

IN THE HIGH COURT OF DELHI AT NEW DELHI

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Judgment delivered on: 04.05.2018

+ **O.M.P.(COMM.) 14/2016 and IA No. 954/2016**

UNITY INFRAPROJECT LTD.

..... Petitioner

versus

AIM CONSTRUCTION CO.

..... Respondent

Advocates who appeared in this case:

For the Petitioner :Ms Stuti Jain and Mr S. K. Jain.

For the Respondent :Ms Aastha Dhawan for Mr Sachin Chopra.

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HON'BLE MR JUSTICE VIBHU BAKHRU

JUDGMENT

VIBHU BAKHRU, J

1. The petitioner has filed the present petition under Section 34 of the Arbitration and Conciliation Act, 1996 (hereafter 'the Act'), *inter alia*, impugning the arbitral award dated 16.09.2015 (hereafter 'the impugned award') rendered by the Arbitral Tribunal constituted of a sole arbitrator. By the impugned award, the Arbitral Tribunal has awarded a sum of ₹53,90,816/- alongwith interest at the rate of 12% per annum from 01.03.2012 till the date of the impugned award and further future interest at the rate of 18% per annum if the awarded amounts are not paid within a period of thirty days of the impugned award.

2. The petitioner claims that the impugned award is without jurisdiction and beyond the scope of the reference, as the Arbitral Tribunal has delivered the impugned award based on a Work Order dated 10.04.2008 issued by the petitioner, which was beyond the scope of reference made to the Arbitral Tribunal.

Factual background:

3. The petitioner is a company incorporated under the Companies Act, 1956 and has its registered office in Mumbai. The petitioner is engaged in the business of infrastructure development including execution of the works for Government organizations, public sector undertakings. The petitioner was awarded a contract in relation to remodeling and up-gradation of Major Dhyan Chand National Stadium, New Delhi. The petitioner invited quotations from the respondent for execution of sanitary and plumbing works related to the aforesaid project.

4. The respondent claims that it submitted its quotations alongwith a letter dated 19.03.2008. The said quotations were accepted and the respondent was called upon to execute the said works. However, subsequently, further modified work orders were also issued from time to time. The respondent claims that it performed the work as per the quality and standards prescribed and submitted a final bill on 03.03.2010 for a sum of ₹2,18,07,868.14/- (this was subsequently corrected to ₹2,17,97,868.14/- before the Arbitral Tribunal). The

aforesaid amount included sum of ₹1,58,32,864.67/- on account of materials and ₹59,75,000.47/- on account of labour.

5. The petitioner made a part payment of ₹1,64,17,047/- (₹1,28,01,532/- on account of materials and ₹36,15,515/- on account of labour charges). In the aforesaid context, the respondent claimed that the sum of ₹53,90,816/- was due and payable by the respondent on account of the work executed.

6. The respondent filed a suit for recovery for a sum of ₹66,84,615/-, which included interest of ₹12,93,797/- with effect from 01.04.2010 to the date of filing of the suit (CS(OS) 2171/2011).

7. In the said suit, the petitioner filed an application [IA No. 18289/2011 in CS(OS)2171/2011] under Section 8 of the Act, *inter alia*, praying that the parties be referred to arbitration by an arbitral tribunal constituted in terms of the arbitration clause contained in the Work Order dated 10.04.2008.

8. The respondent contested the aforesaid application and specifically denied that any agreement (work order) dated 10.04.2008 was entered into between the parties. The respondent claimed that its claim was based on the quotations dated 19.03.2008, which were accepted by the petitioner. The respondent denied that it had entered into any arbitration agreement.

9. The aforesaid application [IA No. 18289/2011 in CS(OS) 2171/2011] as well as the suit were disposed of by an order dated

27.02.2012 referring the disputes to arbitration. By the aforesaid order – passed with the consent of the parties – this Court also appointed Mr S.L. Khanna, former Additional District and Sessions Judge as an arbitrator to adjudicate the disputes between the parties.

10. The arbitral proceedings culminated in the impugned award. While the arbitration proceedings were pending, the petitioner filed a petition seeking review of the consent order dated 27.02.2012 passed by this Court, *inter alia*, stating that the respondent was relying upon a contract dated 09.04.2008 / 10.04.2008 in the arbitral proceedings, which was otherwise denied by the respondent in the proceedings before this Court. The said Review Petition (Review Petition No. 335/2012) was subsequently withdrawn on 19.09.2012 in view of the statement made by the respondent that it had relied “*only upon the Agreement/Work Order dated 19.03.2008*”.

Submissions

11. Mr Jain, the learned counsel appearing for the petitioner had submitted that the Arbitral Tribunal had passed the award on the Letter of Intent (LOI) dated 09.04.2008 and the Work Order dated 10.04.2008. The said Work Order included an arbitration clause, which expressly provided that the venue of arbitration would be at Mumbai and the Courts in Mumbai would have the exclusive jurisdiction. He submitted that in view of the said agreement, the Arbitral Tribunal had no jurisdiction to decide any claim on the basis of the Work Order dated 10.04.2008.

Reasons and conclusion:

12. At the outset, it is relevant to mention that the learned counsel appearing for the petitioner has not disputed that the respondent had executed the works and had submitted a final bill as claimed. The only contention advanced by him was that the said works were executed pursuant to the Work Order dated 10.04.2008 which included an arbitration clause in terms of which the arbitration was to be conducted in Mumbai and the Courts at Mumbai were vested with the exclusive jurisdiction.

13. Before the Arbitral Tribunal, the respondent had filed a statement of claim raising five claims: (i) a sum of ₹53,90,816/- being the difference in the final bill and the amount paid (Claim No.1); (ii) interest at the rate of 18% per annum from the expiry of seven days from the submission of the final bill till the date of reference computed at ₹17,59,259/- (Claim No.2); (iii) *pendente lite* interest at the rate of 18% per annum (Claim No.3); (iv) litigation expenses amounting to ₹2,00,000/- (Claim No.4); and (v) ₹50,00,000/- on account of the loss of business (Claim No.5). The respondent had premised its claims on the Agreement/Work Order dated 19.03.2008 and had relied upon the quotations submitted by it under the cover of the letter dated 19.03.2008. The said letter expressly contained the following terms and conditions:-

“1. Final bill will be raised within 45 days of completion of work.

2. Payment shall be made within 7 days of receipt of final bill.
3. Interest @ 18% per annum shall be charged after the due date.
4. All disputes shall be subject to Delhi jurisdiction only.
5. E & O.E.”

14. The respondent claimed that the petitioner had accepted the said quotation and it had issued a LOI dated 09.04.2008. The petitioner, on the other hand, had denied the existence of any quotation/ dated 19.03.2008. In the Rejoinder, filed by the respondent, it claimed that the works were executed pursuant to the agreement dated 19.03.2008 and the LOI dated 09.04.2008 and Work Order dated 10.04.2008 were issued by the petitioner pursuant to the quotation submitted on 19.03.2008.

15. In view of the pleadings of the parties, the Arbitral Tribunal framed the following issues:-

- (a) Whether the quotation of work dated 19.3.2008 relate to letter of intent dated 9.4.2008 and work order dated 10.4.2008? OPC
- (b) Whether the Claimant is entitled to Rs.53,90,816/- and retention money of Rs.8,57,232/- alongwith pendent lite interest? OPC
- (c) Whether the Claimant is entitled to compensation for loss of business amounting to Rs.50 lacs? OPC
- (d) Relief.”

16. The Arbitral Tribunal found that the respondent had provided quotations for the work on 18.03.2008, which was discussed on 19.03.2008. And, the respondent had submitted its quotations under the cover of its letter dated 19.03.2008, which was accepted by the petitioner by issuing a LOI dated 09.04.2008. The petitioner had thereafter issued a work order dated 10.04.2008 that was followed by other work orders issued on 07.08.2008, 01.12.2008, 02.03.2009 and 11.05.2009. The Arbitral Tribunal held that a contract came into existence with the petitioner accepting the respondent's offer (letter dated 19.03.2008).

17. Insofar as the respondent's objection that the Work Order dated 10.04.2008 contained the arbitration clause is concerned, the same was not accepted by the Arbitral Tribunal for three reasons. First, the Arbitral Tribunal held that the said arbitration clause was stated to have been included in Annexure A to the work order but the said Annexure had not been filed by any of the parties. Secondly, the petitioner (Sh. Anil Sharma who deposed on behalf of the respondent) had denied signing any Annexure to the Work Order dated 10.04.2008 and lastly, the parties had agreed to refer the disputes as raised in the suit filed by the respondent to arbitration.

18. This Court finds no infirmity with the aforesaid reasoning. It is not disputed that the petitioner had not filed the Annexure to the Work Order on the basis of which the petitioner had founded its objections. Since the petitioner had failed to substantiate its objections with the

requisite evidence, the Arbitral Tribunal did not accept the same. Plainly, this conclusion cannot be faulted.

19. The contention that the Arbitral Tribunal was precluded from referring to the Work Order dated 10.04.2008 is also unmerited. The disputes raised by the petitioner in its plaint [CS(OS) 2171/2011 captioned “*M/s Aims Construction Company v. M/s Unity Infraproject Limited*”] had been referred to arbitration. Indisputably, the disputes adjudicated by the Arbitral Tribunal fall within the scope of the suit filed by the respondent and, thus, were within the scope of the jurisdiction of the arbitrator.

20. Whilst, it is correct that the petitioner had founded its claim on the letter dated 19.03.2008, which the petitioner claimed to be the agreement. However, this did not preclude the Arbitral Tribunal to examine the evidence and conclude that the letter dated 19.03.2008 was the quotations as offered by the respondent which were accepted by the petitioner by issuing a LOI dated 09.04.2008.

21. In view of the above, this Court is unable to accept that the impugned award has been rendered beyond the terms of the reference or the jurisdiction of the Arbitral Tribunal. The petition is, accordingly, dismissed. The pending application is also disposed of.

VIBHU BAKHRU, J

MAY 04, 2018
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