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

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FAO (OS) (COMM) 186/2018

Date of decision: 20th August, 2018

M/S. COLLAGE ESTATES PVT. LTD. Appellant
Through: Mr. D.P. Singh and Ms. Ishita
Jain, Advocates.

Versus

BLUE STAR LTD. Respondent
Through: Mr. Akhil Sibal, Sr. Advocate
with Mr. Yashvardhan, Mr. Pradeep
Chhindra, Ms. Smita Kant and Mr. Puneet
Kumar, Advocates.

CORAM:

HON'BLE MR. JUSTICE SANJIV KHANNA

HON'BLE MR. JUSTICE CHANDER SHEKHAR

SANJIV KHANNA, J. (ORAL)

Caveat No.746/2018

Caveator is present and will be heard.

Caveat stands disposed of.

C.M. No.33485/2018

Exemption allowed, subject to all just exceptions.

FAO (OS) (COMM) 186/2018

M/s. Collage Estates Pvt. Ltd. has filed the present intra-Court appeal under Section 37 of the Arbitration and Conciliation Act, 1996 (A & C Act, for short) read with Section 13 of the Commercial Courts, Commercial Division and Commercial Appellate Division of the High Courts Act, 2015.

2. The impugned order dated 4th July, 2018 dismisses objections filed by the appellant under Section 34 of the A & C Act vide OMP (COMM) No.268/2017, challenging the arbitral award dated 6th March, 2017.

3. The appellant had entered into an agreement dated 8th February, 2008 with Blue Star Limited, respondent before us, for installation and commissioning of Heating, Ventilation and Air Conditioning (HVAC) system in the under construction Viva Collage Mall on Jalandhar-Phagwara Road, Jalandhar, Punjab. The agreement, inter alia, had required installation and commissioning of three imported centrifugal water cooled chillers of 650 TR capacity and one rotary screw water cooled chiller of 220 TR capacity. The total value of the contract awarded by the appellant to the respondent was for Rs.12,71,40,000/-.

4. Disputes arose between the parties and as the parties could not agree over the appointment of an arbitrator, the respondent filed a petition under Section 11 of the A & C Act, before this Court. The petition was allowed vide order dated 21th December, 2015, appointing sole arbitrator to adjudicate and decide the disputes.

5. The primary claim of the respondent was that the appellant had failed to make balance payment of Rs.1,78,27,556/-. The appellant, on the other hand, had pleaded breach of contract on the part of the respondent and had claimed damages under different heads to the tune of Rs.7,71,96,439/-.

6. The Award passed by the learned Arbitrator accepts the claim of the respondent and directs payment of Rs.1,78,27,556/- along with interest @ 9% per annum. Counter claims filed by the appellant have been rejected. The impugned award is a detailed one and runs into as many as 160 typed pages and elucidates and decides the factual and legal pleas raised, including the plea of limitation which we shall refer to and examine in some detail.

7. Contention of the appellant is that the claim made by the respondent was barred by limitation in view of the assertion by the

respondent that they had completed installation of four chillers on or before 9th November, 2010 and the arbitration clause was invoked vide notice dated 17th March, 2015. No particular Article of the Limitation Act, 1963 was relied upon by the appellant. Learned single Judge had referred to Article 18 in the Schedule of the Limitation Act, 1963, which reads:-

“

Description of suit	Period of limitation	Time from which period begins to run
Time from which period begins to run	Three years	When the work is done.

”

8. Rejecting the plea of limitation, learned single Judge in the impugned order has referred to judgment of the Delhi High Court interpreting Article 18 of the Limitation Act, 1963 in ***Municipal Corporation of Delhi vs. M/s. Gurbachan Singh & Sons***, 208 (2014) DLT 177, wherein it was held:-

“3. xxx

Three things, inter-alia, can be culled out from these paragraphs. Firstly ordinarily on the completion of the work, the right to get payment begins. Though Article 18 is not stated, this line is in terms of

Article 18 of the Limitation Act. The second aspect is that a dispute arises when there is a claim on one side and its denial/repudiation by the other. The third aspect is that a person cannot postpone the accrual of cause of action by repeatedly writing letters or sending reminders.

16. A summary of the conclusions on reading of the aforesaid relevant clauses of the contract in question and the judgments as dealt with above, bring out the following salient points:

(i) Limitation commences when the cause of action accrues/arises.

(ii) Accrual/arising of cause of action necessarily varies as per facts and circumstances of each case and the nature of jural relationship between the parties viz contractual or otherwise and so on.

(iii) As regards contracts for execution of building work, Article 18 comes into play in that when no specific date for payment is fixed, limitation commences and the cause of action accrues for the purpose of limitation on the completion of work.

(iv) In its application, Article 18 will cause different dates for accrual of causes of action in building works when a time period is fixed for submitting of a bill by the contractor and to which there is no response of the owner. Where a final bill is submitted and liability under the same, even if, in part, is admitted or some payment is made then such actions extend limitation in terms of Section 18 of the Limitation Act.

(v) No fresh period of limitation can arise simply because letters and reminders are written time and

again, attempting to keep the claim alive, although the claim by virtue of Article 18 of the Limitation Act, has become clearly time barred.

xxx”

9. Article 18 would come into play when no specific date is fixed for payment. In such cases limitation commences or starts when the work is complete. This is the date when the cause of action accrues. Answer to the question when the work was complete and cause of action had accrued would depend upon the facts and circumstances. It is in this context referring to the legal position that the impugned order passed by the learned single Judge affirms the findings recorded by the learned Arbitrator that the claim made by the respondent was not barred by limitation.

10. Learned Arbitrator on the facts had referred to the terms of payment, the correspondence/emails exchanged and the meetings and discussions held between the parties. Clause 20 of the agreement dated 8th February, 2008 had provided and stipulated terms of payment. The appellant was to pay 100% CIF value of the chillers, which were to be imported, on opening of the letter of credit and was also to pay the prevailing customs duty on arrival. It is accepted and admitted that this

payment was made by the appellant. Clause 20 had also stipulated that the appellant was to pay 10% advance excluding the Letter of Credit part of the contract value, against bank guarantee of equivalent value valid for the contract period from an acceptable schedule bank. 70% pro-rata was to be paid on delivery. 10% pro-rata payment was due and payable on erection. Balance and last 10% was payable on commission. The respondent was to also execute bank guarantee of equivalent of 10% value valid for 12 month from commissioning or 15 months from delivery, whichever was earlier. Thus there were counter obligations, in respect of the last 10% payment.

11. As per the Award, the three imported chillers were commissioned on 23rd April, 2010, 19th June, 2010 and 11th September, 2010. The fourth chiller of 220 TR capacity was installed on 23rd April, 2010 respectively. However, dispute arose with regard to the third chiller of 650 TR capacity purportedly commissioned on 9th November, 2010. There was exchange of correspondence and meetings with regard to its commissioning and working were held. Contention of the appellant was that the third chiller was not properly installed and commissioned. Subsequently, Global C Inc., a project

management consultant, had carried out inspection on 6th January, 2012 for checking, verification etc. of the bills raised. Global C Inc. had certified that the respondent had completed work to the tune of Rs.11,75,89,559/- and that extra work done by the respondent of Rs. 10,83,963/- would be settled separately. Thus, their report was in favour of the respondent. Thereupon, the respondent had again pressed for payment of balance money.

12. In spite of the inspection report by Global C Inc., the appellant had sent details of defaults via snag list claiming that certain work was not complete or the equipment installed was defective and faulty. The respondent had then vide email dated 1st June, 2012 replied to the snag list and stated that the snag list did not pertain to any major defect or default and had been issued only to delay payment of legitimate dues of the respondent. Nevertheless, to satisfy and meet the objection raised, the respondent had rectified or repaired the defect or fault stated in the snag list. It may be stated that the Award records that the first chiller had run for 6000 hours, the second chiller had run for 5300 hours and the third chiller had run for 4400 hours till January, 2014.

Thus, it was observed that there could not be any doubt that chillers had been installed and their working was satisfactory.

13. The appellant had not raised the plea of limitation in their reply/objections to the petition under Section 11 of the A & C Act, which was filed in July of 2015. It is relevant to point out that the respondent had invoked arbitration clause vide letter dated 17th March, 2015, within the limitation period of 3 years from the email dated 1st June, 2012. It may be pertinent to state that the Arbitral Award also refers to extra work awarded by the appellant to the respondent in the internal areas which was beyond the scope of the original contract. This extra work was also referred to by the Global C Inc. in their report.

14. We would record that there is somewhat a contradiction in the plea of limitation raised by the appellant. The appellant has predicated their defence and raised the claim for damages asserting and claiming that the chillers were not commissioned and were defective. Thus, the balance amount of Rs.1,78,27,556/- had not become due and payable to the respondent. The learned Arbitrator has highlighted the said aspect in the Award and observed that the appellant had stated that the

respondent has not completed the work awarded and that the claim was also barred by limitation. The impugned order also records that it was on 27th April, 2015 that the appellant finally got their chillers commissioned through a third party, statedly at the risk and cost of the respondent.

15. The learned Arbitrator has taken the aforesaid facts into consideration and thereafter held that the claim of the respondent was not barred by limitation.

16. In the facts and circumstances of the case and in light of the aforesaid discussion, we do find no infirmity in the Award. The appeal is dismissed, with no order as to costs.

SANJIV KHANNA, J.

AUGUST 20, 2018/NA

CHANDER SHEKHAR, J.