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

\+ O.M.P. (COMM) 122/2019

TRUE ZONE BUILDWELL PVT LTD ..... Petitioner

Through: Ms. Pallavi Pratap, Mr. Siddharth Josh and Ms. Shruti Arora, Advocates.

versus

SEWA SINGH ..... Respondent

Through: None.

CORAM:
HON'BLE MR. JUSTICE SANJEEV NARULA

<u>O R D E R</u>

% 28.03.2019

<u>SANJEEV NARULA, J.</u>

<u>I.A. 4390/2019 (Exemption)</u>

1. Exemption allowed, subject to all just exceptions.

<u>I.A. 4391/2019 (delay)</u>

2. For the reasons stated in the application, the delay in re-filing the application is condoned and the application is disposed of.

<u>O.M.P. (COMM) 122/2019</u>

3. The present petition has been filed under Section 34 of the Arbitration and Conciliation Act, 1996 (hereinafter, referred to as "the Act") challenging the arbitral award dated 7th September 2018 passed by learned Sole Arbitrator. The brief facts of the case are that on 17th September 2004, the Petitioner entered into a collaboration agreement with Respondents wherein Petitioner agreed to develop land at residential plot/commercial/group housing project. Thereafter on 16th February 2006 agreement to sell and purchase for land was executed between the Petitioner and the Respondents wherein a total

sale consideration of Rs. 184,44,375/- was paid by the Respondents towards assignment of all rights in the Petitioner's land including the right to receive any compensation.

4. It is the case of the Petitioner that after having received consideration and having assigned all rights relating to the land, including the right to receive compensation in respect thereof, the Respondents registered a document purporting to be an instrument of cancellation of the irrevocable power of attorney that was granted in favour of the Petitioner. This according to the Petitioner was done with an oblique motive so that the compensation received in lieu of the acquisition of the subject land could not be delivered to the Petitioner**.** The Petitioner aggrieved with the aforesaid action invoked the Arbitration Clause and accordingly, the claims were filed before the learned Arbitrator. In the claim petition, the Petitioner sought the following claims:

(i) Recovery of an amount of Rs. 77,020,086/- along with compounding monthly interest @ 18 % PA.

(ii) A further amount of Rs. 2 lacs as costs towards litigation expenses.

(iii) Rs. 20 lacs towards mental pain and suffering.

5. The Arbitrator has partly allowed claim No. 1 and held the claimant to be entitled to receive from the Respondent the principal amount of Rs. 184,44,375/-. Claim No. 2 has also been partly allowed and cost of Rs. 20,000/- has been awarded in favour of the Petitioner. Claim No. 3 has been rejected entirely.

6. The sole grievance of the Petitioner is that while allowing the claim No. 1, the learned Arbitrator has awarded a Simple Interest of 12 % per annum on the principal amount of Rs. 184,44,375/- from the date of the agreement to sell till the date of actual payment by the Respondent. The Petitioner has not challenged the award on any other ground. The learned counsel for the Petitioner submits that the transaction between the parties is commercial in nature and therefore the learned Arbitrator ought to have awarded interest at commercial rates keeping in view the nature of dispute between the parties. She further submits that a sum of Rs. 184,44,375/- was paid by the Petitioner as consideration for the purchase of the subject land and the money had been retained by the Respondent. The Respondent has derived benefits on account of the retention of the said amount and therefore the Petitioner is entitled to an enhanced rate of interest, as compensation on account of the breach on the part of the Respondent. Learned counsel for the Petitioner also relies upon the judgment of the Supreme Court in ***M/s Hyder Consulting (UK) Ltd. v. Governor State of Orissa*** **(2015) 2 SCC 189,** and in particular para Nos. 10, 11, 12 and 13 which reads as under:

> *"10. In this view of the matter, it is clear that the interest, the sum directed to be paid by the Arbitral Award under Clause (b) of Sub-section (7) of Section 31 of the Act is inclusive of interest pendent lite.*
> *11. At this juncture, it may be useful to refer to Section 34 of the CPC, also enacted by Parliament and conferring the same power upon a court to award interest on an award i.e. post-award interest. While enacting Section 34, CPC, Parliament conferred power on a court to order interest "on the principal sum adjudged" and not on merely the "sum" as provided in the Arbitration Act. The departure from the language of Section 34 CPC in Section 31 (7) of the Act, 1996 is significant and shows the intention of Parliament.*

12. It is settled law that where different language is used by Parliament, it is intended to have a different effect. In the Arbitration Act, the word "sum" has deliberately not been qualified by using the word "principal" before it. If it had been so used, there would have been no scope for the contention that the word "sum" may include "interest." In Section 31(7) of the Act, Parliament has deliberately used the word "sum" to refer to the aggregate of the amounts that may be directed to be paid by the Arbitral Tribunal and not merely the "principal" sum without interest.

13. Thus, it is apparent that vide clause (a) of sub-section (7) of Section 31 of the Act, Parliament intended that an award for payment of money may be inclusive of interest, and the "sum" of the principal amount plus interest may be directed to be paid by the Arbitral Tribunal for the pre-award period. Thereupon, the Arbitral Tribunal may direct interest to be paid on such "sum" for the post-award period vide clause (b) of sub- section (7) of Section 31 of the Act, at which stage the amount would be the sum arrived at after the merging of interest with the principal; the two components having lost their separate identities."

7. Referring to the above observation, she submits that the learned Arbitrator has committed an error by awarding a reduced interest. The Arbitral Tribunal is required to award interest post the date of the award at the statutorily mandated rate of 18% p.a. and the rate of interest should have been on compounding basis.

8. The Court has heard the learned counsel for the Petitioner at considerable length. The solitary grievance of the Petitioner as noted above is with respect to the rate of interest awarded by the learned Arbitrator. This ground of challenge firstly does not warrant any interference by this Court in view of the narrow scope of Section 34 of the Arbitration and Conciliation Act.

The law relating to the scope of interference by this Court in arbitral award is no longer *res integra*. In fact, there are several judgements of the Supreme Court and of this Court which have defined that the Courts would interfere in the arbitral awards only in a situation covered under Section 34(2) of the Arbitration and Conciliation Act such as ***Associate Builders v Delhi Development Authority*** **(2015) 3 SCC 49,** ***Wishwa Mitter Bajaj v Shipra Estate Ltd.*** **(2019) 256 DLT 42 (DB),** ***McDermott International Inc. v. Burn Standard Co. Ltd.,*** **(2006) 11 SCC 181**, ***P.C.L Suncon (JV) v N.H.A.I.,*** **2015 SCC Online Del 13192,** ***P.R. Shah Shares and Stock Brokers Pvt. Ltd. v B.H.H. Securities Pvt Ltd.,*** **2012 (1) SCC 594,** ***Navodaya Mass Entertainment Limited v J.M. Combines*** **(2015) 5 SCC 698**.

9. The rate of interest to be awarded, has been held to be the discretion of the arbitral tribunal. In the present case, there is no justification for the Court to interfere as the rate of interest awarded is reasonable and there is no perversity in the findings of the Arbitral Tribunal on this aspect. Further in ***Hyder Consulting*** **(supra)** itself, the Court has held that the award of interest by the Arbitrator has to be reasonable and the distinction between pre-reference period and *pendent lite* period has been removed with the 1996 Act. The observations made in para 10, 11, 12 & 13 of the said judgment reproduced above are being misconstrued and the same cannot be interpreted to mean that the post-award interest is required to be conferred at a mandatory rate of 18%. Award of interest for post –Award period is provided in sub-clause (b) of section 31(7). A reading of the said provision clearly shows that unless the Award otherwise directs, the legislature has

provided for payments of interest at the given rate on the sum awarded in the Arbitral Award. Accordingly, this judgment does not in any way assist the Petitioner in the proposition advanced by it. The relevant paragraphs of ***Hyder Consulting*** **(supra)** are reproduced hereunder:

> *"58. Pursuant to the enactment of Sub-section (7) of Section 31 of the Act, 1996, the difference between pre-reference period and pendente lite period has been removed insofar as it relates to the award of interest by arbitrator, unlike the position as under the Act, 1940......*
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> *8. Thus, Sub-section (7) of Section 31 of the Act provides, firstly, vide Clause (a) that the Arbitral Tribunal may include interest while making an award for payment of money in the sum for which the Award is made and further, vide Clause (b) that the sum so directed to be made by the Award shall carry interest at a certain rate for the post award period.*
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> *9. The purpose of enacting this provision is clear, namely, viz. to encourage early payment of the awarded sum and to discourage the usual delay, which accompanies the execution of the Award in the same manner as if it were a decree of the court vide Section 36 of the Act.*
>
> *10. In this view of the matter, it is clear that the interest, the sum directed to be paid by the Arbitral Award under Clause (b) of Sub-section (7) of Section 31 of the Act is inclusive of interest pendent lite."*

Similarly, in ***Sayeed Ahmed and Co. v State of Uttar Pradesh*** **(2009) 12 SCC 26**, it was observed:

> *" 13. The Legislature while enacting the Arbitration and Conciliation Act, 1996, incorporated a specific provision in regard to award of interest by Arbitrators. Sub-section (7) of Section 31 of the Act deals with the Arbitrator's*

power to award interest. Clause (a) relates to the period between the date on which the cause of action arose and the date on which the award is made. Clause (b) relates to the period from the date of award to date of payment. The said Sub-section (7) is extracted below:

7(a) Unless otherwise agreed by the parties, where and in so far as an arbitral award is for the payment of money, the arbitral tribunal may include in the sum for which the award is made interest, at such rate as it deems reasonable, on the whole or any part of the money, for the whole or any part of the period between the date on which the cause of action arose and the date on which the award is made.

(b) A sum directed to be paid by an arbitral award shall, unless the award otherwise directs, carry interest at the rate of eighteen per centum per annum from the date of the award to the date of payment.

Having regard to Sub-section (7) of Section 31 of the Act, the difference between pre-reference period and pendente lite period has disappeared in so far as award of interest by arbitrator. The said section recognises only two periods and makes the following provisions:

(a) In regard to the period between the date on which the cause of action arose and the date on which the award is made (pre-reference period plus pendente lite), the arbitral tribunal may award interest at such rate as it deems reasonable, for the whole or any part of the period, unless otherwise agreed by the parties.

(b) For the period from the date of award to the date of payment the interest shall be 18% per annum if no specific order is made in regard to interest. The arbitrator may however award interest at a different rate for the period between the date of award and date of payment.

14. The decisions of this Court with reference to the awards under the old Arbitration Act making a distinction between the pre-reference period and pendente lite period and the observation therein that arbitrator has the discretion to award interest during pendente lite period inspite of any bar against interest contained in the contract between the parties are not applicable to arbitrations governed by the Arbitration and Conciliation Act 1996"

10. Thus, in the present case, the Arbitrator has awarded interest at the rate of 12% per annum, albeit only on the principal sum found due from the Respondent. In the facts of the case, such rate of interest and limiting the same to the principal sum is not found to be unreasonable or perverse warranting any interference of this Court in exercise of its power under section 34 of this Act. Hence, in view of the judgment of the Supreme Court in ***Hyder Consulting*** **(supra)** the contention of the Petitioner cannot be sustained.

11. In view of the above, since there is no ground for interference, the petition is disposed of with no order as to costs.

SANJEEV NARULA, J

MARCH 28, 2019/*nk*