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

**ARBITRATION PETITION NO. 533 OF 2017  
WITH  
NOTICE OF MOTION NO. 594 OF 2018**

|                 |                |
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| Union of India  | ... Petitioner |
| V/s.            |                |
| Indian Builders | ... Respondent |

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Mr. B.B. Sharma a/w Mr. Ashwini R. Singh for the Petitioner.  
Mr. Jayesh Madhav Joshi for the Respondent Nos. 1A, 1B and 1C.

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**CORAM : R.D. DHANUKA, J.**

**DATE : 17<sup>th</sup> JULY, 2019.**

**P.C.:**

By this petition filed under Section 34 of the Arbitration and Conciliation Act, 1996 (for short 'Arbitration Act'), the petitioner has impugned part of the arbitral award dated 15<sup>th</sup> March 2017 and more particularly in so far as the award in respect of Claim Nos. 2, 5 and 6E is concerned.

2. In so far as the claim no.2 is concerned, Mr. Sharma, learned Counsel for the petitioner invited my attention to the discussion and findings of the learned Arbitrator on this claim in paragraph 49 to 57 allowing claim of Rs.2,28,000/- towards losses alleged to have been suffered by the respondent-contractor due to bifurcation of site.

3. It is submitted by the learned Counsel for the respondent that there was no change in site as found by the learned Arbitrator. It is submitted by the learned Counsel for the petitioner that even otherwise the respondent has not proved the claim of Rs.2,28,000/- awarded by the learned Arbitrator.

4. Learned Counsel for the respondent in so far as the claim no.2 is concerned, invited my attention to findings of the learned Arbitrator in paragraph 56 of the impugned award holding that there is an admitted position that there was change in site, entry of main building, which is about 1.5 k.m. away from the original contractor site and in the dumping yard of DGNP. He also invited my attention to the finding of the learned Arbitrator in so far as the quantification is concerned, in paragraphs 50, 52, 56 and submits that the respondent had made a claim of Rs.6,28,000/- whereas the learned Arbitrator has awarded the claim of Rs.2,28,000/- after considering the evidence led by the respondent.

5. In so far as the submission of the learned Counsel for the petitioner that there was no change in the scope of work is concerned, the learned Arbitrator rendered a finding in paragraph 56 of the impugned award in so far as this claim is concerned holding

that it was an admitted fact that there was change in site of DGNP main building. There is thus no merit in this submission of the learned Counsel for the petitioner. In so far as the submission in respect of the quantification of the claim awarded by the learned Arbitrator is concerned, it is clear that the respondent had made a larger claim and had produced oral as well as documentary evidence. Learned Arbitrator has considered this aspect in paragraph 51 to 56 of the impugned award and has held that the contractor is entitled to compensation in the sum of Rs.2,28,000/-. This Court cannot re-appreciate the evidence considered by the learned Arbitrator. The findings rendered by the learned Arbitrator based on evidence cannot be faulted with in so far this claim is concerned.

6. In so far as the claim no.4 is concerned, the learned Arbitrator has awarded the claim for interest on delayed payment of running account bills. The learned Counsel for the petitioner submitted that there is no provision in the contract entered into between the parties for the payment of any interest on delayed payment of running accounts bills. The learned Counsel for the petitioner does not dispute that there is no bar under the contract for payment of interest on running accounts bills. The learned Arbitrator has

rendered a finding that there was delay on the part of the petitioner in making payment of running accounts bills beyond the reasonable period. The findings of the learned Arbitrator cannot be faulted with by this Court. I do not find any infirmity in this part of the award passed by the learned Arbitrator.

7. In so far as Claim no.6E is concerned, the learned Arbitrator has allowed the claim for loss or profit in the sum of Rs.47,621/- Mr. Sharma, learned Counsel for the petitioner invited my attention to the documents and more particularly D.O. no. 30 signed by the respondent and would submit that under the contract entered into between the parties. It was specifically provided that the petitioner would have right to make variation in the contract. He submits that respondent did not raise any objection when the particular item was sought to be deleted and on the other hand admitted to such deletion being made by the petitioner. It is further submitted that even otherwise no evidence was led by the respondent in support of the claim for loss and profit.

8. Learned Counsel for the respondent could not justify this claim. He could not point out that the respondent had raised any protest when the said item was deleted in D.O. No.30. He also put

his signature on the said D.O. No. 30 without any protest. Learned Counsel for the respondent also could not dispute that the contract permitted the petitioner to delete any part of the scope of work. The respondent even otherwise did not lead any evidence in support of the said claim for loss or profit. This part of the award thus deserves to be set aside. It is ordered accordingly.

9. I therefore pass the following orders:-

- i) The impugned award dated 15<sup>th</sup> March 20117 is upheld except Claim No.6E.
- ii) Arbitration Petition is allowed partly. No order as to costs.
- iii) In view of the disposal of the Arbitration Petition, Notice of Motion does not survive and is disposed off.

**(R.D. DHANUKA, J.)**