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IN THE HIGH COURT OF DELHI AT NEW DELHI

Date of Decision: 16th October, 2018

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O.M.P. (COMM) 43/2017

V.K. DEWAN & CO.

..... Petitioner

Through: Mr. Shashi Dewan, partner of
Petitioner in person. (M:9810111765)

versus

DELHI JAL BOARD & ORS.

..... Respondents

Through: Ms. Sangeeta Bharti, ASC for DJB
with Mr. Krishanu Adhikary,
Advocate. (M:9654074250)

CORAM:

JUSTICE PRATHIBA M. SINGH

Prathiba M. Singh, J. (Oral)

1. Present petition under Section 34 of the Arbitration and Conciliation Act, 1996 challenges the award dated 18th June, 2008 passed by the learned Sole Arbitrator.

2. Brief background is that the Petitioner was awarded a work order No./Supply order No. F8(5) EE(W)C-VII/2000/1497 dated 7th August, 2000. Completion certificate was given to the Petitioner on 1st March, 2005. Disputes arose between the parties and a Sole Arbitrator was, accordingly, appointed on 16th December, 2005. Petitioner had challenged the appointment of Arbitrator before this Court. However, the Petitioner chose to withdraw the said challenge on 20th September, 2007 in OMP No.154/2006. The matter remained pending before the learned Arbitrator for some time.

3. On 14th January, 2008, the Petitioner wrote a letter on the letterhead of

the Petitioner firm, withdrawing his claims in the following terms.

“

Dated:14.1.2009

*Shri Surinder Gandotra,
Sole Arbitrator,
115, Palika Bazar, Connaught Place,
New Delhi-110001*

In the matter of arbitration between:

*V.K. Dewan & Co.,
MD-67, Vishakha Enclave,
Pitampura, Delhi-110088*

v/s

*Delhi Jal Board,
(thru) Executive Engineer
Jal Sadan, Shiv Mandir Marg,
Lajpat Nagar, Phase-11
New Delhi-1100*

*In regard to: Construction of under ground reservoir
and booster pumping station at SurajMal Vihar, Trans-
Yamuna, Delhi*

(Contract agreement no.: 8 of 2000...)

*In the aforesaid matter, without prejudice to his right
to agitate elsewhere, the claimant contractor
withdraws all his claims.*

Copy to:

*Delhi Jal Board
(thru) Executive Engineer
Jal Sadan, Shiv Mandir Marg
Lajpat Nagar, Phase-11
New Delhi-1100”*

4. Since the Petitioner withdrew the claims before the Arbitrator, the Arbitrator awarded costs. Operative portion of the award, by which costs have been awarded in favour of the Respondent, reads as under:

*“ I Surinder Gandotra arbitrator make and publish this
award and hereby direct that M/s. V. K. Dewan & Co
should pay a sum of Rs.5,00,000/- to the Chief*

Executive Delhi Jal Board forthwith + Rs.3,00,000/- towards cost of litigation in the court of Arbitrator, and cost of litigation in Delhi High Court incurred by them + Rs.1,91,550/- as arbitration fee for both the parties M/s Delhi Jal Board and M/s. V. K. Dewan & Co under Section 31 & 38 of Arbitration and Conciliation Act 1996. Now the total amount to be paid by M/s. Dewan & Co. come to Rs.9,91,550/-. Thus M/s. Dewan & Co. has to pay a sum of Rs.9,91,550/- (Rupees Nine Lacs Ninety One Thousand Five Hundred Fifty only) to Delhi Jal Board within a period of 1 month from the date of order and incase M/s. V. K. Dewan & Co. fails to pay this amount of Rs.9,91,550/- the Delhi Jal Board will be entitled to recover and interest of 15% on this amount from M/s. Dewan & Co. till its full realization of the amount Rs.9,91,550/- (Rupees Nine Lacs Ninety One Thousand Five Hundred Fifty only.) ”

5. Thus, the Ld. Arbitrator awarded a total of Rs. 9,91,550/- which was inclusive of Rs. 5 lakhs to be paid to the CEO of Delhi Jal Board, 3 lakhs towards litigation costs and the fees of the arbitrator.

6. The primary submission of the Petitioner, who appears in person, is that the costs awarded i.e. Rs.5 Lakhs to the CEO of Delhi Jal Board, Rs.3 Lakhs towards the cost of litigation in the Delhi High Court and before the Arbitrator as also fee of the Arbitrator are amounts which were never claimed by the Respondent. The learned Arbitrator is not permitted to award costs beyond what has been claimed by the parties. He also raised an objection to the manner in which the Arbitrator has quantified his bill of Rs.1,91,550/-.

7. However, there is no basis to award Rs.5 Lakhs to the CEO of Delhi Jal Board and Rs.3 Lakhs towards the cost of litigation in the Delhi High

Court and Arbitration. The fee of the Arbitrator appears to be exaggerated. The computation of the arbitrator's fees is as under:

<i>Arbitration Fee</i>	<i>Rs. 60,000</i>
<i>Based on the claim of M/s. Dewan & Co. including interest right from the beginning of the contract till the end of the contract and interest on delayed payments made by Delhi Jal Board to the contractor.</i>	<i>Rs. 55,000</i>
<i>Administrative Fee</i>	<i>Rs. 30,000</i>
	<i>Rs. 30,000</i>
<i>TOTAL</i>	<i>Rs. 1,75,000</i>
<i>Towards conveyance charges @ Rs. 750/- per hearing and total hearing in this case were around 20</i>	<i>Rs. 16,550</i>
<i>Grand Total</i>	<i>Rs. 1,91,550</i>

8. The Petitioner has submitted that the Arbitrator has charged fees which are totally baseless in as much as administrative fees has been charged when there was no secretarial staff used by the Arbitrator. Further, commuting charges have been billed, when the hearings were held in the office of the arbitrator itself.

9. This Court does not wish to examine the objections which have been raised as unnecessary allegations are being made against the Arbitrator and the fee awarded. The fact remains that the Petitioner had withdrawn his claims and a reasonable amount could have been awarded by the Arbitrator as costs. There is no doubt that the Petitioner has withdrawn the claims on 14th January, 2008 and the award was published on 18th June, 2008. Thus the matter was contested in the High Court as also before the arbitrator, by the Respondent. The initial disputes arose in 2005 and the withdrawal took

place in 2008 i.e., after a period of three years. So the Respondent cannot be faulted for demanding costs. Without going into the different terms and heads under which the costs have been awarded, a lumpsum cost of Rs.1,50,000/- is awarded in favour of the Respondent which would cover both the fee of the Arbitrator as well as litigation costs before the Arbitrator.

10. The amount is directed to be paid by the Petitioner within a period of four weeks failing which simple interest @ 8% per annum shall be payable on the awarded amount.

11. OMP is disposed of in the above terms.

PRATHIBA M. SINGH, J.

OCTOBER 16, 2018/dk

