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

+ O.M.P. 533/2015

M/S. D. S. COMTECH PRIVATE LIMITED Petitioner
Through: Mr.Ashish Dholakia, Mr.D.Kishore,
Mr.Gautam Bajaj, Mr.Rohan Chawla, Advs.

versus

M/S. INFER INDIA Respondent
Through: Mr.Vivek Kishore, Adv.

CORAM:
HON'BLE MR. JUSTICE NAVIN CHAWLA

ORDER

% **17.07.2018**

This petition under Section 34 of the Arbitration and Conciliation Act, 1996 (hereinafter referred to as the 'Act') has been filed by the petitioner challenging the Arbitral Award dated 6th July, 2015 passed by the Sole Arbitrator in Arbitration Case No. 466 titled M/s Infer India v. D.S.Comtech Pvt. Ltd., adjudicating the disputes that have arisen between the parties in relation to the Work Order dated 9th October, 2009 placed by the petitioner on the respondent.

Counsel for the petitioner submits that along with the Statement of Claim, the respondent had placed only a copy of the Final Bill which had not been certified by the Architect. Drawing reference to clauses 8.1.2.1, 8.1.3.1 and 8.2 of the Work Order, he submits that the certification from the Architect was a pre-condition for release of the payment in favour of the respondent. He further submits that infact, it is the petitioner who placed on record a copy of the Final Bill duly certified by the Architect, wherein as against an amount of

Rs.2,76,66,288.89 claimed by the respondent, the Architect had certified the work done as of Rs.2,42,21,998.30. He further submits that in the reply to the Statement of Claim, the petitioner raised a plea regarding the non-certification of the Final Bill relied upon by the respondent and had even denied the said document in the affidavit of admission/denial filed by it. In spite of such denial, the respondent chose not to lead any oral evidence in support of its claim and, therefore, the Sole Arbitrator has erred in placing reliance on the said Final Bill while awarding the claim in favour of the respondent.

Counsel for the respondent does not dispute this position and submits that the Final Certified Bill amount should be taken as Rs.2,42,21,998.30 and the amounts payable by the petitioner to the respondent be worked out accordingly.

Counsel for the petitioner further submits that the petitioner had placed documents in support of its claim that it had paid an amount of Rs.1,99,76,642/- to the respondent during the course of the work. He submits that in spite of these documents, the Arbitrator has taken the payment made by the petitioner as only Rs.1,95,40,494/- while calculating the amount payable by the petitioner to the respondent. Counsel for the respondent does not dispute this submission and submits that as this is only an arithmetical error, an amount of Rs.1,99,76,642/- be taken as having been paid by the petitioner to the respondent.

The last contention raised by the counsel for the petitioner is that in spite of finding that the respondent had not completed the work in accordance with the Work Order, the Arbitrator has still awarded

refund of the Performance Security in favour of the respondent. He submits that the Performance Security was to be released only upon completion of the work and as the work remained unfinished, the same could not have been released in favour of the respondent.

I am unable to accept the said submission of the counsel for the petitioner. Once the Arbitrator has awarded damages in favour of the petitioner for the work found unfinished or defective, the contract would stand discharged and the respondent would be entitled to seek refund of the Performance Security in terms of the Work Order.

Counsel for the petitioner further challenges the award of cost of the arbitration proceedings and the rate of interest awarded in favour of the respondent. As the majority of the claims of the petitioner have been found to be justified and the rate of interest awarded in favour of the respondent is only 9% till the date of the Award and 12% from the date of the Award till realization, I do not find any merit in the submission of the counsel for the petitioner. This being a matter of discretion of the Arbitrator, in any case, cannot be interfered with by this Court in exercise of its powers under Section 34 of the Act until and unless the same is found to be unreasonable or perverse, which in the facts of the present case, I do not find.

In view of the above, the amount payable by the petitioner to the respondent shall be reworked by taking the amount of the Final Bill as Rs.2,42,21,998.30 and the payment made by the petitioner to the respondent during the progress of the work as Rs.1,99,76,642/.The remaining Award shall stand.

The petition is partly allowed in the above terms with no order as to costs.

NAVIN CHAWLA, J

JULY 17, 2018
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