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

\+ O.M.P. (COMM) 135/2017

DEWAN CHAND ..... Petitioner

Through Mr.T.P.S.Kang, Adv.

versus

KRISHAK BHARTI COOPERATIVE LIMITED (KRIBHCO)

..... Respondent

Through Mr.Sudhir Makkar, Sr. Adv. with Ms.Meenakshi Singh, Ms.Saumya Gupta and Mr.Abhishek Chaudhary, Advs.

CORAM:
HON'BLE MR. JUSTICE NAVIN CHAWLA

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

% **10.09.2018**

By the Order dated 28.05.2018, while rejecting the challenge of the petitioner to the non-grant of interest by the Arbitrator in the Impugned Award, the other arguments of the petitioner were noted to the effect of there being an error on the face of the record where the Arbitrator instead of and in place of taking the Final Bill amount certified by the Architect as Rs.18,26,110/-, has taken the amount as Rs.14,85,807/-, and has further allowed a deduction of Rs.2,65,000/- twice over.

The parties were thereafter referred to the Delhi High Court Mediation and Conciliation Centre for exploring the possibility of an amicable settlement. As no settlement could be arrived at between the parties, further arguments have been heard on these issues.

As far as the challenge to the Award based on the purported incorrect amount of the Final Bill being taken into consideration is concerned, learned senior counsel for the respondent has drawn my attention to the Order dated 21.11.2014 passed by the Arbitrator on the application under Section 33 of the Arbitration and Conciliation Act, 1996 (hereinafter referred to as the 'Act') filed by the petitioner, the relevant portion of which read as under:

> *"It has also contended that in the second paragraph under Claim No. B (1) the Award gives the figure of Rs.14,85,087/- as payable under the Final Bill. It is argued that as the Designation Architect had certified payment of Rs.18,26,110/- therefore in paragraph 2 under Claim No. B (1) the payment due upto Final Bill ought to have been taken as Rs.18,26,110/-. The learned Counsel for the Respondent has serious objection to it. He has submitted that during arguments the parties were made to sit together and verify the amount payable under Final Bill and during proceedings it was the common stand of the parties that the amount under the Final Bill which was actually payable was Rs.14,85,807/- and not 18,26,110/-. <u>Of course, the parties were directed to sit and sort out the exact amount payable under the Final Bill and the amount of Rs.14,85,807/- was the amount stated to be so payable and what I have mentioned in paragraph 2 under Claim No. B (1) represents the position which was taken during arguments after such a meeting</u>. I therefore find no ground to interfere."*
>
> *(Emphasis Supplied)*

A reading of the above observation/finding of the Arbitrator would show that before the Arbitrator the parties had agreed that the Final Bill amount is to be taken as Rs.14,85,807/- and the parties had made submissions before the Arbitrator on that basis.

In view of the above, it is not for this Court to scrutinize the said amount any further as the same is based on the exercise undertaken by the parties themselves pursuant to the order passed by the Arbitrator during the course of the proceedings.

As far as the deduction of Rs.2,65,000/- being made twice over, the learned senior counsel for the respondent, on instructions, fairly conceded that this amount has been deducted twice over even in the corrected Award and therefore, the Impugned Award to that extend has to be corrected and the respondent shall pay the said amount. It is ordered accordingly.

Learned counsel for the petitioner has further argued that the Arbitrator has wrongly rejected the claim of the petitioner with respect to the interest on the Retention Money.

I have considered the submission made by the counsel for the petitioner, however, I find no merit in the same. The Arbitrator in his Award has found that the Retention Money deducted by the respondent from the Running Account Bills was to the tune of Rs.23,32,000/-. The same was to be released upon completion of the work by the petitioner. The period of completion of the work was extended till 31.05.1994, however, during the execution of the work itself, the respondent had released an amount of Rs.11.3 lacs in June, 1993 and a further amount of Rs.12 lacs on 02.11.1993. Therefore, the entire amount of Retention Money has been released to the petitioner even prior to the completion of the work. The Arbitrator therefore, found that the claim for interest on this Retention Money was not justified.

I do not see any ground to interfere with this finding as the petitioner has been unable to show that any of the dates or figures given by the Arbitrator in the Award are incorrect or that there was any term in the Agreement which entitles the petitioner to claim interest on the retention money.

I may only note that the learned senior counsel for the respondent has submitted that apart from the above amount of Retention Money, the Impugned Award further directs the respondent to refund a sum of Rs.6.60 lacs [Claim No.C(2), C(3), C(4) and C(5)] by refusing to accept the case of the respondent that the same had been withheld towards Retention Money and refunded/adjusted.

In view of the above, the present petition is partly allowed, with no order as to cost.

Dasti.

NAVIN CHAWLA, J

SEPTEMBER 10, 2018/Arya