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

Date of Decision: 14th November, 2018

\+ **O.M.P. 27/2012**

M/S SATYA PARKASH & BROS (P) LTD. ..... Petitioner

Through: Mr. Aseem Mehrotra, Advocate. (M:9811062351)

versus

GOVERNMENT OF NCT OF DELHI & ANR. ..... Respondents

Through: Mr. Sanjay Dewan and Ms. Nishima Arora, Advocates. (M:9953221778 & 9811036782)

CORAM:
JUSTICE PRATHIBA M. SINGH

Prathiba M. Singh, J. (Oral)

1. Present petition under Section 34 of the Arbitration and Conciliation Act, 1996 has been filed challenging the award dated 2nd August, 2011 passed by the Sole Arbitrator.

2. Brief background is that the Petitioner- M/s. Satya Parkash & Bros (P) Ltd. (*hereinafter 'Contractor'*) was awarded a contract for work of improvement of Nelson Mandela Road, New Delhi. The stretch was about 4 kms. The work involved the development and widening of the road from four lanes to eight lanes including construction of drains, footpaths and extension of culverts etc. Initially work was awarded to a sole proprietary firm of Shri Satya Prakash Gupta. The proprietary firm was thereafter converted into the company namely M/s Satya Parkash & Bros (P) Ltd. There is no dispute in the present case in respect of the company taking over the work of the sole proprietary firm.

3. Award of the work took place on 16th May, 2002. Date of start of

work was 17th May, 2002. As per the award, the date of completion of work was to be 16th May, 2003. Due to various reasons, the contract was foreclosed on 26th October, 2004. The actual date of completion was taken to be 26th November, 2004. At the time when the contract was foreclosed, only 200 meters of the road was left for development.

4. The Contractor had various disputes with the Government. Basic disputes were in respect of clearance of the final bill, which was delayed considerably by the Government. Contractor also raised claims in respect of escalation, idle machinery and deployment of idle manpower. However, finally vide letter dated 21st February, 2007, the Contractor sought appointment of Arbitrator and raised various claims in respect thereof. The total claims were eight in number relating to claims on account of pending final bill, idle men & machinery, loss of profit, interest on delayed payments, increase in the rates of materials & labour under clause 10C/10CC, loss due to prolongation of contract.

5. The Government failed to appoint the Arbitrator. Thus, the Contractor was forced to file an arbitration application being A.A. No.195/2007. Vide order dated 15th January, 2008, the said petition was disposed of by appointing a Retd. Judge of this Court, Justice Jaspal Singh as the Sole Arbitrator to adjudicate the disputes.

6. Before the Arbitrator, the Contractor quantified his various claims. Final bill was also infact released after the arbitration proceedings had commenced i.e. sometime in the year 2011.

7. Claims raised by the Contractor were as under:

- Claim No.1 - Claim towards the final bill
- Claim No.2 - Claim of execution of increased/additional quantity of

work.

- Claim No.3 - Claim of escalation of Rs.72,58,640/- due to various hindrances resulted for almost delay of 15 months.
- Claim No.4 - Claim due to delay of machinery, deployment including the extra expenses.
- Claim No.5 - Claim due to delay (extra manpower which was deployed)
- Claim No.6 - Prolongation of contract, loss/profit in view thereof.
- Claim No.7 - *Pendente lite* and future interest.
- Claim No.8 - Litigation cost and expenses.

8. Findings of the learned Arbitrator in respect of various claims are as under:

Claim No.1 - Learned Arbitrator awarded interest on the amount of Rs.17,32,156/- @ 9% per annum from 1st June, 2007 till 30th March, 2011 when the final bill was paid.

Claim No.2 - Nil award.

Claim No.4 - Nil award.

9. All the claims relating to delay were considered by the learned Arbitrator together and in respect thereof, the learned Arbitrator held that the claims were not liable to be granted in view of the conduct, that despite there having been several hindrances, the work itself was not stopped because of these hindrances.

10. Mr. Aseem Mehrotra, learned counsel appearing for Petitioner submits that the learned Arbitrator has gravely erred in not allowing the escalation. It is further submitted that the hindrance register being an

admitted document between the parties clearly records various hindrances that were caused due to which delays had taken place in the execution of the contract. Learned counsel also submits that hindrance register being an admitted document, delays having not held by the learned Arbitrator himself to be attributable to the Respondent, as per settled position in law, the Contractor was entitled to escalation. He relies on the following judgments ***P. M. Paul vs. Union of India, 1989 Suppl. (1) SCC 368*, *K. N. Sathyapalan vs. State of Kerala (2007) 13 SCC 43*, *J. G. Engineers Private Ltd. vs. Union of India & Anr. (2011) 5 SCC 758*, *Deconar Services (P) Ltd. vs. NTPC (2010) I AD (Delhi) 468*, *Sudhir Bros. vs. Delhi Development Authority & Ors. (2009) 2 Arb. L.R. 115 (Delhi)*, *DDA vs. Narain Das R. Israni, (2008) 1 Arb. L.R. 58 (Delhi)*, *M. L. Mahajan vs. Delhi Development Authority, 2002 (63) DRJ 57, Anurodh Constructions vs. D.D.A., 2005 (84) DRJ 314 and R.L. Kalathia and Company vs. State of Gujarat (2011) 2 SCC 400.***

11. On the other hand, Mr. Sanjay Dewan, learned counsel appearing for Respondent-Government, submits that the Contractor had admittedly agreed to not claim any compensation. He relies upon the letter dated 3rd March, 2006 and submits that the repeated extensions were sought by the Contractor to complete the contract in view of the hindrances as also Contractor's own conduct of having not deployed idle labour and machinery on the site. Mr. Dewan further submits that the documents on record go to show that even in the NIT itself, the Contractor was well aware that 15% of the site would not be handed over immediately upon the start of the work as there were various issues in respect of cutting of trees, shifting of pipes, man holes and cables,

shifting of DTC bus stand, removal of jhuggi clusters etc. For these works to be completed, in any case, the Contractor was aware that it would take about six months for the Government to hand over the complete land. In fact, as it transpired, the Contractor itself had to be foreclosed because of non-removal of Jhuggis in respect of one section of the road.

12. Learned counsel for Respondent relies upon the judgment of this Court in O.M.P. 399/2007 where under similar circumstances it was also held that an undertaking given by the Contractor not to claim compensation or any monetary claims ought to be honoured and it cannot be easily disturbed by merely stating an argument that the said undertaking was executed under the coercion or duress.

13. This Court has heard learned counsel for the parties. A perusal of the reasoning of the learned Arbitrator in respect of claims which are only claims pressed before this Court today shows that the learned Arbitrator has analysed clause 10C as also clause 10CC. In respect of clause 10C, the learned Arbitrator has held that this clause would apply only when there was an increase in the wages or in the prices of the material. Claim raised by the Contractor do not relate to this increase in price. Insofar as the clause 10CC is concerned, the learned Arbitrator categorically records as under:

> "………
> *Coming to Clause 10 CC, during arguments it was common case of the parties that the said clause is not attracted. However, admittedly there is no clause in the contract which expressly debars escalation nor is there anything in the contract showing that it is for a fixed price not only for the original term but also for all times in the future till the completion of the work. I do not think it can be disputed that a fixed price contract would be confined only to the original period*

> *and escalation would be paid for the extended period when the same is on account of breaches/delays by the Respondent. After having crossed that hurdle, the Claimant would be required to prove as to what should be the amount payable towards escalation for the extended period. .... "*

14. As recorded above, it was the common case of the parties that clause 10CC was not applicable. However, the learned Arbitrator, based on the settled position of law as cited by the Contractor holds that since there has been delay which is solely attributable to the Government, the Contractor can still claim escalation. The learned Arbitrator has not committed any error in law. However, learned Arbitrator thereafter records that while the hindrance register records certain hindrances, which were admittedly caused during the execution of the contract, for example on 1st October, 2002, 15th May, 2003, 20th February, 2004 and 14th March, 2003, various electric cables/poles, high tension pillars, huts, acquiring of land from DDA, shifting of pipes and man holes, shifting of DTC bus stand, removal of trees, shifting of MTNL Boxes and Cables etc. However, evidence on record did not show that the execution of contract was stopped in any manner. It is a factual finding of the learned Arbitrator that hindrances recorded in the hindrance register did not result in stoppage of work. Learned Arbitrator, in fact, relied upon the various letters written by the Government, which show that the Contractor itself had not deployed sufficient labour and machinery on the site. Learned Arbitrator further notes that the Contractor sought repeated extensions for completion of work and at the time when extensions were granted, same were to be granted without claim of any compensation.

15. The Arbitrator relied on letter dated 3rd March, 2006 written by the

Contractor, which reads as under:

> "*In continuation to our letter under reference and as per your verbal instructions we hereby undertake that we have not suffered any financial loss on account of delay in completion. and will not claim anything extra on this.*"

16. As per this letter, it is clear that the Contractor had agreed to not claim any compensation or financial losses or raise any claims for any extra amounts in this regard. The Contractor having agreed to not raise any claim, the claims in respect of delays are rightly rejected by the learned Arbitrator. In fact, a perusal of the calculation sheet, in which the Contractor raised the claim for escalation shows, that the same has been raised on the basis of clause 10CC, which is clearly not applicable. The learned Arbitrator based on the three counts i.e. 1) Factual analysis of stoppage of work and deployment of machinery; 2) In view of undertaking dated 3rd March, 2006 and 3) On the basis of non-applicability of section 10CC, rejected the claims in respect of delays, which have been raised by the Contractor.

17. Admittedly, there was delay in the release of final bill for which the learned Arbitrator has rightly awarded the interest in favour of the Contractor, which is not even under challenge in the present case.

18. In view of the matter, OMP does not deserve to be entertained and the same is, accordingly, dismissed. In the facts of the present case, there is no order as to costs.

PRATHIBA M. SINGH
JUDGE

NOVEMBER 14, 2018/*dk*