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\* **IN THE HIGH COURT OF DELHI AT NEW DELHI**  
*Date of decision: 14<sup>th</sup> December, 2018*

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**O.M.P. 53/2012**

GOVT OF NCT OF DELHI

..... Petitioner

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

versus

MICRO COMPUTERS SERVICES & ANR. .... Respondents

Through: Mr. Raman Kapoor, Senior Advocate  
with Mr. Rajesh Kumar Luthra,  
Advocate.

AND

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**O.M.P. 342/2012**

M/S MICRO COMPUTER SERVICES

..... Petitioner

Through: Mr. Raman Kapoor, Senior Advocate  
with Mr. Rajesh Kumar Luthra,  
Advocate.

versus

DIRECTORATE OF EDUCATION ..... Respondent

Through: Mr. Sanjay Dewan and Ms. Nishima  
Arora, Advocates.

**CORAM:**

**JUSTICE PRATHIBA M. SINGH**

**Prathiba M. Singh, J. (Oral)**

1. The above OMPs arise out of the impugned award dated 29<sup>th</sup> August, 2011 by which the Claimant M/s. Micro Computer Services (*hereinafter* 'Micro Computers') was awarded a sum of Rs.42,64,382.00/- to be paid by the Directorate of Education, Government of NCT of Delhi (*hereinafter*, 'Government of NCT of Delhi'), within a period of 60 days. Subsequent to the main award passed on 29<sup>th</sup> August 2011, a further order/award was

passed by the Ld. Arbitrator dated 5<sup>th</sup> December, 2011, whereby the application filed by Micro Computers under Section 33 of the Arbitration and Conciliation Act, 1996 seeking modification of the award dated 29<sup>th</sup> August, 2011 was rejected by the Ld. Sole Arbitrator.

2. Micro Computers has filed OMP 342/2012 seeking modification of the award to the extent that it be awarded past and *pendente lite* interest @24% p.a. from 1<sup>st</sup> April, 2004 as also challenging the rejection of the application under Section 33. The Government of NCT of Delhi has filed OMP 53/2012 seeking setting aside/ quashing of the impugned award dated 29<sup>th</sup> August, 2011.

### ***Brief Background***

3. In brief, the case of Micro Computers is that they were awarded contract dated 4<sup>th</sup> August, 2000 for the purpose of imparting computer education, for a period till 31<sup>st</sup> March 2004, in various schools run by the Government of NCT of Delhi. The total amount payable under the said agreement was Rs.13,29,000/- per single shift school, which were 23 in number and Rs.20,56,000/- for double shift schools, which were 3 in number. Thus, a total of 26 schools were covered by the contract. 15% of the total contract value was to be paid upfront at the time of entering into the contract. The balance 85% amount payable was to be paid in eight half yearly instalments. Value of one instalment was to be Rs.39,03,125.00/-. During the currency of the contract, the original agreement was extended on 9<sup>th</sup> September, 2002 to the second shift of some of the schools under which a total amount of Rs.37,61,699/- was to be paid.

4. The claim of Micro Computers is that the final instalment was not paid to it, on the pretext that there were some deficiencies in the work

executed. However, there was a certificate of satisfactory performance which was issued to it on 17.10.2003, which is admitted by the Government of NCT of Delhi. In addition, various penalties were imposed and amounts were deducted by withholding the same from earlier instalments, constituting a total of Rs.1,04,25,518/-. However, a total claim of approximately Rs.1,58,07,330/- was made by Micro Computers, as being the outstanding payment, as on 31<sup>st</sup> March, 2007. The Government did not clear the said payments and accordingly, disputes arose between the parties.

5. A learned Single Judge of this Court vide order dated 13<sup>th</sup> March, 2007, appointed a Sole Arbitrator to decide upon the disputes between the parties.

6. Insofar as the conversion of some schools from merely first shift to both the first and second shifts is concerned, Micro Computers claims that Rs.11,36,714/-, is outstanding. This claim of Micro Computers was rejected by the Ld. Arbitrator vide its order dated 5<sup>th</sup> December, 2011.

***Main award dated 29<sup>th</sup> August, 2011***

7. In the main award dated 29<sup>th</sup> August, 2011, the learned Arbitrator framed the following issues.

*“1. Whether the claimant supplied non functional computers, changed computer teachers and violated other provisions of contract related to supply of books and stationary? (Onus of proof on respondent).*

*2. Whether the claimant is registered partnership firm? (Onus of proof on claimant)*

*3. Whether the claim is filed by a duly authorized person? (Onus of proof on claimant)*

*4. Whether the contract was satisfactorily performed by claimant? Onus of proof on claimant).*

*5. Whether the claimant supplied the computers and*

*hardware's to the respondent in-conformity with the contract? (Onus of proof on claimant).*

*6. Whether the claimant is entitled to the claim amount? (Onus of proof on claimant).*

*7. Whether the claimant is entitled to interest, at what rate and for what period? (Onus of proof on claimant).*

*8. Whether the claimant is entitled to the cost of proceedings and compensation? (Onus of proof on claimant).*

*9. Relief"*

**A. Issue No.2:- Whether the claimant is registered partnership firm? (Onus of proof on claimant) and**

**B. Whether the claim is filed by a duly authorized person? (Onus of proof on claimant)**

6. No objections are pressed by the Government qua Issues Nos.2 & 3.

**C. Issue No.1 - Whether the claimant supplied non functional computers, changed computer teachers and violated other provisions of contract related to supply of books and stationery? (Onus of proof on respondent).**

8. Under this issue, the learned Arbitrator came to the conclusion, after considering the stand of both the parties, that Micro Computers had submitted all the relevant documents, including the satisfaction reports from the principals of various schools. It had also cleared the electricity and other dues as per the contract. In fact, the Government of NCT of Delhi asserted that they raised objections against Micro Computers in respect of the manner of implementation of the contract and that there were various deficiencies in the services offered. Learned Arbitrator, however, concluded that there was no material placed on record to show that there were any deficiencies in the

services provided by the Company. Finally, the learned Arbitrator relied upon annexure C-7 which was a letter dated 9<sup>th</sup> September, 2004, which recorded clearly that various documents were provided. The letter reads:

*“This is with kind reference to the above project. As this project has been recently concluded and having settled all the dues we would like to place on record the following supporting documents:*

- a. No dues certificate from all schools (original copy from 25 schools).*
- b. School wise statement of payment of electricity bills together with payment details.*
- c. School wise statement of payment of telephone bills alongwith payment details.*
- d. No dues certificate from the schools covered under the Computer Education Programme of CEP-I have also been relied upon by the claimant. The same is annexed herewith as Annexure ‘C’ (colly)”*

Thus, the learned Arbitrator concluded that the Government of NCT of Delhi was unable to establish its allegations of deficiencies against the Company.

9. Insofar as issue nos.4 & 5 are concerned, as per the contract, the hardware supplied and the software were to be taken back by the company after the period of the contract. However, the stationery, consumables etc. were to become the property of the school. The company had placed on record the documents to show that it had installed quality products at the schools and there was no document to prove the contrary. Thus, these issues were also decided in favour of Micro Computers.

10. On the relief, the learned Arbitrator notes, clearly, that the Government had imposed various penalties in the payments of the earlier instalment Nos.1 to 7. None of these penalties were ever challenged by

Micro Computers. The claim in respect of withholding of the penalties was, therefore, rejected by the learned Arbitrator. The learned Arbitrator calculated the average penalty imposed in 7 instalments and applied the same rate as a penalty for the 8<sup>th</sup> instalment. The learned Arbitrator further concludes that there is no reason for withholding the 8<sup>th</sup> instalment. Accordingly, the learned Arbitrator having arrived at the average penalty of Rs.97,943/-, per instalment, deducted the said sum from the 8<sup>th</sup> instalment. The earnest deposit made by the company with the Government was also directed to be refunded. Accordingly, the Arbitrator awarded the following sums: -

|                                        |      |                        |
|----------------------------------------|------|------------------------|
| <i>Eighth Instalment Rupees</i>        | ---- | <i>Rs.39,03,125-00</i> |
| <i>(-) Less Average Penalty Rupees</i> | ---- | <i>Rs.97,943-00</i>    |
| <i>(A) Balance Rupees</i>              | ---- | <i>Rs.38,05,183-00</i> |
| <i>(+)(B) Earnest Money Rupees</i>     | ---- | <i>Rs.4,59,200-00</i>  |
| <i>Total (A+B) Rs.</i>                 | ---- | <i>Rs.42,64,382-00</i> |

11. Insofar as issues nos.7 & 8 for interest and costs are concerned, no pre-suit or *pendente lite* interest was awarded and interest @ 8% per annum was awarded from the date of award till the date of payment.

12. Mr. Sanjay Dewan, learned counsel appearing for the Government of NCT of Delhi submits that the Report of the Technical Advisory Committee (TAC) Report, which holds that the performance of the Company was not satisfactory, ought to have been considered by the learned Arbitrator as the same was made by an independent body, even though it was after the term of the contract. In respect of the TAC report, the learned Arbitrator has held that the TAC report cannot be considered as the TAC was held subsequent to the contract period and consequently, the TAC sought to change the terms and conditions of payment unilaterally without any discussion with the

company. The learned Arbitrator concludes in respect of the TAC report as under: -

*“Perusal of the documents filed by the parties shows that TAC report dated 14.01.2005 filed by the respondent on record to buttress its case in my view cannot be considered. Firstly because the TAC was held after completion of contract period on 31.03.2004. Second, it unilaterally changed the payment terms contrary to the terms of the agreement dated 04.08.2000 as well as the special terms and conditions given in tender details part-I filed during the arguments by the respondents.*

*On page 19 clause 15 of the tender details part-I, the Director of education has been given the right to negotiate further reduction of rate. In this case the director did not negotiate the reduction of rate with the contractor/claimant, and altered the rates of his own, therefore his action cannot be termed as justified for the reasons that no opportunity of hearing was afforded to the claimant on this issue.”*

13. The reasoning given by the learned Arbitrator for not considering the TAC report is based on clause 15 of the tender, which clearly requires that the Director of Education has a right to negotiate the rate but cannot unilaterally alter the rates. Since the same is based on the contract between the parties and unilateral changing of rates is impermissible, the TAC report was rightly rejected.

14. The interest awarded by the Arbitrator is also reasonable and does not call for any interference as no pre-suit or *pendente lite* interest has been awarded to Micro Computers. Mr. Raman Kapoor, learned Senior Counsel submits that the pre-suit and *pendente lite* interest ought to have been awarded in this case. The award of interest being a discretionary power of

the Arbitrator, in the facts of this case, the Court does not see any reason to grant *pendente lite* or pre-suit interest.

***Order dated 5<sup>th</sup> December, 2011***

15. In the main award, the learned Arbitrator came to the conclusion that the contract to Micro Computers was extended on 9<sup>th</sup> September, 2002 to the second shift of some of the schools. This fact is not disputed even by the learned counsel for the Government of NCT of Delhi. The fact, however, remains that there is an outstanding payment which had to be made in respect of the said extension of the contract. This payment has not been made. The learned Arbitrator himself notes that the extra schools were included in this contract and this fact is also not disputed, as is evident from the note sheet which is placed on record at page 118 of the Petition. However, the Ld. Arbitrator holds that the claim is not liable to be allowed as the contract of extension granted to the Company is not part of the reference order passed by this Court, referring the disputes to arbitration. For all these reasons, though the fact that Rs.11,36,714/- is due, is not disputed, Micro Computers has not been awarded this claim. The order of reference, records as under:

*“There is no dispute that an arbitration agreement exists and this is evidenced from the conduct of the respondent itself. The claim is live since the contract itself was entered into on 4.8.2000 valid upto 31-03-04. Accordingly, I appoint Mr. Jagat Rana, Advocate as a sole arbitrator **to adjudicate upon the disputes arising between the parties.**”*

16. A perusal of the above order shows that the Court referred the disputes under contract dated 4<sup>th</sup> August 2000, between the parties to

arbitration. The subsequent conversion of some of the schools from single shift to double shift was not by way of a separate contract. The scope of work in some of the existing schools under the contract dated 4<sup>th</sup> August 2000 was expanded from single shift to double shift. In fact parties did not even bother to pen down the contract in writing. The extension appears to have happened by oral agreement. Thus, the extended part was not a separate contract but an integral part of the existing contract and arrangement. It was not alien to the main contract. Thus the finding that the disputes under the extended part of the contract was not referred to arbitration is erroneous. It is not in dispute that the services were rendered by the Company. The rates are also not in dispute. The only averment is that the same was not referred to arbitration.

17. The disputes under the contract had to be adjudicated comprehensively, and not in a piecemeal manner. The finding of the learned Arbitrator that the reference would not include the extension is not tenable and the same is, accordingly, set aside. The outstanding amount of Rs.11,36,714/- is awarded in favour of Micro Computers. The payments as directed in the award along with the sum of Rs. 11,36,714/- be made within eight weeks. If the payment is not made within eight weeks, simple interest on the awarded amount would be payable from today @ 8% p.a.

18. Accordingly, O.M.P. 53/2012 is dismissed and O.M.P. 342/2012 is partly allowed.

**PRATHIBA M. SINGH**  
**JUDGE**

**DECEMBER 14, 2018/dk**