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

\+ FAO 246/2018

SOUTH DELHI MUNICIPAL CORPORATION

..... Appellant

Through: Mr. Nikhil Goel and Mr. Ashutosh Ghade, Advs. for SDMC

Versus

M/S SATISH BUILDERS

..... Respondent

Through: Mr. Rajesh Pandey, Adv.

CORAM:
HON'BLE MR. JUSTICE NAJMI WAZIRI

<u>O R D E R</u>

% 21.05.2018

<u>CM APPLs. 21322-23/2018</u>

Exemptions allowed, subject to all just exceptions.

The applications stand disposed off.

<u>CAV 480/2018</u>

Mr.Rajesh Pandey, Advocate appears for the respondent. The Caveat stands discharged.

<u>FAO 246/2018 & CM APPL. 21321/2018 (stay)</u>

This appeal impugns an order dated 29.01.2018 passed by ADJ (West), Tis Hazari Courts, Delhi dismissing the appellant's petition under section 34 of the Arbitration and Conciliation Act, 1996.

At the outset, the learned counsel for the appellant states and fairly so that the impugned order dismissing the appellant's section 34 application has concluded that all factual aspects have been appropriately dealt with in the award, therefore, no interference was called for. The learned counsel states that on issue no.4, the award of compensation due to loss of profitability is not founded on evidence or facts as claimed by the respondent. It is the appellant's case that the time for execution of the contract was one month but the appellant suo moto extended it by two months. He submits that there was no formal application by the respondent for extension of time. This, however, belies the facts of the case. The appellants had admitted to be obstacles obtaining at the site, during the execution of the work by the respondent. This issue has been considered in the award and then the claim no.4 was allowed. The learned Arbitrator had clearly noted and reasoned that the appellant had approved extension of time without levy of penalty under Clause 2 of the agreement which in effect would mean that the delay in execution of the work was attributable to the appellant – SDMC, therefore, applying the Emden Formula and in the context of Supreme Court's judgment in ***Villayati Ram Mittal Vs. Union of India & Anr.*** 1990 (1) Arb.LR 134 and in ***Mcdermott international inc. Vs. Bum Standard Co. Ltd.*** 2006 (2) RAJ 661 (SC), the loss of profit was calculated and the claim was granted. Therefore, the appellant's contention to the contrary is untenable.

The appellant's second argument is that the award of interest should have been from the date the bill was raised and not from the date of completion of the work. This argument too is untenable because it has been adequately dealt with in the award, holding that the monies were payable to the respondent – Contractor on the basis of measurements recorded. It is another matter though, that same had been scored off by the appellant/Corporation. The payments being due upon completion of the work as recorded, would entail award of interest for the delay after the due date of payment.

In view of the above, the appeal is without merit and it is accordingly dismissed along with CM No. 21321/2018.

NAJMI WAZIRI, J

MAY 21, 2018/acm