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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
IN ITS COMMERCIAL DIVISION**

COMMERCIAL ARBITRATION PETITION NO. 341 OF 2017

Union Bank of India

a Body Corporate constituted under
the Banking Companies (Acquisition and
Transfer of Undertaking) Act, 1970 having
their head Office at 239, Vidhan Bhavan Marg,
Mumbai – 400 021 and having S.S. Department,
239, Vidhan Bhavan Marg,
Mumbai – 400 021.

...Petitioner

....Versus....

Engineering Projects (India) Ltd.

(A Government of India Enterprise)
having its Corporate Office at Core-3,
Scope Complex 7, Lodhi Road,
New Delhi – 110 003 and Western Region
Office at 6A, Bhakhtawar, Nariman Point,
Mumbai – 400 021.

...Respondent

Mr. Anoshak S. Daver along with Mr. Ninesh N. Amin, Advocates for the
Petitioner.

Mr. Manoj Kumar Das along with Mr. Dayadhan Teekaram Sharma,
Advocates for the Respondent.

CORAM : R.D. DHANUKA, J.

RESERVED ON : 9th SEPTEMBER, 2019

PRONOUNCED ON : 17th SEPTEMBER, 2019

P.C. :

. By this petition filed under Section 34 of the Arbitration and Conciliation Act, 1996 (hereinafter referred as ‘the Arbitration Act’ for short), the petitioner has impugned the Arbitral Award dated 17th January, 2017 passed by the Arbitral Tribunal allowing the claims made by the respondent and rejecting the counter claim made by the petitioner. Some of the relevant facts for the purpose of deciding this petition are as under :-

2. The petitioner was the original respondent in the arbitral proceedings whereas the respondent was the original claimant. The respondent was awarded a contract for “Construction of Staff Training College (STC) and Hostel Building” for Union Bank of India at Powai, Mumbai by the petitioner for an amount of Rs.8,19,99,757/- with a completion period of 15 months. On 14th November, 2003, the petitioner issued a Letter of Award in favour of the respondent. Subsequently, an Agreement was entered into between the parties incorporating the terms and conditions of the contract between the parties in respect of the said work awarded by the petitioner to the respondent. The respondent had deposited Rs.41,07,488/- as an by way of security deposit with the petitioner under the said Agreement. Dispute arose between the parties. The dispute was referred to the Arbitral Tribunal of 3 Arbitrators.

3. The respondent filed a statement of claim raising 13 claims before the Arbitral Tribunal for the total amount of Rs.4,65,89,451/- on 8th December, 2011 under different heads of claim. The petitioner filed the statement of defence and counter claim dated 4th February, 2012 before the Arbitral Tribunal. In the counter claim filed by the petitioner, the petitioner made 9 claims under various heads on the ground that the respondent had allegedly abandoned the site and has not completed their obligations arising under the Agreement entered into between the parties. No oral evidence was laid by any of the parties before the Arbitral Tribunal. 53 hearings were held by the Arbitral Tribunal excluding 44 internal meetings. The Arbitral Tribunal made an award thereby allowing Claim Nos. I, II, III, V, VI and rejected the remaining claims made by the respondent. The Arbitral Tribunal rejected all the counter claims made by the petitioner.

4. The respondent did not challenge the part of the arbitral award thereby rejecting some of the claims made by the respondent by filing any arbitration petition. The petitioner has challenged the award allowing the claims made by the respondent in this petition and also the rejection of counter claim. However, during the course of arguments, Mr. Daver, learned Counsel for the petitioner, pressed the grounds of challenge only in respect of Claim Nos. I, II, VI and interest.

5. In so far as the Claim No.I is concerned, learned Counsel for the petitioner invited my attention to the relevant paragraphs of the statement of claim and also the written statement forming part of the record before the Arbitral Tribunal. The said claim was towards outstanding amount allegedly payable to the respondent by the petitioner under final bill with interest. The Arbitral Tribunal has dealt with this claim in paragraph 6.1 to 6.14 of the Arbitral Award and allowed the claim of Rs.32,96,533/- with interest in the sum of Rs.20,93,526/- from 10th September, 2010 till the date of award. The petitioner had reduced the claim from Rs.1,22,73,825/- to Rs.32,96,533/- before the Arbitral Tribunal. In paragraph 6.1.3.4, the Arbitral Tribunal recorded a finding that both the parties had accepted that there was no dispute regarding the final bill in the sum of Rs.32,96,533/-. Mr. Daver, learned Counsel for the petitioner did not dispute this statement recorded by the Arbitral Tribunal that both the parties had accepted the said amount as the amount payable under the final bill.

6. Mr. Daver, learned Counsel for the petitioner strongly placed reliance on the letter dated 21st April, 2008 addressed by the respondent to the petitioner requesting for grant of extension of time without levy of liquidated damages and for release of the outstanding amount of Rs.1.50 lacs approximately. He submits that in the said letter, the respondent had given an undertaking to the petitioner that if the petitioner would grant extension of time upto March, 2007 without levy of any liquidated damages, the respondent would not claim (a) compensation for work executed beyond the original stipulated date, (b) claim for idling for infrastructure, labours, manpower, materials, (c) claim for compensation of delayed payment of bills and (d) claim for compensation for loss of expected profit. He submits that the petitioner had thus given up the various claims including claim for price variation for the work carried out during the extended period. He submits that it was not the case of the respondent that the said letter was issued by the respondent under any coercion or duress.

7. Learned Counsel for the petitioner invited my attention to the written statement filed by the petitioner and more particularly on page 62 of the written statement and would submit that a specific plea was raised by the petitioner that in view of the undertaking submitted by the respondent by

letter dated 21st April, 2008, the respondent could not claim any interest on delayed payment and other payments mentioned in the said letter dated 21st April, 2008. Learned Counsel invited my attention to the submissions of the petitioner in this regard recorded by the Arbitral Tribunal in para 6.1.2 of the arbitral award. He submits that the Arbitral Tribunal has allowed Claim No.I contrary to the said undertaking dated 2nd April, 2008 submitted by the respondent to the petitioner. He submits that the Arbitral Tribunal has allowed the claim of respondent also on the ground that there was no provision in the Agreement entered into between the parties providing for issuance of No Claim Certificate by the respondent before release of the payment due to the respondent from the petitioner. Learned Counsel for the respondent relied upon various findings rendered by the Arbitral Tribunal and submits that the findings are not perverse.

8. Upon raising a query by this Court whether the petitioner had released the payment of Rs.1.50 lacs approximately and had granted extension of time without levy of liquidated damages as demanded in the said letter dated 21st April, 2008 as a condition precedent for the respondent giving up its claim for various heads of compensation, Mr. Daver, learned Counsel for the petitioner fairly agreed that the petitioner had not released the entire payment of Rs.1.50 lacs demanded as a condition precedent for waiving claim for various heads of compensation including compensation for delayed payment of bills and price variation.

9. The Arbitral Tribunal accordingly exercised their powers under Section 31(7)(a) of the Arbitration Act and has rightly awarded interest in favour of the respondent on the amount due and payable to the respondent by the petitioner based on the admitted amount of Rs.32,96,533/- from 10th September, 2010 till the date of award. Mr. Daver, learned Counsel for the petitioner fairly admitted that there was no provision in the Agreement entered into between the parties for submission of “No Claim Certificate” by the respondent in favour of the petitioner as a condition precedent before release of the amounts due and payable by the petitioner to the respondent. The Arbitral Tribunal has recorded sufficient reasons for allowing this claim after considering the provision of the Agreement and the submission and document relied upon by the parties. I do not find any infirmity in this part

of the award made by the Arbitral Tribunal. The submissions made by the learned Counsel for the petitioner in respect of Claim No.I are rejected.

10. In so far as Claim No.II awarded by the Arbitral Tribunal is concerned, the said claim is in respect of reimbursement of the service tax paid by the respondent. It is submitted by the learned Counsel for the petitioner that admittedly there was no service tax levied on the work carried out by the respondent during the original stipulated period of completion of work. The service tax was levied only with effect from 1st June, 2007. He submits that in Clause 70(2) of the General Conditions of Contract, the service tax, which was levied after expiry of the original contractual period was not required to be reimbursed by the petitioner. He placed reliance on various paragraphs of the statement of claim and the written statement in respect of this claim.

11. On the other hand, it was the case of the respondent that the petitioner had admitted the claim made by the respondent by a letter dated 27th September, 2011. The contract period was required to be extended due to various reasons attributable on the part of the petitioner. The service tax was introduced during the extended period of the Agreement entered into between the parties. The respondent placed reliance on Clause 70(2) and Clause 45 of the General Condition of Contract in support of the claim for reimbursement of service tax levied by the subsequent legislation during the extended period of the Agreement.

12. A perusal of the award clearly indicates that the Arbitral Tribunal has interpreted Clause 70(2) and Clause 45 of the General Condition of Contract and has rendered a finding of fact that the petitioner was liable to reimburse the service tax, which was levied during the extended period. The Arbitral Tribunal has allowed the said claim based on the interpretation of Clause 70(2) and Clause 45 of the General Condition of Contract and after considering the pleadings and documents forming part of the record before the Arbitral Tribunal. There was no dispute raised by the petitioner that the respondent had paid the service tax, which was levied during the extended period of Agreement. I do not find any perversity in the findings rendered by the Arbitral Tribunal. The interpretation of the Arbitral Tribunal of Clause

70(2) and Clause 45 of the General Condition of Contract is correct interpretation and thus no interference is warranted in such interpretation rendered by the Arbitral Tribunal.

13. In so far as the claim awarded by the Arbitral Tribunal towards interest on security deposit of Rs.41,01,030/- is concerned, learned Counsel for the petitioner submits that the Arbitral Tribunal could not have awarded any interest on the refund of security deposit contrary to the Clause 8.1 and 8.2 of the Agreement.

14. A perusal of the award indicates the Arbitral Tribunal has interpreted Clause 8.1 and 8.2 of the Agreement and has rendered a finding that the contract provided for release of 50% of security deposit on meeting two requirements explained in Clause 8.1. The balance 50% amount was to be kept in fixed deposit with the bank, which was to be returned to the respondent herein with interest after satisfactory completion of LD. The Arbitral Tribunal held that 50% security deposit could have been released in September, 2007 as the respondent had almost meet all requirements of Clause 8.1. The respondent was entitled to release of 50% amount of security deposit i.e. Rs.20,49,015/- on 14th September, 2007. The balance 50% amount was to be placed in fixed deposit and thus the respondent was entitled on the bank interest. The Arbitral Tribunal awarded interest @ 10% p.a. on amount of security deposit. The findings of fact rendered by the Arbitral Tribunal are after considering the provision of the Agreement and the pleadings and documents filed by the parties. The finding of the Arbitral Tribunal being not perverse, cannot be interfered with by this Court in this petition filed under Section 34 of the Arbitration Act. There was no bar under those clauses for payment of interest on security deposit.

15. The last submission of the learned Counsel for the petitioner is that though there was no evidence laid by the respondent in respect of the rate of interest which is awarded at 10% p.a. , the Arbitral Tribunal has awarded interest @ 10% p.a. In my view there is no merit in this submission of the learned Counsel for the petitioner. Under Section 31(7)(a) of the Arbitration Act, the Arbitral Tribunal is empowered to award reasonable rate of interest from the due date till payment. In the facts of this case, the interest awarded

by the Arbitral Tribunal at 10% p.a. being a reasonable rate of interest does not warrant any interference.

16. Learned Counsel for the petitioner did not urge any other submission for consideration of this Court and thus this Court did not go into other grounds raised in the Arbitration Petition.

17. In my view, the award rendered by the Arbitral Tribunal is reasonable award and has been rendered after considering the pleadings and documents produced by both the parties. The findings rendered by the Arbitral Tribunal are not perverse and thus no interference is warranted by this Court. The Arbitration Petition is totally devoid of merit.

18. I therefore pass the following order:-

- a) Commercial Arbitration Petition No. 341 of 2017 is dismissed. There shall be no order as to costs.

(R.D. DHANUKA, J.)