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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
Date of decision: 23rd May, 2018

+ O.M.P. (COMM) 229/2018
DELHI TRANSPORT INFRASTRUCTURE DEVELOPMENT
CORPORATION LTD. Petitioner
Through: Mr.Amjet Andly, Mr.A.K.Sharma &
Mr.P.K. Sharma,Advs.
versus
WELL PROTECT MANPOWER SERVICES (P) LTD.
..... Respondent
Through: Mr.Tarkeshwar Nath, Mr.Saurabh
Kumar Tuteja & Mr.Onkar Nath,
Advs.

CORAM:
HON'BLE MR. JUSTICE NAVIN CHAWLA
NAVIN CHAWLA, J. (Oral)

IA 7225/2018

Exemption allowed subject to all just exceptions.

IA No. 7227/2018

This is an application seeking condonation of delay of two days in filing of the petition. Having perused the contents of the application, the application is allowed and the delay is condoned.

IA No. 7228/2018

This is an application seeking condonation of delay in re-filing of the petition. The counsel for the petitioner submits that as certain part of the Arbitral Record was handwritten, it took time to have the same typed and there were certain objections raised by the registry, which took time to be removed. Having perused the contents of the application as also the

explanation given, the delay in re-filing of the petition is condoned.

OMP(Comm.) 229/2018 & IA No. 7226/2018

1. Issue notice. Notice is accepted by Mr.Tarkeshwar Nath, Advocate on behalf of the respondent. With the consent of the parties the petition is taken up for final hearing.
2. The counsel for the petitioner relying upon Clause 53, 54 and 55 of the Notice Inviting Tender (NIT) submits that the respondent was under an obligation to provide copy of the relevant records in order to prove its claim of making payments to the workers, superintendents etc., in accordance with the revised minimum wages. He further submits that in any case, the wages had to be paid only through ECS or by cheque in the presence of the representatives of the Department and therefore, the petitioner should have produced its books of accounts to show such payments. On the other hand, the counsel for the respondent submits that the only witness produced by the petitioner in support of its defence namely Mr. Sanjay Sharma, Executive Engineer, in cross-examination had admitted that the respondent had submitted the accounts, including receipt of the amount received by the workers before the Department. He further submits that details of these payments were submitted before the Sole Arbitrator in form of Ex.R19 which is a statement. The said document was admitted by the petitioner and therefore, there was no requirement of producing any other or further proof in support of the claim.
3. I have considered the submissions made by the counsels for the parties. The Arbitrator while dealing with the claims of the respondent with respect to further payment due to the revision of the minimum wages has

held as under:-

“I. Issue no. 3

Whether the Claimant is entitled for the payment of Rs. Ninety Five Lacs Twelve Thousand Nine Hundred And Sixty Two (Rs.95,12,962/-) on account of arrears of the enhanced/revised minimum wages? OPC

The Claimant has claimed this amount as enhanced minimum wage arrears. He submitted that the minimum wages increased from time to time, in lieu whereof, the Claimant paid the enhanced wage rates to the deployed workers. These enhanced minimum wages were not reflected in the bills raised by the Claimant as the enhanced wages were not sanctioned by the Respondent before the bills were raised. As against it the Respondent's averment in his reply, is that, the enhanced minimum wages are matter of record. The Respondent thus has denied this claim of the Claimant, firstly on the ground that the Claimant be put to strict proof of it and secondly on the ground that an amount of Rs. Sixty Two Lac Sixty Thousand And Four (Rs.62,60,004/-) was paid by the Respondent to the Claimant towards final settlement bill which was in full and final satisfaction of the Claimant's bill. The Claimant along with his Statement of Claim has filed 'Due and Drawn statement' ranging from 01.10.11 to 31.03.14 demonstrating an amount of Rs. Ninety Five Lac Twelve Thousand Nine Hundred And Sixty One (Rs.95,12,961/-) due against the Respondent, which the Claimant had paid to the supervisors, gunmen and the security guards posted at the three ISBTs enhanced by the government since 01.10.11 to 31.03.14 pending the contract. In the affidavit of Shri Sanjay Sharma, Executive Engineer, filed on 04.10.16 by the Respondent for Admission and Denial of the Documents, he has admitted this breakup of the enhanced minimum wages in EX R19, filed by the Claimant in his evidence. The Respondent's counsel has put up her endorsement and signature in admission of EX R19, as apparent from the order sheet dated 04.10.16. In the light of this document filed by the Claimant in support of its claim and its admission by the Respondent, there is no plausible reason whatsoever to disbelieve this breakup and the details of the enhanced wages

given in this document. It is therefore well established and clear that the Claimant has been successful in proving that the minimum wages pending the contract increased during the period of 01.10.11 to 31.03.14 in consequence whereof the Claimant had paid Rs. Ninety Five Lac Twelve Thousand Nine Hundred and Sixty One (Rs.95,12,961/-) to the deployed workers. The Claimant has clearly pleaded that all the payments made by him to the workers were made in the presence of the representatives of the Respondent which the Respondent has not denied in his defence statement. The Respondent's assertion against it is that the bill of amount of Rs. Sixty Two Lacs Sixty Two Thousand and Four (Rs. 62,62,004/-) was prepared by the Respondent finally on acceptance of the Claimant, and thus this amount was paid to the Claimant in July 2014 in accord and in full satisfaction as final settlement to the Claimant. This contention of the Respondent is found without any force for the Claimant's case is that, he had no earlier occasion to claim these amounts of enhanced minimum wages, he paid to workers from the Respondent because the Respondent had not sanctioned the enhanced minimum wages on their revision by the government during the contract period. Ex R2 Notice Inviting Tender No. 23-2011-12 given by the Respondent to the contractor in its 'NOTE', term no. 1 clearly mentions,

“if the minimum wages is revised by the government of NCT of Delhi/government of India, the incremental wages, if applicable will be provided.

In presence of this term there remains no hitch and hesitation in holding that to pay revised minimum wages to workers by the contractor was ultimately the liability of the Respondent.”

4. A reading of the above would show that the Arbitrator has preliminary passed his Award on appreciation of the evidence led before him, including the evidence of Mr.Sanjay Sharma, Executive Engineer, non-denial of the breakup of enhanced minimum wages in Ex.R19 and non-denial of the assertion of the respondent that the wages were paid before the

representatives of the petitioner. This being a case of appreciation of evidence, the Court in exercise of its power under Section 34 of the Act cannot act as a Court of appeal and re-appreciate the evidence so as to arrive at a different conclusion. In *Associate Builders v. DDA* (2015) 3 SCC 49, the Supreme Court, after analyzing the provisions of Section 34 of the Act, has held as under:-

“33. It must clearly be understood that when a court is applying the “public policy” test to an arbitration award, it does not act as a court of appeal and consequently errors of fact cannot be corrected. A possible view by the arbitrator on facts has necessarily to pass muster as the arbitrator is the ultimate master of the quantity and quality of evidence to be relied upon when he delivers his arbitral award. Thus an award based on little evidence or on evidence which does not measure up in quality to a trained legal mind would not be held to be invalid on this score [Very often an arbitrator is a lay person not necessarily trained in law. Lord Mansfield, a famous English Judge, once advised a high military officer in Jamaica who needed to act as a Judge as follows:

“General, you have a sound head, and a good heart; take courage and you will do very well, in your occupation, in a court of equity. My advice is, to make your decrees as your head and your heart dictate, to hear both sides patiently, to decide with firmness in the best manner you can; but be careful not to assign your reasons, since your determination may be substantially right, although your reasons may be very bad, or essentially wrong”.

It is very important to bear this in mind when awards of lay arbitrators are challenged.] . Once it is found that the arbitrators approach is not arbitrary or capricious, then he is the last word on facts. In P.R. Shah, Shares & Stock Brokers (P) Ltd. v. B.H.H. Securities (P) Ltd. [(2012) 1 SCC 594 : (2012) 1 SCC (Civ) 342] , this Court held: (SCC pp. 601-02, para 21)

“21. A court does not sit in appeal over the award of an

Arbitral Tribunal by reassessing or reappreciating the evidence. An award can be challenged only under the grounds mentioned in Section 34(2) of the Act. The Arbitral Tribunal has examined the facts and held that both the second respondent and the appellant are liable. The case as put forward by the first respondent has been accepted. Even the minority view was that the second respondent was liable as claimed by the first respondent, but the appellant was not liable only on the ground that the arbitrators appointed by the Stock Exchange under Bye-law 248, in a claim against a non-member, had no jurisdiction to decide a claim against another member. The finding of the majority is that the appellant did the transaction in the name of the second respondent and is therefore, liable along with the second respondent. Therefore, in the absence of any ground under Section 34(2) of the Act, it is not possible to re-examine the facts to find out whether a different decision can be arrived at.”

5. It is further contended by the counsel for the petitioner that the respondent was not entitled to the release of the security amount as the petitioner had issued two notices dated 06.03.2013 and 23.05.2013 alleging that the respondent was making payment of wages in cash. This being in breach of the agreement, the petitioner could not have been held entitled to release of the security amount.

6. I am unable to agree with the said submission of the learned counsel for the petitioner. The Arbitrator in his Impugned Award has taken note of the fact that the termination notice dated 16.08.2013 based on the notices referred to by the counsel for the petitioner had been quashed by this Court vide its order dated 16.09.2013 passed in WP(C) No. 5444/2013 and though the petitioner had been granted liberty to pass a fresh order, the petitioner did not do so. As far as these notices were concerned, they were based on some report of Anti-Corruption Department, which remain unproved. The

Sole Arbitrator has further taken note of the fact that there was no material brought forward by the petitioner to suggest any breach or infringement of the terms of the Contract by the respondent except the assertion in these notices. The petitioner has also not shown if there was any dispute pending before the Labour Department against the respondent or any of its worker had made any claim against the respondent or in default against the petitioner. The Arbitrator has therefore, held that there was no justification for the petitioner to withhold the refund of the security amount. This being a question of fact and appreciation of evidence, this Court in exercise of its power under Section 34 cannot start the process of re-appreciating the same. In any case, the view expressed by the Arbitrator cannot be said to be perverse or unreasonable so as to warrant any interference of this Court.

7. In view of the above, I find no merit in the present petition and the same is accordingly dismissed and with no order as to cost.

NAVIN CHAWLA, J

MAY 23, 2018/rv