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

+ O.M.P. (COMM) 146/2016

SRI PRABHU TRANSPORT Petitioner

Through: Mr.P.R. Kovilan and Ms.Jubli
Momalia, Advs.

versus

CONTAINER CORPORATION OF INDIA LTD & ANR.

..... Respondents

Through: Mr.Rishi K Awasthi,Adv.

CORAM:

HON'BLE MR. JUSTICE NAVIN CHAWLA

ORDER

% **22.10.2018**

1. This petition under Section 34 of the Arbitration and Conciliation Act, 1996 (hereinafter referred to as the 'Act') has been filed by the petitioner challenging the Arbitral Award dated 14.11.2014 passed by the Sole Arbitrator disallowing the claim of the petitioner with respect to the enhanced rates of transportation.
2. The disputes between the parties arose out of the Agreement dated 15.07.2009 whereby the respondent appointed the petitioner, for acting as contractor for road transportation of EXIM (export-import) containers between Chennai port and CFS/Tiruvottiyur at container freight station, Sathangadu Village, Tiruvottiyur, Chennai dated 15.07.2009.
3. The petitioner claimed that with effect from 01.02.2010, due to culvert damage, the petitioner was forced to take a route of 24 kms instead of 10 kms as provided in the Agreement and therefore, was entitled to

additional rates for the same from the respondent. The respondent allowed such claim only with effect from 01.12.2010 and therefore, the petitioner invoked the Arbitration Agreement claiming such enhanced rates with effect from 01.02.2010 to 30.11.2010. The Arbitrator has, by the Impugned Award, rejected such claim of the petitioner.

4. Counsel for the petitioner submits that the Agreement between the parties clearly stipulated the distance of transport to be 10 kms. The respondent itself having agreed to enhance the rates with effect from 01.12.2010, cannot deny such enhancement from the date of the event forcing the petitioner to take an extra route, which accrued from 01.02.2010. He further submits that the respondent having allowed such enhancement of rates, reliance of the Arbitrator on Clause 18.7 of the Agreement was unfounded and the Award is liable to be set aside on this ground.

5. I have considered the submission made by the counsel for the petitioner, however, find no force in the same. Clause 2.1 of the Agreement reads as under:

2.1 The CFS is located at Sathankadu Village adjacent to Tondiarpet Marshalling Yard, Chennai - 600019. The approximate distance between Chennai Port and CFS/TNPM is 10 kms. However, there will be variation in km in case of trailer routing, which shall be ascertained by the contractor before offering the quotes."

(Emphasis supplied)

6. A reading of the above Clause would clearly show that the distance of 10 kms mentioned in the Agreement was only an approximate and not the actual distance for transportation. In fact, the contractor was warned that there could be variation in the distance due to trailer routing.

7. Clause 18.7 makes it even more clear that the contractor will not be allowed any enhancement of rates merely because of restriction of movement or diversion of routes due to civil work being undertaken by the concerned Authority. Clause 18.7 is reproduced hereinbelow:

18.7 Events like imposition of restrictions on movement by the state Government authorities on a particular route or in certain timings or diversion of route due to civil works, law and order, festivals, etc. shall not form the basis for higher rates. The traffic has to be carried by the diverted route or in the permissible timings at the rates quoted in this tender."

8. The Arbitrator after considering the above two provisions of the contract and also taking note of the fact that the first request of the petitioner for enhancement of rates was made only on 12.07.2010, rejected the claim of the petitioner. The said Award cannot be said to be unreasonable or perverse or as falling foul of the grounds mentioned in Section 34 of the Act.

9. I therefore, find no merit in the present petition and same is dismissed with no order as to cost.

10. The pending applications, if any, are also disposed of accordingly.

NAVIN CHAWLA, J

OCTOBER 22, 2018/Arya