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

Date of Decision: 23rd July, 2018

+ **O.M.P. (COMM) 470/2016**

UNION OF INDIA

..... Petitioner

Through: Mr. J. K. Singh, Standing Counsel with
Ms. Madhulika Agrawal, Advocates.
(M:9811310222)

versus

M/S AWALESH KUMAR SINGH

..... Respondent

Through: Mr. Varun Kapur, Advocate.

CORAM:

JUSTICE PRATHIBA M. SINGH

Prathiba M. Singh, J. (Oral)

1. Present petition has been filed challenging the award dated 26th March, 2007 passed by the learned Arbitral Tribunal.
2. Briefly stated, tenders were invited by the Petitioner, Northern Railway, Chandigarh in April, 2001 for filling, construction and other work in Zone-7 from Kms.20 to Kms.25 in Punjab area in connection with new B.G. Rail Link from Chandigarh to Ludhiana. The Respondent submitted its tender. On 17th July, 2001 the acceptance letter was signed. As per the Petitioner, the Respondent did not start work despite repeated letters and notices and neither was there any mobilisation done on site. In fact, Respondent failed to deposit even the Security deposit and various letters were issued, calling upon the Respondent to deposit the said sum of Rs.2.5 Lakhs. Since the Respondent did not mobilise the resources and commence the work, the Petitioner proceeded to terminate the contract vide letter dated 5th November, 2001 in terms of the General Conditions of contract. The Petitioner then carried out work through some third party at the Respondent's risk and costs.
3. Challenging the termination, the Respondent invoked the arbitration clause in the contract. It filed its claim for Rs.50,000/- and the Petitioner filed

a counter claim to the tune of Rs.1,20,98,000/-, subsequently modified to Rs.89,95,348/-. Learned Arbitral Tribunal rejected both the claims and the counter claims.

4. Learned counsel for the Petitioner challenges the arbitral award on the ground that the findings of the learned Arbitral Tribunal are completely contrary to the contract and the record, inasmuch as the Tribunal has proceeded on the presumption that the Claimant/Respondent herein had not received any of the notices given by the Railways and that the Railways has shown undue haste in terminating the work. Learned counsel for the Petitioner relies upon the fact that various notices issued by the Railways could have never been disputed in as much as some of the said notices were, in fact, replied to by the Respondent.

5. On the other hand, learned counsel for the Respondent submits that the Respondent was not responsible for the delay. The land where the construction was to take place was acquired only on 4th & 6th September, 2001. It is also submitted that thereafter work could not be commenced due to the monsoon season. It is further submitted that the acquisition having taken place only on 4th & 6th September, 2001, issuance of notice within six weeks, that is on 22nd October, 2001, was in haste and hence the Tribunal's findings deserve to be upheld.

6. The Court has seen the various letters issued by the Railways. While it is true that the land was not acquired till 4th & 6th September, 2001, the notice of the Railway dates back to 21st July, 2001 wherein the Respondent was called upon to mobilise the work and pay the security deposit. Several letters had to be thereafter written to the Respondent asking it to deposit the sum of Rs.2.5 lakhs. In each of these notices, the Respondent was asked to mobilise the resources on site. Till 18th September, 2001, the sum of Rs.2.5 lakhs security

deposit was not paid by the Respondent. Thereafter, the Railways started serving seven days notices as per the contract, beginning with 1st October, 2001, 22nd October, 2001, 30th October, 2001 & 5th November, 2001. The letters dated 22nd October, 2001, 30th October, 2001 and 5th November, 2001, were replied by the Respondent on 8th November, 2001, 11th November, 2001 and 15th November, 2001 respectively. Thus the issuance of these letters and the replies thereof is admitted on the record.

7. A perusal of the replies by the Respondent also shows that even as of November, 2001, the Respondent was seeking to justify the non-commencement of work and non-mobilisation of the resources. The manner in which the Respondent did not make deposit of payment and failed to mobilise resources on the site clearly shows that after the acceptance letter on 17th July, 2001, the Respondent took no steps to proceed with the work.

8. In infrastructure contracts of this nature, parties, which tender and become successful, ought to bear in mind that time is of the essence in these contracts and the letters in the present case reveal that the Respondent was merely making excuses for not commencing the work. Moreover, the Arbitral Tribunal has gone completely wrong by holding that sufficient notice was not given and that the Railways acted in haste. The record clearly establishes the contrary. The findings of the Arbitral Tribunal being contrary to the record are not sustainable. Arbitral Award dated 26th March 2007, is set aside. Costs of Rs.50,000/- shall be paid by the Respondent to Petitioner.

9. OMP is disposed of.

PRATHIBA M. SINGH
JUDGE

JULY 23, 2018/dk