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

Date of Decision: 1st August, 2018

+ **O.M.P. (COMM) 485/2016**

MCD

..... Petitioner

Through: None.

versus

M/S SHARMA & ASSOCIATES & ANR

..... Respondents

Through: Mr. A.K. Mishra and Mr. G.K.
Pandey, Advocates. (M-9811235958)

CORAM:

JUSTICE PRATHIBA M. SINGH

Prathiba M. Singh, J. (Oral)

1. In this petition, there has been no appearance for MCD since 23rd March, 2015. Brief background of the case is that the Petitioner, had invited a tender for civil works and the Respondent herein was the successful bidder. The bid was accepted by the Petitioner @77.95% above the tender amount of Rs.13,98,525/- and the work was to begin on 7th October, 1993. The time for completion was 12 months. Due to various lapses, the completion of the work got delayed but was finally completed on 30th April, 1998. The final bill of the Respondent was approved by the Petitioner on 30th June, 1998, however, payment was only made on 31st March, 2000 after holding back a sum of Rs.1,40,000/- attributed to delay in completing the work.

2. It is the case of the Respondent, that since he had sought for extension of time for completion as per Clause 10(c)(c) of the General Conditions of

Contract, the deduction by the Petitioner of Rs. 1,40,000/-, and any other allied expenses incurred by the Respondent, was completely unfounded. Accordingly, clause 25 of the GCC was invoked and the matter was referred to arbitration.

3. It was the case of the Petitioner that since the date of completion of the work was to be 6th October, 1994, the claim of the Respondent before the Ld. Arbitrator was barred by limitation, as the period of 90 days for invoking the arbitration clause starts running from the stipulated date of completion of the work, i.e., 6th October, 1994, herein.

4. The learned Arbitrator in his award dated 7th February, 2012 granted the following reliefs:

- a) **Claim No.1** - Insofar as claim no.1 is concerned, the same relates to amount withheld from the final bill for want of extension of time. The Arbitrator has noted that the site was not provided by the Respondents for a period between 17th March, 1994 to 20th September, 1994, as the required space was not available. The extension of time was not granted and, therefore, the amount was withheld from the final bill. The Arbitrator has held that withholding of the amount is admitted for want of approval and since the witness (RW-1), Shri Rajiv Jain, has admitted the said document which proposed extension of time, which was granted, the withholding was held to be incorrect. Thus, the claim of Rs.1,40,000/- was granted in favour of the Respondents. The same does not warrant any interference by this Court.
- b) **Claim No.2** - Similarly, claim no.2 relates to deduction of Rs.22,000/- which was also made due to the withholding of the extension.
- c) **Claim No.3** - In claim No.3, the Respondents had raised a claim for a

sum of Rs.7,19,758/- towards escalation under clause 10(c)(c) of the Agreement. Learned Arbitrator has, after going through the evidence on record, applied the escalation as per clause 10(c)(c) and awarded a sum of Rs.5,46,484/- which was the admitted amount by the Petitioner. Learned counsel for the Respondents relies upon the minutes dated 19th December, 2000 wherein the Department had itself concluded that the delay in completion of work was not attributable to the contractor. It is also noted that the work was completed by the contractor on 30th April, 1998.

- d) **Claim No.4** - Insofar as claim no.4 is concerned, the Respondents claimed a sum of Rs.3,00,000/- towards infructuous and overhead expenses because the contract has been prolonged beyond the contractual period. The Arbitrator has considered the wages paid to chowkidars and supervisory staff and only granted Rs.83,065/- which was the expenditure actually incurred. The said final bill also does not warrant any interference by this Court.
- e) **Claim No.5** – This claim was for Rs.2,00,000/- towards loss of profit due to prolongation of contract. The Arbitrator, however, in light of the reliefs given above, rejected this claim of the Respondent, and held that the Respondent is entitled to a sum totalling Rs.7,91,549/- for Claims Nos.1, 2, 3 & 4.

5. Finally, the Arbitrator has granted interest @ 10% per annum. Considering the transaction relates to 1998 and 1999 and the same stood completed on 30th April, 1998 shows that the matter has been pending for more than 20 years. The interest of 10% per annum, is accordingly reasonable in the facts and circumstances of the case and also does not

warrant any interference. The objections raised by the Petitioner are all factual in nature. The grounds raised are very general. The Petitioner seeks to argue, in its objections, that the delay lies with the Claimant/Respondent, whereas the document relied upon says exactly the contrary (Exhibit C-1/R-1/1). The said document also records that the Claimant was not responsible for the delay.

6. In view of the above, as also because none has appeared for the Petitioner, the petition is dismissed.

PRATHIBA M. SINGH
JUDGE

AUGUST 01, 2018

Rekha

