

\$~

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

38

+ **FAO(OS) (COMM) 27/2019**

DELHI STATE INDUSTRIAL &

INFRASTRUCTURE DEVELOPMENT

CORPORATION LTD

..... Appellant

Through: Mr Vinod Diwakar, CGSC with Mr
Sayandeep Pahari and Ms Radhika
Roy, Advocates.

versus

M/S LARSEN & TURBO LTD.

..... Respondent

Through: Mr S. Santanam Swaminadhan and
Ms Nishita Khurana, Advocates.

CORAM:

JUSTICE S.MURALIDHAR

JUSTICE SANJEEV NARULA

ORDER

%

11.02.2019

CM 6384/2019 (exemption)

1. Allowed, subject to all just exceptions.

CM 6383/2019 (delay)

2. For the reasons explained in the application, the delay in filing the appeal is condoned and the application is allowed.

FAO(OS) (COMM) 27/2019 & CM 6382/2019 (stay)

3. This appeal is directed against an order dated 9th October, 2018 passed by the learned Single Judge dismissing the Appellant's OMP (Comm.) No.117/2018 filed under Section 34 of the Arbitration & Conciliation Act, 1996 ('Act') thereby upholding the award dated 7th June, 2014, subject to a

minor modification which proceeded on a concession by the Respondent.

4. The brief facts are that the Appellant floated a tender for construction of 'Infrastructure Development Works (Road, Water Supply, Sewerage and Storm-Water Drainage)' in the New Industrial Area at Village Bhorgarh Part-B (Bawana, Phase-II), Delhi. The Respondent was the successful bidder. The contract was awarded to it by the Appellant with a value of Rs. 77,44,33,504/-. The time for completion of the contract was 19 months. The date of start of work was 7th January, 2008. The stipulated date of completion was 6th August, 2009.

5. As it turned out, the Respondent executed the entire work earlier than the stipulated time i.e. on 16th April, 2009 itself. Admittedly, the gross value of the work that was completed, also worked out to be the less than the tendered amount. It worked out to be Rs. 68,57,60,283/-.

6. Clause 2-A of the Terms and Conditions of the contract envisaged the Respondent earning a bonus of one percent of the tendered value, if it finished the work ahead of the scheduled completion of time. Clause 2-A of the contract reads thus:

“CLAUSE 2A

In case, the contractor completes the work ahead of scheduled completion time, a bonus @ 1% (one per cent) of the tendered value per month computed on per day basis, shall be payable to the contractor, subject to a maximum limit of 5% (five per cent) of the tendered value. The amount of bonus, if payable, shall be paid along with final bill after, completion of work. Provided always that provision of the Clause 2A shall be applicable only when so provided in 'Schedule F'”

7. The Respondent filed a claim before the Arbitrator for a sum of Rs. Rs.2,83,95,950/- calculating the bonus amount on the basis of Clause 2A. This bonus amount was calculated on the total value of the contract i.e. Rs. 77,44,33,504/-.

8. Apparently, prior thereto a letter was given on 19th November, 2009 by the Respondent to the Appellant agreeing to restrict its claim for bonus based on the 11th RA Bill value at Rs.67,46,38,947.87. This entire letter has been extracted in paragraph 12 of the impugned judgment of the learned Single Judge. Consequently, notwithstanding the fact that the Arbitrator had allowed the entire claim of the Respondent, which was the bonus amount calculated on the value of the contract i.e. Rs.77.44 crores, the learned Single Judge has in the impugned order reduced that amount by calculating bonus on the actual value of the work done i.e. Rs. 67,46,38,947.87. This was consistent with the letter dated 19th November, 2009, written by the Respondent to the Appellant.

9. Learned counsel for the Appellant reiterated the submission made before the learned Single Judge, viz., that for being eligible for the bonus amount, there had to be a corresponding reduction in the time taken for completion of the contract. If the above submissions were to be accepted, it would amount to re-writing the terms of the contract, which was impermissible for the Arbitrator to do, much less the learned Single Judge. Both the learned Arbitrator and the learned Single Judge have gone by the terms of the contract and, therefore, on this aspect, no interference is called for.

10. It is then contended by learned counsel for the Appellant that the actual

date of completion was 19th June, 2009 and not 16th April, 2009. This is a factual aspect, with both the learned Arbitrator and the learned Single Judge having concurrently accepted the case of the Respondent that it finished the work on 16th April 2009 itself. It does not call for any interference.

11. Consequently, the Court is unable to find any error in the impugned order of the learned Single Judge. The appeal is accordingly dismissed. The pending application is also disposed of.

S. MURALIDHAR, J.

SANJEEV NARULA, J.

FEBRUARY 11, 2019

rd