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

+ **FAO(OS) (COMM) 146/2019**

INDIA TOURISM DEVELOPMENT CORPORATION..... Appellant

Through: Mr.Sangram Patnaik with
Ms.Swayamsidha and Mr.Jayant
Goyel, Advocates.

versus

M/S C P & ASSOCIATES PVT LTD Respondent

Through: Mr.Sanyat Lodha with Ms.Sanjana
Saddy, Advocates for R1 and R2.

+ **FAO(OS) (COMM) 147/2019**

INDIA TOURISM DEVELOPMENT CORPORATION..... Appellant

Through: Mr.Sangram Patnaik with
Ms.Swayamsidha and Mr.Jayant
Goyel, Advocates.

versus

M/S CP & ASSOCIATES PVT LTD Respondent

Through: Mr.Sanyat Lodha with Ms.Sanjana
Saddy, Advocates for R1 and R2.

CORAM:

JUSTICE S.MURALIDHAR

JUSTICE TALWANT SINGH

ORDER

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30.07.2019

CM APPL. 29333/2019 (exemption) in FAO(OS) (COMM) 146/2019

CM APPL. 29335/2019 (exemption) in FAO(OS) (COMM) 147/2019

1. Allowed, subject to all just exceptions.

FAO(OS) (COMM) 146/2019 and 147/2019

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FAO(OS) (COMM) 146/2019 and CM APPL. 29332/2019 (stay)
FAO(OS) (COMM) 147/2019 and CM APPL. 29334/2019 (stay)

2. These are two appeals filed by the ITDC against the common order dated 13th March 2019 in the two petitions being OMP (Comm.) 39 of 2019 and OMP (Comm.) 40 of 2019 filed by the Appellant under Section 34 of the Arbitration and Conciliation Act, 1996 ('Act') challenging in turn two awards i.e. one dated 23rd July 2018 and the other 26th July 2018 passed by the sole arbitrator in the disputes between the parties arising out of a work order for supply of furniture for the CWG village near Akshardham, Delhi.

3. The Delhi Development Authority ('DDA') assigned the work of furnishing 2709 flats in Vasant Kunj and Akshardham during the Commonwealth Games 2010 to the ITDC under two Memoranda of Understanding ('MoUs') dated 14th July 2010 and 15th July/9th August 2010 respectively. In turn, ITDC issued notices inviting tenders for the supply of furniture in the above two locations. The supply was to be completed within 3 to 5 months.

4. Respondent No.1 was the successful bidder. In terms of the contract entered into with it by ITDC, the furniture was to be supplied within the time stipulated but admittedly there was a delay in the supply of furniture.

5. As it transpired, there is a clause for Liquidated Damages ('LD') which was invoked by the ITDC and sums were recovered from the bills submitted by Respondent No.1 which led Respondent No.1 and Respondent No.2, with whom it had entered into a sub-contract for making of such furniture, to file

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claims before the learned Arbitrator.

6. On the question of who is responsible for the delay in the supply of furniture, the learned arbitrator has in the impugned awards come to the conclusion that it was ITDC that was responsible for the delay and that it had granted extension to the Claimants up to 31st August 2010 for completing their obligation of having to supply the furniture without levy of compensation. The arbitrator also noted that the furniture had in fact been supplied and installed by 31st August 2010 and this had also been confirmed by ITDC.

7. On the basis of the above factual determination, the learned arbitrator was of the view that ITDC could not have invoked the LD clause and recovered the LD from the bills submitted by the Respondent Nos.1 and 2.

8. The learned Single Judge has after noticing the above factual findings concluded in para 24 of the impugned order as under:

“24. The Arbitrator has therefore, considered the evidence led by the parties on the question of delay before him and has arrived at the conclusion that it was the petitioner who was responsible for such delay due to failure of handing over of the flats on time to the respondents. This being a finding of fact, which can in no manner be said to be unreasonable or perverse, cannot be interfered with by this Court in exercise of its powers under Section 34 of the Act.”

9. Learned Counsel for the Appellant urged that the learned Single Judge erred in not interfering with the Award of learned arbitrator where it was

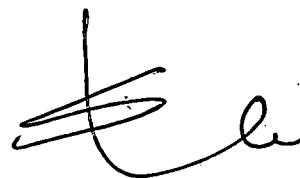
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held that on account of the inability of the Appellant i.e. ITDC to prove loss it could not have recovered the LD. According to him this was a legal flaw which called for interference by the learned Single Judge.

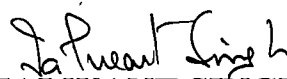
10. In para 27 of the impugned order, the learned Single Judge notes that this formed only one of the grounds on the basis of which the arbitrator allowed the claim of Respondent Nos. 1 and 2. However, the fact remains that the learned Arbitrator on facts found that it was the Appellant which was responsible for the delay and, therefore, the essential condition for invoking the LD clause was nonexistent.

11. This Court finds no error having been committed by the learned Single Judge in declining to interfere with the factual findings of the learned Arbitrator based on evidence that would have been beyond the scope of proceedings under Section 34 of the Act.

12. The Court finds no grounds to interfere with the impugned order of the learned Single Judge. The appeals are dismissed. Pending applications are also dismissed.



S. MURALIDHAR, J.


TALWANT SINGH, J.

JULY 30, 2019 / tr