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

\+ **FAO(OS) 236/2017, C.M. APPL.30784-30785/2017**

\+ **FAO(OS) 239/2017, C.M. APPL.31075-31076/2017**

DELHI DEVELOPMENT AUTHORITY ..... Appellant

versus

M/S GAMMON INDIA LIMITED ..... Respondent

Through : Sh. Sanjeev Sagar, Advocate, for appellant.
Sh. Sumit Goel, Sh. Ishan Nagar and Ms. Tanya Chaudhry, Advocates, for M/s. Gammon India Limited.

CORAM:
HON'BLE MR. JUSTICE S. RAVINDRA BHAT
HON'BLE MR. JUSTICE A. K. CHAWLA

O R D E R

% 10.10.2018

1. The Delhi Development Authority (DDA) has preferred two appeals under Section 37 of the Arbitration and Conciliation Act, 1996 [hereafter "the Act"], aggrieved by a common judgment and order of the learned Single Judge, rejecting its petitions under Section 34 and partly allowing the respondent's claim [hereafter "the claimant'" or "the GIL", as the case may be].

2. The undisputed facts are that the DDA awarded the respondent four works for construction, i.e. flyovers/grade separators at Mathura Road, NH-2; NH-24; Wazirabad Road and Vikas Marg [hereafter collectively referred to as "the construction work"]. The formal agreement was signed by the parties on 09.01.1999. The stipulated date of commencement of work was 22.01.1999 which was to be completed in 18 months. There was no dispute that there was a time overrun and that the construction work was completed between February 2001 and May 2003. Again, it is not disputed that the DDA granted extension of time (EOT) by various orders/letters addressed to the GIL. The payment of amounts under the contracts – essentially for the extended periods led to disputes.

3. The GIL contended that its claims in the final bills drawn, mostly for the extended period, were unjustifiably rejected. It had invoked the arbitration clause in the contract. These disputes were referred to a sole arbitrator by the DDA. The arbitrator, by his award, allowed, amongst several claims only Claim No.1(b) – reimbursement of additional supervision charges to the extent of ₹3,96,71,904/- and Claim No.2(5) towards amounts receivable on satisfaction of quality queries – to the tune of ₹3,50,000/-. The amounts were to carry an interest rate @ 18%.

4. Claiming to be aggrieved, the DDA challenged that part of the award of interest @ 18% in its Section 34 petitions; the rejection of its claims except those awarded in Claim No.1; partial awarding of Claim No. 1(b) and Claim No. 2(5) form the subject matter of GIL's petition under Section 34 of the Act.

5. By the common impugned order, learned Single Judge allowed the GIL's petitions, especially holding that the DDA's position, to the extent it was accepted in totality *vis-a-vis* Claim No.1(a); part of Claim No.1(b); Claim No.1(c) and Claim No.1(d) and Claim No.1(e) as well as Claim Nos. 2(2), 2(3) and 2(4) were unjustified. It is not disputed that the observations and findings of learned Single Judge are such that parties are relegated to their remedies in the contract and the GIL has sought reference to a fresh proceeding – on 02.09.2017.

6. The DDA, in its appeals urges that the learned Single Judge fell into error in interfering with the award inasmuch as the amounts were revised after adjudication by the Tribunal in respect of Claim Nos. 1(a), 1(b), 1(c), 1(d), 1(e) and Claim Nos. 2(2) to 2(4). It is submitted that the acceptance of the claim – as far as it relates to acceptance of the contractor's contentions with respect to Claim No.1(a) would mean that even though it accepted the extension of time, it was unwilling to pay the license fee during the extended period. Learned counsel highlighted that under the contract, especially Clause No.4, the contractor had agreed to pay ₹ 1 lakh towards license fee for the four construction works which were given to it. In these circumstances, the same yardstick would be applicable for the extended period since that land was not given gratuitously. On the other

hand, learned counsel for the claimant, GIL urged that the contract between the parties was a lumpsum fixed rate one. At the stage of finalization of the contract, the GIL was made aware of the limited license fee payable for the duration of the project. The extension without imposition of liquidated damages meant that the GIL was not at fault. Therefore, for the extended period, the DDA could not later claim for additional license fee.

7. The DDA contended with respect to the other items, i.e. the restriction of supervision charges, interest on claim [1(b)]; interest on mobilisation advance beyond the contract period [1(c)]; reimbursement of overhead charges [1(d)] and towards reimbursement of additional plant and hire charges [1(e)] the award of the Tribunal was justified and that the learned Single Judge ought not to have interfered with the finding of fact. Learned counsel also submitted that the other aspects of the award where the Tribunal refused to grant any amounts save what was awarded in respect of claim 2(2) was also erroneous.

8. On an overall reading of the Award, this Court is of the opinion that the Tribunal's conclusions were based upon arbitrator's understanding of what constituted terms of the contract upon which the contractor could legitimately claim dues. Applying that rationale or yardstick, the Tribunal restricted the award of claims on only two heads. All that the learned Single Judge has indicated in the impugned judgment is that this approach was not warranted particularly given that the claimant GIL had adduced evidence, to substantiate its contention that the expenses claimed by it were actually incurred during the extended period. The evidence and other materials in the form of documents placed before the Tribunal which do not appear to have been discussed was dealt with. Seen from this perspective, the approach of the learned Single Judge appears to be that since the refusal to grant any amounts except what were actually given were in fact unreasoned, it could not be sustained. The DDA's contention with respect to additional rent for the extended period, in the opinion of the Court, is an aspect which needs to be carefully considered also keeping in mind the perspective of

the contract that its economics and final burden would increase if such amount is recovered for the extended period. According to the contractor/GIL, the extension was on the principle that it was not at fault.

9. For these reasons, the Court is of the opinion that no interference with the impugned judgment is called for. The appeal is accordingly dismissed.

S. RAVINDRA BHAT, J

A. K. CHAWLA, J

OCTOBER 10, 2018/ajk