

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

% Date of decision: 11th February, 2019

+ FAO(OS) 10/2019

IILM ACADEMY OF HIGHER LEARNING Appellant

Through: Mr. Puneet Mittal, Sr. Adv. with
Mr. Sandeep Mittal, Ms. Vasudha
Bajaj and Mr. Vinod Kathwalia, Advs.

versus

JBG BUILDCON PVT LTD Respondent

Through: Mr. Sandeep Sharma, Mr. Aman
Dhyani and Ms. Kanchan Semwal,
Advs.

CORAM:

HON'BLE THE CHIEF JUSTICE

HON'BLE MR. JUSTICE V. KAMESWAR RAO

V. KAMESWAR RAO, J. (ORAL)

CM. No. 3007/2019 (for exemption)

Exemption allowed subject to all just exceptions.

Application stands disposed of.

CM. No. 3008/2019 (for delay)

This is an application filed by the applicant / appellant seeking condonation of 10 days delay in filing the appeal. For the reasons stated in the application delay of 10 days in filing the appeal is condoned.

Application stands disposed of.

FAO(OS) 10/2019

1. The challenge in this appeal filed under Section 37 of the Arbitration and Conciliation Act, 1996 (in short of Act of 1996) is to the order dated 29th October, 2018 in OMP No. 644/2011, which is a petition under Section 34 of the Act of 1996, whereby the learned Single Judge has disposed of the said petition.

2. Mr. Puneet Mittal, learned Sr. Counsel appearing for the appellant had made two submissions, with regard to Claim No. 5 which was *claim towards material, construction of labour hutments, godowns and construction of site office*. Against the said claim, learned Arbitrator has granted an amount of Rs.9,60,000/- in favour of the respondent herein by deducting 20% of the value as given by the respondent, i.e., Rs. 12 Lacs. The finding of the learned Arbitrator in this regard as has been reproduced by the learned Single Judge in Para 7 of the impugned order is reproduced as under:

“...3 After hearing the parties and considering the documents on record I find that the claimant on 24.8.2006 on the request of the respondent prepared a list of materials and indicated the value and submitted the said list to the President of the Respondent Academy. The said letter dt. 24.4.2008 was duly received by the respondent along with valuation of the materials lying at site. After four days i.e. on 28.8.2006, the respondent terminated the contract of the claimant without issuance of any show cause notice. Thereafter the claimant was not

allowed access to the site and was not allowed to take back his materials & tools/plants. In the arbitration proceedings the value of the materials have not been controverted nor any suggestion or arguments advanced by the Respondent as to what was the actual value of the material left by the claimant at site. The claimant Shri S.S. Maan in his evidence has proved that he has sent the detailed list of materials, T&P etc. along with their valuation and the said list was prepared by his Engineer in his presence after due verification and counting the list of rate and purchase of the material was duly approved. The said evidence has not been controverted nor there is any cross examination by the respondent on this aspect. In the cross examination Shri Maan had submitted that after the termination of the contract on 28.4.2006 the respondent had stopped his entry at the site and his staff and labour were removed from the site. The relevant extract from his cross examination is "Thereafter the respondent stopped my entry at the site and our staff & labour were removed from the site. Our material, tools and plants were taken by the respondents in their custody". There is nothing contrary on record to show that the materials, tools & plants of the claimant were removed. I, therefore, hold that the claimant is entitled to the material left at site by the claimant. I accept the valuation of the material as assessed by the claimant vide his letter dated 24.8.2006. Since the value of the materials shown in letter dated 24.8.2006 as Rs. 36,20,200/- pertained to all the three contracts, the claimant is entitled to only 1/3rd of its value under the present contract i.e. Rs. 12,00,000/-. However, I consider it appropriate to deduct 20% in the value as given by the claimant. I therefore award Rs. 9,60,000/- under this claim."

3. According to him, there is no basis for the learned Arbitrator to deduct only 20% of the value given by the claimant. According to him, it should

have been more than that. He also states that 20% has no basis. Mr. Mittal could not justify the higher value.

4. Learned Arbitrator having deducted 20% from the value of the claim of the respondent which is agreed to by the learned Single Judge, this court is of the view that the same does not require any interference by this court.

5. The other challenge made by Mr. Mittal is with regard to interest of 9% granted by the learned Arbitrator which has been upheld by the learned Single Judge. According to Mr. Mittal, the appropriate interest should have been 6%. He states, this aspect was also agreed to by the respondent during the proceedings before the learned Single Judge. In that regard, he has drawn our attention to Para 11 of the impugned order. We are not impressed by the submission made by Mr. Mittal for the simple reason that the respondent had agreed for 6% interest if the appellant herein undertakes to make payments due under all the four awards on or before 31st May, 2019. Admittedly, the appellant did not agree to make the payment under all the four awards. Accordingly, the learned Single Judge had proceeded with the arguments and decided the petition. Under such circumstances, the grant of 9% is justifiable and cannot be interfered with.

The present appeal is dismissed.

CM. No. 3006/2019 (for stay)

Dismissed as infructuous.

V. KAMESWAR RAO, J

CHIEF JUSTICE

FEBRUARY 11, 2019/jg

