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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
Date of decision: 14th December, 2018

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+ **O.M.P. 943/2011**

M/S MICRO COMPUTER SERVICES Petitioner

Through: Mr. Raman Kapoor, Senior Advocate
with Mr. Rajesh Kumar Luthra,
Advocate. (M:9312241561)

versus

DIRECTORATE OF EDUCATION Respondent

Through: Mr. Shlok Chandra and Mr. Ritesh
Kumar Sharma, Advocates.
(M:9999670588)

AND

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+ **O.M.P. 54/2012**

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, Adv.

CORAM:
JUSTICE PRATHIBA M. SINGH

Prathiba M. Singh, J. (Oral)

1. The above OMPs arise out of award dated 29th August, 2011 by which

M/s. Micro Computer Services (*hereinafter 'Micro Computers'*) was awarded a sum of Rs.1,01,74,428.40/- 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. Micro Computers has filed the present OMP 943/2011 seeking modification of the award to the extent that it be awarded past and *pendente lite* interest @24% p.a. from 1st April, 2004. The Government of NCT of Delhi has filed OMP 54/2012 seeking setting aside/quashing of the impugned award dated 29th August, 2011.

2. M/s. Micro Computer Services was awarded a contract dated 10th January, 2002 under the Computer Education Programme-II of the Government of NCT of Delhi. The total amount payable under the said agreement was Rs.15,96,000/- per single shift school, which were 13 in number and Rs.20,73,000/- for a double shift school, which were 11 in number. Thus, a total of 24 schools were covered by the agreement. 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 seven half yearly instalments, as per the contract. Each half yearly instalment was Rs.52,88,336/-.

3. The contract was valid till 31st March, 2005. Disputes arose between the parties as there were short payments by the Government. The matter was referred to a Sole Arbitrator by this Court. The learned Sole Arbitrator framed the following issues for consideration on 6th September, 2010: -

- “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'

4. The learned Arbitrator, insofar as issue Nos.4&5 are concerned, went into the report given by the Technical Advisory Committee ('TAC'). The learned Arbitrator records that the report of the survey team and experts and supervisors was placed on record. As per the said report, some amount of delay was attributable to the Department and the TAC report did not point out any specific deficiency of the company. Accordingly, under issue Nos.4 and 5, since there were no deficiencies made out, the learned Arbitrator comes to the conclusion that the Micro Computers cannot be held responsible for any alleged deficiency. In fact, the learned Arbitrator records that in the handing over of the computer labs, the allegation was that Micro Computers had not performed the services satisfactorily. The learned Arbitrator, however, records that no material has been placed by the Department to establish the allegations of any deficiencies.

5. Mr. Sanjay Dewan, submits that the learned Arbitrator ought to have noticed the reports, which were in fact placed before the learned Arbitrator.

The finding of the learned Arbitrator, clearly, is that the reports were not even established and proved on record. Reports being subsequent to the contract and intended to alter fundamental conditions of the contract such alteration cannot be done unilaterally.

6. Insofar as the TAC report is concerned, the learned Arbitrator records that the date of completion of contract is 31st March, 2005 and the TAC report did not bear any date. Report of the said committee was submitted on 16th June, 2005 i.e. subsequent to the date of completion of the contract itself. Recommendations of the committee were that pro-rata payments were to be made in 7 instalments. However, Ld. Arbitrator notes that this conclusion of change of contract value from fixed instalment to pro-rata basis is unilateral, arbitrary and completely contrary to the contract. Admitted position was that 6th and 7th instalments had been withheld. After calculating the penalty, which was imposed in the first 5 instalments, the learned Arbitrator came to the conclusion that average penalty was Rs.1,50,971.80 for each instalment. Thus, the learned Arbitrator deducted the penalty for two instalments i.e. Rs.3,01,943.60/- and awarded 6th and 7th instalments to the company.

7. Insofar as interest is concerned, no pre-suit and *pendente lite* interest was awarded. Only 8% simple interest per annum has been awarded from the date of award. 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.

8. The Government of NCT of Delhi, having not led any evidence in

respect of deficiency of services on behalf of Micro Computers, the amounts as per the contract cannot be withheld and have been rightly granted by the Ld. Arbitrator. The award does not warrant any interference.

9. OMPs are, accordingly, dismissed.

PRATHIBA M. SINGH
JUDGE

DECEMBER 14, 2018/dk

