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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ O.M.P. (COMM) 491/2018
UNION OF INDIA THROUGH: CHIEF ADMINISTRATIVE
OFFICERS

..... Petitioner
Through: Mr.Jagjit Singh & Mr.Preet Singh,
Advs.

versus

SIKKA ENGINEERING COMPANY

..... Respondent
Through: Mr.Darpan Wadhwa, Sr. Adv. with
Mr.Mayank Bamniyal, Adv.

CORAM:

HON'BLE MR. JUSTICE NAVIN CHAWLA

ORDER

% **19.12.2018**

1. The learned counsel for the petitioner submits that pursuant to the order dated 06.12.2018 passed by this Court in the present petition, he has received instructions from the petitioner to the effect that the petitioner would allow the respondent to remove all surplus material from the Udhampur Depot in accordance with Clause 1.2.53 read with Clause 32 of the General Conditions of Contract.
2. In view of the said submission, the learned senior counsel for the respondent submits that the Award insofar as claim no. 8 is concerned, may be set aside by this Court. He further submits that the respondent shall be removing the said surplus material during the course of the next one month.
3. The learned counsel for the petitioner submits that in addition to the grounds of challenge decided by this Court in its order dated 06.12.2018, the petitioner is also aggrieved with the grant of claim

nos. 10 and 21 by the Impugned Award.

4. Claim no. 10 of the respondent pertains to release of withheld amount of cut TTC (Two Track Cantilever). The Arbitrator has allowed this claim on the following reasons:-

“Reasons of amount awarded:- As per the respondent, the case regarding Claimant's demand has already been processed vide letter No.RE/El/JAT/4103/Gr.179/Bill dt.22-12-2016 by DyCEE/RE/JAT office and was forwarded by CPD/RE/UMB office to CORE/ALD. Its reply is awaited from CORE/ALD against this claim. As per the Respondent, in principle it has been agreed to pay to the Claimant by CPD/RE/UMB. As such Rs.8,00,061/- are awarded against this claim.”

5. The learned counsel for the petitioner submits that there were terms in the Contract which bar such a claim. However, he fairly admits that in the Statement of Defence no reference to any such terms has been made. Infact, the petitioner had asserted that this claim has been approved in principle and shall be paid to the respondent.
6. In view of the above, the challenge to grant of Claim no. 10 cannot be sustained.
7. As far as Claim no. 21 is concerned, the same was for the refund of Performance Guarantee and the Security Deposit. The Arbitral Tribunal has given the following reasons for allowing the claim:-

“Reasons of amount awarded:- As a matter of record, the fact is that the work was completed to the tune of more than Rs.14 crores which is 19.27% higher than the initial estimated contract cost of the work of Rs.11,47,81,147/- without LD and with PVC on erection, for which Provisional Acceptance Certificate for completion of the work that installations are accepted provisionally from 2-07-2016 was issued by the

Project-in-charge DyCEE/RE/JAT & CPD/RE/UMB on 2-07-2016 and the section was opened to introduction of commercial services for both public carriage of passengers and goods vide CRS's Sanction dated 30-08-2016. So to say now it is more than one year past that the installations are in service. Therefore the Performance Guarantee is justified to be released and paid back and the Security Deposit also stands refundable as per the conditions laid down in the Contract Agreement to the Claimant. Therefore Rs.73,26,409/- and Rs.63,07,047/- are awarded against the claims of Performance Guarantee and Security Deposit respectively to the Claimant against this claim.”

8. The learned counsel for the petitioner fairly admits that the ground of challenge to the said claim is the same as has been rejected by this Court in its order dated 06.12.2018.
9. For the reasons recorded in order dated 06.12.2018 and the reasons given by the Arbitral Tribunal, the said challenge also has no force and is rejected.
10. There is no other ground of challenge raised by the petitioner to the Impugned Award.
11. The Impugned Award insofar as it grants claim no. 8 is set aside recording the submission made by the counsels for the parties hereinabove. Award, insofar as Claim no. 11 is concerned, is set aside. The challenge to the remaining Award is dismissed.
12. The petition is disposed of in the above terms, with no order as to cost.

NAVIN CHAWLA, J

DECEMBER 19, 2018/rv