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

Date of decision: 25th October, 2018

+ **O.M.P. 669/2007**

UNION OF INDIA (SR. DIVISIONAL ENGINEER-V, DRM
OFFICE)

..... Petitioner

Through: Mr. Anand, Proxy for Mr. S.R.
Narayan, Advocate (M-9718447715).

versus

M/S SAMRAT CONSTRUCTION CO.

..... Respondent

Through: None.

**CORAM:
JUSTICE PRATHIBA M. SINGH**

Prathiba M. Singh, J. (Oral)

1. The proxy counsel for the Petitioner seeks an adjournment. It is noticed that even on the last date, none appeared for the Petitioner and Court notice was issued. There is no reason for adjournment in the matter. None appears even for the Respondent.
2. The brief background is that the present petition has been filed under Section 34 of the Arbitration and Conciliation Act, 1996 challenging the award dated 14th June, 2007. Vide the said award, the Respondent/Claimant has been awarded a sum of Rs.7,05,933/- towards the various claims made by it.
3. The brief background is that the Claimant was awarded a contract for provision of fencing in connection with high speed high speed in the section

of Assistant Divisional Engineer/Tughlakabad (Junction cabin Palwal) Section from Km. 1498 to 1503 (Zone-III). The work was awarded on 2nd April, 2004 and was to be completed within a period of three months i.e. by 1st July, 2004. The date of completion was extended up to 15th December, 2004 with a penalty of Rs.2,000/- per week. The contract was finally rescinded on 28th April, 2005.

4. The initial value of the contract was Rs.84,68,500/- which was thereafter increased to Rs.1,01,93,545/- and approved on 19th October, 2004. A total payment of Rs.88,92,552/- was released to the Claimant.

5. It is not disputed that the work was completed and 11 running bills were paid by the Government. All the bills were duly certified by the Engineer-in-charge.

6. According to the Claimant, a sum of Rs.5,07,402/- was outstanding towards various heads of work executed by the Claimant. The Arbitral Tribunal has, under Claim 1, gone into detailed calculations of the amount of work which was actually executed and as against a sum of Rs.5,07,402/- which was claimed, Rs.4,75,093/- has been awarded. The admitted position on record is that the entire work was completed and no agency was engaged at the risk and cost of the Claimant to execute any balance work or defective/damaged work.

7. Insofar as Claims No.2, 3, 4, 5, 6 and 7 are concerned, the Arbitral Tribunal has passed a nil award.

8. Claim No.8 relates to refund of security deposit including the earnest money. The claim was for Rs.3 lakhs and the Arbitral Tribunal awarded a sum of Rs.2,22,840/- including the refund of the earnest money of Rs.50,000/-.

9. Claim No.9 relates to refund of penalty, as against the claimed amount of Rs. 1,00,000/-, the Arbitral tribunal has awarded Rs. 8,000/- Claim No. 10 has been rejected.

10. The Government's Counter Claim No. A is related to excess payment received by the contractor in connivance with the field staff. According to the Government, the various measurements and defective work was not pointed out during the completion of the work. The persons who had issued the said certificates in terms of quality of work were the Government's own employees. Further, the Arbitrator also notes that the requisite details in respect of alleged connivance have not been proved on record. Accordingly, this Claim was rejected.

11. Counter Claim No. B relates to penalty which was also rejected.

12. The main objection raised by the Petitioner/Government in the objection petition is extremely factual. The grounds raised in the petition primarily relate to the fact that the contractor was given excess payment and were in connivance. The said ground having not been made out before the Tribunal and the remaining award having been decided on the basis of the work executed by the contractor, no interference is called for in the present petition.

13. Under these circumstances, the OMP is rejected.

PRATHIBA M. SINGH
JUDGE

OCTOBER 25, 2018

Rahul