IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

ARBITRATION PETITION NO.256 OF 2015
ALONG WITH
NOTICE OF MOTION NO.1146 OF 2018
WITH
NOTICE OF MOTION NO.1148 OF 2018
IN
ARBITRATION PETITION NO.1158 OF 2014

Municipal Corporation of
Greater Mumbai ... Petitioner
Versus
Bucon Engineers & Infrastructure
Private Limited ... Respondent

.....

Mr. P.G. Lad a/w Ms Aparna Murlidharan, Ms. Sayli Apte, Mr. R.Y. Sirsikar and Mr. Dadasaheb Shingade for the Petitioner-MCGM.
Ms. Rajni Iyer, Senior Advocate a/w Mr. M.S. Bhandari I/b Ms. Pranjali Bhandari for the Respondent.

.....

CORAM : S.C.GUPTE, J.

DATE : 29 NOVEMBER 2018

P. C. :

. Heard learned Counsel for the parties.

2 This petition challenges an award passed by a Sole Arbitrator in a reference arising out of a construction contract. The contract was in pursuance of a tender for the work of planning, designing and construction of community toilets in slums in H/E Ward in Mumbai, the finance for which was to come in a substantial part from International Bank for Reconstruction and Development (IBRD). It was the case of the

Respondent herein, who was the contractor and claimant before the arbitral tribunal that the Petitioner had committed various breaches of the contract including non-payment for work done as per the Bills of Quantity ("BOQ") rates, non-payment of extra items of work executed by the Respondent, as also for revision of rates/increased cost of execution during the extended period of contract, such extension being on account of delays on the part of the Petitioner, and for other compensation for such delays including compensation on account of idleness of labour, staff, machinery and establishment, etc. The claim was for a total sum of about Rs.2.44 crores, out of a total contract value of Rs.3.21 crores. The learned arbitrator awarded a sum of Rs.80.48 lacs to the Respondent. This award has been impugned in the present petition.

3 So far as the Respondent's claim towards non-payment of final bill is concerned, it is *prima facie* clear from a reading of the impugned award that this part of the award discloses a possible view of the contract and evidence placed by the parties before the learned arbitrator. Whilst ruling on Claim No.1A (claim for non-payment of work done as per BOQ rates), the learned arbitrator has gone by the Petitioner's own record and clause 43.1 of the special conditions of contract. Based on this material, the learned arbitrator has concluded that there was no case for withholding of any payment on account of want of an MoU between the community and MCGM. This is *prima facie* a legitimate and possible view based on the material and no fault can be found with the same.

4 As for the claim for provision of pipes of various diameters, fixing of

taps and manhole covers, the learned arbitrator has relied on details of measurements recorded at the site at the time of execution along with the rate analysis and bills placed before the learned arbitrator. After studying this material and after considering the submissions of the parties, the learned arbitrator has found the claim to be justified. *Prima facie*, even this exhibits a possible view of the material and does not call for any interference under Section 34 of the Arbitration and Conciliation Act, 1996.

5 So also, as far as compensation towards loss of interest due to delay in payment of R.A. bills (claim No.3.) is concerned, there is *prima facie* adequate material on record to justify the claim. The work reflected in RA bills has been duly certified by the Engineer of the Petitioner. There has been inordinate delay in payment of these bills after completion of the work and submission of bills. The only contention of the Petitioner as far as this claim is concerned was that under the particular stipulation of the contract, namely, clause 43.1 of the conditions of contract, the Petitioner's responsibility to pay was within 28 days of certification by the Engineer. Only in the event there was a delay in such payment beyond 28 days the Petitioner was liable to pay interest for such late payment. The Engineer was the Petitioner's appointee; under clause 42.1 of the conditions of contract between the parties, the Engineer was required to check the contractor's monthly statement and certify the amount payable within 14 days after taking into account the credit/debit for the month in question. After reading the two clauses, namely, Clauses 42.1 and 43.1 of the conditions of contract and after taking into account the material placed before him by the parties, the learned arbitrator has held the claimant to be entitled to payment of interest on account of delays in payment. Even

this part of the award, *prima facie*, does not call for any interference.

6 So also, the claim for compensation due to delay in returning the retention money, is based on an interpretation of the contract, particularly, Clauses 48.2 and 48.3 of the conditions of contract and other material placed by the parties before the learned arbitrator. *Prime facie* even this exhibits a possible view.

7 The claims, which call for real consideration after a fuller hearing, are claims pertaining to “compensation due to idle labour, staff, machineries and establishments” as also “compensation due to infructuous expenditure incurred on appointment of N.G.O. due to certain sites becoming infeasible later”. These claims really call for a detailed hearing and analysis of the material placed before the learned arbitrator so as to consider whether they exhibit a possible view of the matter. So also, as far as the claim for revision of rates/increased costs of execution during the extended period of contract is concerned, there is a case for going into the quantum of compensation worked out by the learned arbitrator, though in principle *prima facie* the learned arbitrator appears to be right in awarding the revision of rates/increased costs of execution. So also, for the claim of cost, since a large part of the Respondent's claim has been rejected by the arbitral tribunal, a proper hearing may be called for.

8 In the premises, the Arbitration Petition is admitted. The Petitioner, however, shall deposit a sum of Rs.35,00,000/- in this court. The Respondent may be entitled to withdraw this amount against bank guarantee. The amount has been worked out on the basis of *prima facie*

observations made above. As for the rest of the award, MCGM may secure the claim by placing before the Prothonotary and Senior Master of this court, fixed deposits (FDs) of corresponding value with an undertaking not to encash the same FDs during the pendency of the present petition. The Petitioner shall deposit the amount and place FDs before the Prothonotary and Senior Master within a period of four weeks from today. Immediately, upon deposit of this amount, the Respondent shall be entitled to withdraw the amount with bank guarantee of any nationalized bank.

9 The execution of the impugned award shall be stayed subject to the condition of deposit of money and FDs as noted above. Notice of Motion No.1146 of 2018 is disposed of in the above terms.

10 The arbitration petition to come up along with Arbitration Petition No.1158 of 2014 on 18 December 2018 for final hearing.

(S.C. GUPTE, J.)