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

*Date of decision: 29<sup>th</sup> October, 2018*

+ **O.M.P. 645/2011**

**IILM ACADEMY OF HIGHER LEARNING** ..... Petitioner

Through: Mr. Samrat Nigam, Mr. Sandeep Mittal & Ms. Rekha, Advocates (M-9560952425).

versus

**S.S. MANN** ..... Respondent

Through: Mr. Sandeep Sharma, Mr. Aman Dhyan & Mr. Nilesh Deep, Advocates (M-9717464364).

**CORAM:**  
**JUSTICE PRATHIBA M. SINGH**

**Prathiba M. Singh, J.** (Oral)

1. The present petition under Section 34 has been filed challenging the award dated 13<sup>th</sup> May, 2011 passed by the Learned Sole Arbitrator who was appointed by this Court vide order dated 11<sup>th</sup> September, 2006.
2. The brief background is that the Respondent is a contractor who was awarded a contract for construction of building New Workshop Block for IILM Academy Campus, Greater Noida. at plots no.17 and 18, Knowledge Park-II, Greater Noida, U.P. The Learned Arbitrator had, on 9<sup>th</sup> September, 2006, pursuant to the directions of this Court, conducted joint measurements and recorded the same, in the presence of the parties. The present contract was awarded along with the two other contracts in the same campus for

construction at plot no.16, Knowledge Park-II, Greater Noida, U.P. and construction of building of management block of IILM Academy at plots no.17 and 18, Knowledge Park-II, Greater Noida, U.P..

3. The present petition, however, relates to the New Workshop block. The Learned Arbitrator had conducted the joint measurements which were jointly accepted by the parties. The contractor was the Claimant before the Arbitrator and the Respondent in the present petition (*hereinafter* 'contractor'). The contractor raised various claims in respect of outstanding payments which were due from the Petitioner. The various claims raised, the amounts awarded as also the objections and findings thereon are set out below:

**CLAIM NO.1 AND 2**

**Claim No.1:        Towards work executed at site as per 7<sup>th</sup> R/A bill submitted on 5.8.2006.**

**Claim No.2        Towards payment of work done after submission of the 7<sup>th</sup> R/A Bill.**

There were several items under these claims. Both these claims were decided jointly by the Learned Arbitrator and after considering the various items under which the claims were made by the contractor, the Learned Arbitrator awarded a sum of Rs.18,89,578/-.

4. The allowing of claims under Items No.3 and 14 are objected by the counsel for the Petitioner. The same are in respect of 'anti-termite treatment' and 'electrical work' respectively. The learned counsel submits that these two claims are not liable to be awarded as the anti-termite treatment was not done and there was no evidence to show that the electrical work was carried out.

The Ld. Arbitrator has, in respect of anti-termite treatment held that the Petitioner has in fact made payment towards the same in the 1<sup>st</sup> R/A Bill and also in the 5<sup>th</sup> R/A Bill which was duly certified on 17<sup>th</sup> June 2006. Thus it cannot be disputed that anti-termite treatment was in fact carried out. Moreover the Architect had also certified the same and in the joint measurements, the parties had accepted that 1065.60 M<sup>2</sup> work had been executed, qua this item.

5. Insofar as item no.14 qua electrical works are concerned, the arbitrator has held that out of the total works, the contractor had executed 85% of the works. In the 5<sup>th</sup> RA Bill itself, 25% of the electrical work had been completed and by the end, the Arbitrator notes that the total value of work executed was more than the value of the work order itself. In view of this, the Arbitrator holds that 85% of the electrical works has been executed and the claim for 85% of the claimed amount was allowed.

6. These are factual issues and the claims awarded are based on the certification by the Architect as also the evidence on record. They are beyond the scope of interference under Section 34 of the Act. The same are thus upheld.

**CLAIM NO.4 - Damages for illegal termination**

7. The contractor argued that the termination which had taken place on 28<sup>th</sup> August, 2006, was illegal and it is therefore entitled to loss of profits for the unexecuted work. During the arbitral proceedings, the said claim was withdrawn by the contractor.

**CLAIM NO.5 - Towards Material, construction of labour hutments, godowns, construction of site office**

8. In respect of this claim, the findings of the Learned Arbitrator are as

under:

*“(3) After hearing the parties and considering the documents on record I find that the claimant on 24.8.2006 on the request of the respondent prepared a list of materials and indicated the value and submitted the said list to the President of the Respondent Academy. The said letter dt. 24.4.2008 was duly received by the respondent along with valuation of the materials lying at site. After four days i.e. on 28.8.2006, the respondent terminated the contract of the claimant without issuance of any show cause notice. Thereafter the claimant was not allowed access to the site and was not allowed to take back this materials & tools/plants. In the arbitration proceedings the value of the materials have not been controverted nor any suggestion or arguments advanced by the Respondent as to what was the actual value of the material left by the claimant at site. The claimant Shri S.S. Maan in his evidence has proved that he has sent the detailed list of materials, T&P etc. along with their valuation and the said list was prepared by his Engineer in his presence after due verification and counting the list of rate and purchase of the material was duly approved. The said evidence has not been controverted nor there is any cross-examination by the respondent on this aspect. In the cross examination Shri Maan had submitted that after the termination of the contract on 28.4.2006 the respondent had stopped his entry at the site and his staff and labour were removed from the site. The relevant extract from his cross examination is “Thereafter the respondent stopped my entry at the site and our staff & labour were removed from the site. Our material, tools & plants were taken by the respondents in their custody.” There is nothing contrary on record to shows that the materials, tools & plants of the claimant were removed. I, therefore, hold*

*that the claimant is entitled to the material left at site by the claimant. I accept the valuation of the material as assessed by the claimant vide his letter dated 24.8.2006. Since the value of the materials shows in the letter dated 24.8.2006 as Rs.36,20,200/- pertained to all the three contracts, the claimant is entitled to only 1/3<sup>rd</sup> of its value under the present contract i.e. Rs.12,00,000/-. However, I consider it appropriate to deduct 20% in the value of materials as given by the claimant. I, therefore award Rs.9,60,000/- under this claim.”*

In respect of this claim, the submission of Mr. Samrat Nigam, Ld. Counsel for the Petitioner is that there is no basis for the Arbitrator to hold that entry of the contractor was prevented in any manner. He submits that except the bald averment recorded by the Arbitrator in the cross-examination, there is no evidence and it is completely denied that the Petitioner had restricted the access to the premises.

9. A perusal of the paragraph extracted above shows that the contractor had written a letter dated 24<sup>th</sup> August, 2006 listing out the materials which were on site and giving the value of the said materials. Admittedly, as recorded in para 2 under claim 5 of the award, the Petitioner received the said letter, but chose not to reply to the same. The only letter which was sent by the Petitioner after the receipt of letter dated 24<sup>th</sup> August, 2006 was the termination letter on 28<sup>th</sup> August, 2006. The termination itself was challenged by the contractor in the arbitral proceedings. In any event, the cross-examination recorded of the contractor is clear and categorical that the contractor was stopped from removing the staff, labour, material, tools and plants which were taken by the Petitioner into their custody. The contractor had claimed that the value of the material lying on site, was a total of

Rs.36,20,200/- in respect of all three contracts and hence Rs.12 lakhs was liable to be awarded in the present case. The Petitioner does not dispute that it made use of the contractor's machines, tools, plants which were lying in the premises. The Learned Arbitrator deducted 20% in the value claimed i.e. Rs.12 lakhs and awarded Rs.9,60,000/-. The reasoning of the Arbitrator is sound and valid. The objections raised that the same is based on a bald averment of the contractor, is not correct. In fact if the Petitioner felt that there was no material on site, it ought to have led adequate evidence to establish its stand. The contractor failed to do so.

10. The award therefore does not warrant any interference.

**CLAIM NO.3 - Interest on delayed payments**

**CLAIM NO.6 - Interest pendente lite and future**

11. These two claims relate to interest on delayed payments and interest *pendente lite* and future interest which has been filed, awarded by the Arbitrator.

12. In respect of interest, on the last two hearings, when the matter was heard, the calculation were produced on record in respect of payment of interest. Counsel for the contractor had fairly agreed that if the Petitioner is willing to undertake to make the payments due under all the four awards on or before 31<sup>st</sup> May, 2019, his client is willing to accept Simple Interest @ 6% per annum, however, today when the matter was heard, there appears to be no consensus or agreement between the parties. Accordingly, the interest awarded by the Learned Arbitrator is being examined on merits. The claim of the contractor was for interest @ 15% per annum on account of delayed payments on the seventh running bill which was submitted on 5<sup>th</sup> August, 2006. The Learned Arbitrator has awarded interest @ 9% per annum on

claims no.1 and 2 w.e.f. October, 2006 till date of realization. This is a reasonable rate of interest awarded by the Arbitrator because most items for which the claims were made by the contractor were not even seriously disputed by the Petitioner.

13. Insofar as the claims no.4 and 5 are concerned, the claim no.4 now is not pressed by the contractor. In respect of claim no.5, Simple Interest @ 9% per annum from the date of award has been given by the Learned Arbitrator. The same is also reasonable and does not warrant any interference.

14. Insofar as the counter claims are concerned, all of them have been rejected and no objections have been pressed in respect thereof.

15. The OMP is accordingly disposed of in the above terms.

**PRATHIBA M. SINGH**  
**JUDGE**

**OCTOBER 29, 2018**

*Rahul*