$~18

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

Date of Decision: 30th August, 2018

\+ **O.M.P. 526/2008**

DELHI TRANSPORT CORPORATION ..... Petitioner

Through: Mr. Jyotindra Kumar & Mr. A.K. Verma, Advocates (M-8587815809).

versus

M/S CHIRAG SECURITY & PLACEMENT SERVICES ..... Respondent

Through: Mr. Malaya Chand, Advocate (M-9810570525).

CORAM:
JUSTICE PRATHIBA M. SINGH

Prathiba M. Singh, J. (Oral)

I.A. 4577/2017 (Delay in filing Restoration Application)

1. This application has been filed seeking condonation of delay of 101 days in filing of I.A. 4576/2017 for restoration of the petition. For the reasons stated in the application, the delay is condoned.

2. I.A. is allowed.

I.A. 4576/2017 (Restoration Application)

3. This is an application seeking restoration of OMP 526/2008 which was dismissed for non-prosecution on 2nd December, 2016. For the reasons stated in the application, OMP 526/2008 is restored.

4. I.A. is allowed.

O.M.P. 526/2008

5. The present petition has been filed under Section 34 of Arbitration and Conciliation Act, 1996 challenging the award of the Learned Sole

Arbitrator dated 12th June, 2008.

6. The brief background is that the Respondent is an out-sourcing agency through whom drivers were employed by DTC vide contract dated 26th August, 2005. The agreement was valid for a period of one year from 26th August, 2005. Services of drivers were being availed of by DTC and payment was made on the basis of per kilometre rate. The DTC used to make payments to the Agency, which was in turn paid to the drivers. The payments for the months of February, March, April and May, 2006, were withheld out of the sums payable to the drivers, as the Respondent had not made the statutory payments under the Employment Provident Fund (*hereinafter 'EPF'*) and Employees' State Insurance Corporation (*hereinafter 'ESIC'*). The ESIC's recovery officer had issued notices to DTC and had also attached its bank accounts, as the DTC was treated as the principal employer of the drivers. In this view of the notice issued by ESIC and the withholding of payments to the Respondent by DTC, disputes arose between the parties and the matter was referred to arbitration by this Court in O.M.P. 181/2006.

7. The impugned award dated 12th June 2008, came to be passed. As per the award, a sum of Rs.5.61,523/- has been awarded to the Respondent/claimant along with the security deposit of Rs.50,000/- and interest @ 18% per annum. The operative portion of the award is as under:

> *"12. On the basis of the discussion and findings in the preceding paragraphs, I allow the claim of the Applicant M/S Chirag Security and Placement Services (Regd.) for an amount of Rs. 561523 (Rupees five lakhs sixty one thousand five hundred and twenty three). This will be paid to the Claimants along with a refund of security deposit of Rs.50 thousand. These amounts will*

> *be paid to the Claimants by the DTC within a period of one month of the date of this order failing which the Claimants will be entitled to payment of interest at 18 percent on the above amount from the date of the award till the date of actual payment."*

8. The Ld. Counsel for DTC submits that the Learned Sole Arbitrator has failed to take into consideration the fact that various sums were paid by the DTC towards the EPF and ESI, while awarding the said amount. The basic contention is that since the statutory dues were not deposited and were sought to be recovered from the DTC, it is entitled to deduct the same from the payments to be released to the Respondent. It is further submitted that the rate of interest awarded is also on the higher side. Ld. Counsel further submits that the amount due to the Respondent is also not admitted by DTC and hence there was no basis for awarding the same amount.

9. On the other hand, Ld. counsel for the Respondent submits that the Arbitrator has gone by the record and the admitted position of DTC as on record. He pointed out to the relevant paras of the award which, according to him, clearly show that all the requisite facts have been taken into consideration by the Sole Arbitrator.

10. A perusal of the award shows that on each of the issues, the Learned Arbitrator has appreciated the evidence on the record. The main claim i.e. in respect of amount due to the Respondent for the months of February 2006, March, 2006, April, 2006 and May, 2006, the Learned Arbitrator has relied upon the additional affidavit filed by DTC in O.M.P.181/2006 wherein DTC admitted that the total amount due for payment to the Respondent is Rs.6,05,753/-. In the said affidavit, the DTC has categorically stated as under:

> *"That as per the statement prepared by the respondent (A/c Deptt) the bills pending for payment to the petitioner is Rs.605753/- against which the ESI contribution payment due from the petitioner is Rs.27,257/-. Thus, the balance amount payable after deduction of ESIC dues is Rs.5,78,496/-. The provident fund dues payable by the petitioner is Rs.88036/-. Copy of the statement of account is annexed and marked as Annexure A."*

The Arbitrator has relied on this particular affidavit which has been extracted in the award and thereafter in issue no.2 calculated the exact amounts payable to ESIC and EPF. The Arbitrator has then held that the total sum which was to be paid by the DTC to the ESIC and EPF was Rs.44,230/-. The Learned Arbitrator has rejected the counter claim and also held that insofar as the dues to the drivers are concerned, the same would be the responsibility of the Respondent and finally awarded the amounts in favour of the Respondent.

11. The calculation made by the Arbitrator was that from the admitted sum which was due as per DTC's affidavit i.e. Rs.6,05,753/-, the Arbitrator deducted a sum of Rs.44,230/- i.e. towards EPF and ESI dues. Thus, the amount due is a sum of Rs.5,61,523/- along with the security deposit, which has been awarded. The calculations of the Arbitrator are correct as per the record as also the notices issued by the statutory authorities. No fault can be found insofar as these findings are concerned.

12. Ld. Counsel for the Petitioner – DTC has expressed apprehension that the DTC has been made a party before the Labour Commissioner, where the drivers have instituted proceedings to claim their dues and hence this Court ought to clarify that the responsibility of payments to the made to drivers is

not that of DTC but of the Respondent.

13. On issue no.5, the Arbitrator has clarified as under:

> *"11. It is an admitted position on both sides that the dues of the ESIC have already been determined and paid by the Principal Employer namely DTC. There is no outstanding demand on account of EPF. <u>In so far as any claims by the drivers are concerned, these will become the responsibility of the Claimants in terms of the agreement between the parties for the period payments, on account of the outsourced drivers, are made by the DTC</u>."*

14. From the above, it is clear that the responsibility for making the payment to the drivers is solely of the Respondent and not of DTC. It is clarified accordingly.

15. The interest awarded by the Arbitrator is on the higher side i.e. 18%. The same is modified to 10% per annum from the date of award till the date of actual payment. The payment shall be released within a period of 8 weeks by the Petitioner – DTC to the Respondent, failing which, interest on the total amount awarded @ 12% per annum would be liable to be paid, on the total decretal amount till the date of actual payment.

16. O.M.P. is disposed of with these directions.

PRATHIBA M. SINGH
JUDGE

AUGUST 30, 2018
Rahul