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

Date of Decision: 9th October, 2018

+ **O.M.P. (COMM) 117/2017**

**DELHI STATE INDUSTRIAL & INFRASTRUCTURE
DEVELOPMENT CORPORATION LTD**

..... Petitioner

Through: Ms. Anusuya Salwan, Ms. Renuka
Arora and Ms. Nikita Salwan,
Advocates. (M:9811225368)
Ms. Kanika Bansal and Ms. Shreya
Sharma, Advocates. (M:9999078085)

versus

M/S LARSEN & TOURBO LTD.

..... Respondent

Through: Mr. S. Santanam Swaminadhan,
Advocate. (M:9810061495)

CORAM:

JUSTICE PRATHIBA M. SINGH

Prathiba M. Singh, J. (Oral)

1. Present petition has been filed challenging the award dated 7th June, 2014 passed by the Ld. Sole Arbitrator. A tender was floated by the DSIIDC for Construction of Infrastructure Development Works (Roads, water supply, sewerage & storm water drainage) in New Industrial Area at Village Bhorgarh, Part-B (Bawana, Phase-II), Delhi. The Respondent had submitted its bid and the contract was awarded to the Respondent with the value of Rs.77,44,33,504/-.

2. The date of commencement of work was 7th January, 2008 and completion was to be effected within 19 months i.e. by 6th August, 2009. The entire work was executed by the Respondent well within the time and in fact, the completion date was 16th April, 2009. The gross value of the work, which was actually completed, was lesser than the tender amount i.e.

Rs.68,57,60,283/-.

3. The only claim of the Respondent against the Petitioner was in respect of bonus under clause 2A of the agreement. Clause 2A of the Agreement reads as under:

“CLAUSE 2A

In case, the contractor completes the work ahead of scheduled completion time, a bonus @ 1% (one per cent) of the tendered value per month computed on per day basis, shall be payable to the contractor, subject to a maximum limit of 5% (five per cent) of the tendered value. The amount of bonus, if payable, shall be paid along with final bill after completion of work. Provided always that provision of the Clause 2A shall be applicable only when so provided in ‘Schedule F’”

4. The Respondent filed its claim before the learned Arbitrator for a sum of Rs.2,83,95,950/-. The Arbitrator went into the competing submissions made and in para 1.5 observed as under:

“1.5 On the basis of facts on record and the contentions of the parties in paras above, it has emerged that the work having tendered value of Rs77,44,33,504 was actually completed on 16.04.2009 whereas the stipulated date of completion of work is 06.08.2009. Thus the claimant achieved actual completion of work 110 days (Exh. C-21, page 218) ahead of the scheduled completion time of 19 months. Therefore, as per the provisions of clause 2A of the agreement the claimant is entitled to the payment of bonus at the rate of one percent of the tendered value of the work per month (computed on daily basis) for a period of 110 days. Accordingly, the amount payable works out to Rs.2,83,95,895 [=77443350 x (1÷100)x(110 ÷ 30)].”

5. The Arbitrator, accordingly, considered the entire contract value and awarded bonus amount to the Respondent.

6. Mrs. Salwan, learned counsel appearing for Petitioner challenges the award on the ground that the contract provided for a definition of the term “work”. She relies on clause 2(i) of the Conditions of Contract to submit that the work would always mean work which is executed whether temporary or permanent including original, altered, substituted or additional work. Thus, it is her submission that the Arbitrator went wrong in considering the total value of the contract. It is further her submission that since value of the actual executed work reduced, time for execution of the said contract also ought to be proportionately reduced. Accordingly, she submits that the time within which the work ought to have been completed is 16.82 months, by proportionately scaling down the same, in terms of the reduced value of the work executed. Since the Respondent took 17.39 months to complete the work against 16.82 months, the Respondent is not entitled to any claim of bonus. Mrs. Salwan submits that as per the letter dated 19th November, 2009, the Respondent had agreed to go by the 11th RA bill, but finally the Arbitrator awarded even more than what the Respondent itself had agreed to restrict the claim for.

7. On the other hand, learned counsel for the Respondent submits that there were no notices given under clause 13 of the contract reducing the scope of work. In fact, the entire work was executed by the Respondent well within the time prescribed. At no point, the Engineer-in-Charge reduced the scope of work. Thus, the bonus is liable to be awarded as per the tendered value.

8. Having heard learned counsels for the parties and having perused the

relevant clauses of the agreement, the first and foremost thing that needs to be appreciated is the purpose of clause 2A. The purpose of the bonus clause is to encourage a contractor to complete the work well within time. If a contractor has completed the work within time, 1% of the tendered value would be liable to be given as bonus, for every month of the period of early completion.

9. The facts in the present case are not seriously disputed in terms of the dates or the quantum of work executed. The only question is in respect of interpretation of the clauses and whether clause 2A has to be read with clause 2(i) of the Conditions of Contract and if so what would be the effect. This Court does not agree with the submission of Mrs. Salwan that when the entire work is executed and the cost of the project turns out to be lesser than the initial tendered amount, time for execution has also to be proportionately reduced. If such an argument is accepted, in every case where the contractor has executed the work within time and at an amount lesser than the tendered value, time period for execution will continue to reduce and the bonus clause would never get triggered. Such an interpretation would completely render the bonus clause at naught. This interpretation is liable to be rejected.

10. However, the question is as to whether the Respondent is entitled to bonus as per the value of the work executed or the initial value of the tender. For whatsoever reasons, the initial value of the tender was Rs.77.44 crores but the final bill was only for Rs.68.58 crores. Bonus amount thus, cannot include the value of work, which has not been executed at all. The Bonus clause relates to the 'work' and cannot be read in isolation. Clause 2(i) defines 'work' as under:

“The expression works or work shall, unless there be

something either in the subject or context repugnant to such construction, be construed and taken to mean the works by or by virtue of the contract contracted to be executed whether temporary or permanent, and whether original, altered, substituted or additional.”

Thus, the concept of Bonus is intertwined with the ‘work’ executed, including the abridged or reduced work.

11. A perusal of the award shows that the Arbitrator has taken the tendered value of Rs.77,44,33,504/- while awarding bonus. Since the value of the work itself reduced, bonus would have to be calculated on the basis of the value of the work executed. In fact the Respondent, itself, in its letter dated 19th January, 2011, had agreed to go by the value of the 11th RA Bill i.e. Rs.67.46 crores and not Rs.77.44 crores. The said letter reads as under:

*“LTCD/WET/DSI IDC/0126 Dated 19th Jan-2011
Chief Project Manager (CD-XVIII)
M/s Delhi State Industrial and Infrastructure Corp.
Limited,
DSI IDC Site office, Delhi Auchandi Road,
Bawana, Delhi-110039.*

Kind Attn: Mr. H. O. Gupta

Sub:- Resubmission of Final Bill & Escalation Bill For Infrastructure Development works (Roads, Water supply, Sewerage & Storm water Drainage) in New Industrial area at Bhorgarh- Part-B (Bawana phase-II).

Dear Sir.

This is refrence to the Above Mentioned Subject. As we are Aware that the work in New Industrial Area at Bhorgarh- Part-b (Bawana phase-II) has been completed on dated 16th Apr 2009. We are hereby Submitting the Final Bill & Escalation Bill Along with approved Extra item File. The Detail of Final balance amount is follows.

***1. Final Bill (Extra Deviated & Extra Item)-
Rs.11774580/-***

2. Escalation Bill 6th Quarter - Rs.1995049/-
3. Bonus Amount As per Clause 2A -Rs.2470600/-
(sic 2,47,06,000)

In view of above we hereby request you to kindly release the balance amount Rs.38475629/- to us at the earliest. Thanking you and assuring you our best services all the time.

Regards

For

*Larsen & Toubro Limited
ECC Division”*

12. Thus, the Respondent itself calculated the Bonus under Clause 2A on the basis of the value of work executed. The reliance of the Petitioner on letter dated 19th November, 2009, is also apt, in as much as even in the said letter, the Respondent agreed to restrict its claim for Bonus based on the 11th RA Bill valued at Rs.67,46,38,947.87/- The said letter reads as under:

*“Ref.: LTCD/WET/DSI IDC/111 Date: 19.11.2009
Executive Engineer (CD-VIII)
M/s Delhi State Industrial and Infrastructure Corp.
Limited
DSI IDC Site Office, Delhi Auchandi Road
Bawana, Delhi - 110039
Kind Attn : Mr. S.K. Chabba
Sub.: Incentive for early completion for "Infrastructure
Development Works (Roads. Water Supply. Sewerage
& Storm Water Drainage) in New Industrial Area at
Bhorgarh. part-B (Bawana Phase-II
Ref. - Our letter No. : LTCD/WET/DSI IDC/107 Dated
07/09/2009*

Dear Sir,

This is with reference to the above mentioned subject and referred letter vide which we have claimed the "Incentive for Early Completion". In this regard we would like request herewith that incentive amount may please be calculated based on the certified values of

running bill-11. We would further like to confirm herewith that we shall not be claiming the "Incentive for Early Completion" on the balance amount which is in process at Divisional Office and Tendered Amount as claimed.

In view of this we hereby request you to kindly arrange to release the above said payment at the earliest.

Thanking you and assuring you our best services all the time.

Yours Truly,

*For Larsen & Toubro Limited
ECC Construction Division”*

13. Thus, it is held that the Bonus clause is applicable to the work executed by the Respondent. There is however, no dispute as to how the amount is to be calculated. Even as per the Respondent, it is to be calculated on the basis of the 11th RA Bill. Thus, it is held that the Respondent is entitled to bonus at 1% of Rs. 67,46,38,947.87/- (page 10 of reply) for the period of 110 days. The amount payable as Bonus would be calculated as under:

$$[674638947 \times (1 \div 100) \times (110 \div 30)] = \text{Rs.} 2,46,91,785/-$$

14. OMP is disposed of in the above terms.

**PRATHIBA M. SINGH
JUDGE**

OCTOBER 09, 2018/dk