learned arbitrator granted an interest for such period too.

15. Admittedly the contract was extended till 15.09.2011 when it was finally terminated. Now clause 7 of the agreement though says the security money deposited shall not carry any interest but it also notes the security deposit is to be refunded after the successful performance of the contract and after settlement of all the dues/accounts with the department. Thus where the contract was terminated by the petitioner on 15.09.2011 then it was obligatory upon the petitioner to settle the dues of the respondent forthwith and adjust such dues against security and pay the balance, if any. Admittedly, the petitioner was earning interest on security

lying deposited with it from the date such amount was deposited by the respondent with the petitioner. Now if the accounts took time to settle and were adjusted against the security, it was only on balance amount of security and caution money the pre-reference interest was allowed by the learned arbitrator. Admittedly such balance amount (a part of security deposit and caution money) was lying deposited with the petitioner, earning interest on it, hence if the learned arbitrator directed payment of interest on balance amount of Rs.81,49,759/- there was no illegality in the award and rather was in consonance with clause 7 (supra) as admittedly no interest was granted on security amount which was adjusted against the dues even after termination of this contract. Hence, the objections under section 34 of Act being devoid of merits are liable to be dismissed.

16. The petition alongwith pending application is thus dismissed. No order as to costs.

YOGESH KHANNA, J

NOVEMBER 28, 2017

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