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

+ **O.M.P. 37/2008**

M/S MOHATA CONSTRUCTION CO. Petitioner
Through: Ms. Madhurima Tatia, Advocate.
(M:9810719337)
versus

UNION OF INDIA Respondent
Through: Mr. Jaswinder Singh, Advocate.
(M:9811232066)

CORAM:

JUSTICE PRATHIBA M. SINGH

ORDER

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06.09.2018

1. The present Section 34 petition has been filed challenging the award of the Arbitrator dated 16th October, 2007. The background facts are that a contract was awarded by the Respondent – Union of India to the Petitioner – M/s Mohata Construction Co., for construction of provisions of Married Accommodation for Airmen at Camero Complex, Subroto Park Delhi Cantt, New Delhi. The Sole Arbitrator entered reference on 17th October, 2006. One of the claims raised by the contractor was with respect to the cost of procurement of sand. According to the Petitioner, as per Appendix C of the contract, the source of material for coarse aggregate had to be Sohna (Haryana)/Pali, and the source of sand for RCC and PCC work was to be Badarpur. According to the Petitioner, in view of the orders passed by the Hon'ble Supreme Court in *M. C. Mehta v. Union of India* dated 6th May, 2002 and in *T. N. Godavarman vs Union of India* dated 18th November, 2002, no sand was available in the Sohna/Pali areas, therefore, they had

procured the coarse aggregate from Chandigarh and sand for RCC work from Ghaggar, Punjab near Dera Bassi. According to the Petitioner, Conditions 21.3 and 21.4 of the Special Conditions of Contract required them to produce the original vouchers in respect of all the materials, which were sourced by them. However, in contrast with the material mentioned in Condition 21.4, in respect of materials mentioned in Condition 21.3, the verification of the Engineer-in-Charge was required. However, according to the learned counsel for Petitioner, insofar as the material not covered by Condition 21.4, there is no requirement to provide the original vouchers, unless there is a demand to that effect by the Engineer-in-Charge.

2. The claim of the Petitioner for the increased cost for obtaining the coarse aggregate was to the tune of Rs.22.83 lakhs, which was raised before the Sole Arbitrator. Learned counsel for the Petitioner further submits that the fact that there were enormous difficulties in obtaining the coarse sand, is reflected from the various letters and documents, which are placed on record. Ld. Counsel further relies on the the minutes of the Board of Officers, which has been placed at page 43 to 44 of the written submissions. According to learned counsel for Petitioner, therefore, the Petitioner is entitled to reimbursement of the additional cost of procuring the coarse sand from Ghaggar, and coarse aggregate from Chandigarh. Learned counsel for Petitioner, thus, submits that the learned Arbitrator erred in not granting the said claim in favour of the Petitioner.

3. On the other hand, learned counsel for Respondent submits that insofar as the factual appreciation of evidence is concerned, the Arbitrator has the last word. He further submits that though there were difficulties in view of the Supreme Court orders, the claimant could not prove its claim as

no proper vouchers were produced. He further submits that the suppliers mentioned in the vouchers produced by the Petitioners were found to be non-existent. Learned counsel for the Respondent specifically relies upon paragraphs 18.8 and 18.9 of the award.

4. The Court has heard learned counsels for both the parties. The jurisdiction under Section 34 is limited. While there is no doubt that the orders were passed by the Supreme Court in the ***M. C. Mehta*** and ***T. N. Godavarman*** cases, the question remains as to whether the Petitioner's claim is liable to be allowed. The learned Arbitrator has specifically given a finding that the Petitioner did not submit authentic records of materials, which were supposed to have been procured by them from Ghaggar or from Chandigarh. According to the learned Arbitrator, the vouchers submitted by the Petitioner were not authentic and did not relate to the period of currency of the contract i.e. from October, 2002 to August, 2003. Learned Sole Arbitrator has further held that the sand, which is shown to have been procured, does not match with the records maintained, including the work diary. Thus, the learned Arbitrator concluded that the claimant could not prove that any of the materials were actually brought from Ghaggar/Chandigarh to the site of work. Relevant paras of the award of the Arbitrator are set out below:

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18.6 The claimants submitted copies of audited cheques payment for the material procured in support of the vouchers already submitted by them. They also contended that it is difficult to exactly locate, when the works at various stages were executed at site and in view of non-availability of the stage passing register, they are unable to comment further.

18.7.....

18.8 UOI confirmed that the building materials viz coarse sand from Ghaggar and aggregate from Chandigarh were never produced by the contractor for testing and approved by the UOI for incorporation into the work. Work diary records, which are authentic documents signed by both the parties show that only Badarpur sand was brought to the site for the entire period of work.

18.9 UOI highlighted that the claimants for the first time informed the UOI in Feb 2003 regarding bringing Ghaggar sand for work but no vouchers were produced at that time and records in the work diaries also show only Badarpur sand. The so called audited documents and vouchers produced by the claimants, during herein, are not authenticated and are for material prior to Feb 2003 and quantities contained in the vouchers do not match with the records of the quantities mentioned in the work diaries which is signed by the contractor as an authentic record. Even the rates are varying in the vouchers from Rs.22.00 per cu ft to Rs.20.00 per cu ft, whereas claimants have taken a rate of Rs.22.00 per cu ft to work out their claim. A BOO was ordered by UOI to verify the addresses of suppliers for the aggregate and sand as per the details given in the vouchers by the claimants and all were found to be false/non-existent.

18.10.....

18.11 In view of the aforesaid, I am convinced that there has been total lack of effort from the claimants in maintaining a meticulous authentic record of material deemed to have been brought by them from Ghaggar River or Chandigarh to the site of work, subsequent to the issue of ban on quarrying by the Hon'ble Supreme Court in May 2002 and subsequent clarification in Oct 2002. No authentic vouchers were submitted by the claimants to the UOI, during currency of contract from Oct 2002 to Aug 2003, when the material was said to

have been brought by them from the changed source to the site of work, to support their claim. The claimants have not been able to produce any document showing approval of the Accepting Officer for change in source of materials as required vide Note (b) to Appendix 'C' on Page 172 of the CA. Records showing tests of materials from the new source also could not be produced in support of the claim. Authentic record, signed by both the parties viz work-dairy, was produced by the UOI, to substantiate that no quantum of 'material from changed source' was brought to the site of work and incorporated into the work. Claimants could not reconcile the data from the vouchers produced by them now at the time of hearing, with that given in the work diary signed by them. Thus the Claimants could not prove that any of the materials from Ghaggar/Chandigarh, purchased by them as per vouchers, had actually been brought to the site of work of CA No.CEWAC-02/2001-02 and incorporated into the construction of Married Accommodation for Airmen at Camero Complex, Subroto Park Delhi Cantt, after complying with the provisions of the CA. I therefore conclude that the claim is NOT sustained and award an amount of Rs. NIL to the claimants.

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5. The finding of the Sole Arbitrator has been more on facts rather on the question as to whether the claimant is entitled to reimbursement in principle. There can be no doubt that due to the intervening orders, which were passed by the Supreme Court, if the claimant had actually proved that higher costs had been incurred by them, the same may have had to be reimbursed. However, in the present case it is seen that the documents, which were filed by the Petitioner, did not satisfy the Arbitrator as to their genuineness and authenticity. Under these circumstances, in a Section 34 petition, this Court cannot start re-appreciation of the vouchers and other

documents, which are supposedly filed on record on behalf of the Petitioner. Thus, no interference with the award of the Sole Arbitrator is called for.

6. Learned counsel for the Petitioner has also raised the issue of costs that have been imposed by the Arbitrator. The Respondent had raised a counter claim for Rs.1 lakh. Since the claims of the Petitioner have been rejected as proper documents were not produced by it, costs of Rs.35,000/- are liable to upheld. However, no interest would be chargeable on the same. Costs be paid within a period of eight weeks from today.

7. Insofar as claim nos.2 & 3 are concerned, the learned Arbitrator has concluded that since there were breaches by both parties, fault did not lie only with the Union of India for the delay in finalisation of the final bills. The said findings do not warrant any interference.

8. OMP is disposed of in the above terms.

9. Let the matter be placed before the Registrar General on 15th November, 2018 to confirm the payment of costs to the Union of India.

PRATHIBA M. SINGH, J.

SEPTEMBER 06, 2018/dk