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

+ **O.M.P. (COMM) 67/2018**

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Date of decision: 20.8.2019

IMPROVE VYAPAAR PVT. LTD Petitioner
Through Mr. Vikas Arora, Ms. Radhika Arora
and Mr. Rishabh Agnihotri, Advs.
versus
VVA DEVELOPERS (P) LTD & ORS. Respondents
Through Mr. Apoorv Agarwal and Ms. Megha
Choubey, Advs.
Mr. Vinod Tyagi, Adv. for R-2 & 3.

CORAM:
HON'BLE MR. JUSTICE RAJIV SHAKDHER

RAJIV SHAKDHER, J. (ORAL)

1. This is a petition filed under Section 34 of the Arbitration and Conciliation Act, 1996 (in short '1996 Act'). The challenge in this petition is made *qua* the award dated 6.11.2017.
2. Learned counsel for the petitioner says that the challenge to the award is limited in nature and, for this purpose, has referred me to the substantive prayers made in the petition.
3. For the sake of convenience, the same are extracted hereafter:
“(a) allow the present petition and consequently set aside the Award dated 06.11.2017 passed by Justice R.C. Jain (Retd.)—learned Sole Arbitrator in the arbitration whereby the claim of compensation @Rs. 151/- per sq. feet to the petitioner from 01.09.2013 was declined;
(b) Award the compensation of Rs.151/- per sq feet along

with interest @18% pa on the said compensation with effect from 01.09.2013 till the final disposal of this appeal; and

(c) Rectify the calculation for award thereby confirming the balance principal amount as Rs. 2,89,90782/- instead of Rs. 2,66,60,760/-.”

4. In sum, learned counsel for the petitioner says that the petitioner is aggrieved on account of the fact that the compensation which was to be awarded to the petitioner in terms of Clause 12 of the Memorandum of Understanding dated 18.3.2013 (in short ‘MOU’) has not been awarded.

5. Furthermore, it is the learned counsel’s submission that the learned arbitrator while adjusting the amounts received by the petitioner has adjusted the same against the principal amount i.e. Rs.3,19,10,760/- without first adding the component of interest for the period spanning between 1.7.2013 and 6.12.2013.

5.1. In other words, the contention is that the sum of Rs.52,50,000/-, which had been paid by the respondent, had to be adjusted after interest for the aforementioned period had been added on to the principal sum of Rs.3,19,10,760/-.

6. I have heard the learned counsel for the petitioner as well as Mr. Tyagi, advocate, who appears for respondent nos.2 and 3, as also Mr. Agarwal, who represents the Resolution Professional (R.P.), and has put in appearance for respondent no.1 company.

7. Ordinarily these proceedings would not have gone further. However, given the fact that the impugned award is a composite award passed not only against respondent no.1 company but also

against respondent nos.2 and 3, therefore, it has become necessary to deal with the petition.

8. Insofar as the first aspect is concerned, the learned arbitrator has considered not only Clause 12 but also Clause 11 of the MOU.

8.1. The learned arbitrator has read the aforementioned clauses “harmoniously” and concluded that once interest is ordered to be paid which he has via the impugned award in terms of Clause 11 then compensation as provided under Clause 12 of the MOU need not be paid.

8.2. Mr. Arora, advocate, who appears for the petitioner, says that the interpretation given by the learned arbitrator is flawed. In support of this submission reliance is placed on Section 73 and Section 74 of the Indian Contract Act, 1872 (in short ‘Contract Act’).

8.3. It is his submission that since interest at the rate of 18 percent per annum has been ordered to be paid with effect from 1.7.2013, compensation should have been paid for the period prior to 1.7.2013.

8.4. On being queried, Mr. Arora concedes that no assertion whatsoever was made in the Statement of Claims ('SOC') that delay in execution of the project had resulted in injury and, therefore, the compensation was payable.

8.5. Therefore, the counsel's submission that the learned arbitrator failed to keep in mind the provisions of Sections 73 and 74 of the Contract Act can have no bearing on the matter.

8.6. That apart, to my mind, the petitioner if it were to succeed would have to bring its case within the purview of the expression

"patent illegality" obtaining in Section 34(2A)¹ of the 1996 Act.

8.7. Moreover, even if I were to assume that the learned arbitrator misinterpreted Clause 12 or failed to apply the provisions of Sections 73 and 74 of the Contract Act, it would not fall foul of Section 34 of the 1996 Act.

8.8 Interpretation of the terms of the contract is completely within the domain of the arbitrator. [See: *Ssangyog Engineering & Construction Co. Ltd. v. National Highways Authority of India (NHAI)*, 2019 SCC OnLine SC 677.

8.9 Likewise, erroneous application of law cannot be a ground for setting aside the award. In this case though such a situation does not arise as even according to Mr. Arora necessary averments were not made in the SOC.

9. As regards the other contention of counsel for the petitioner that adjustments were allowed by the learned arbitrator of the sum of Rs.52,50,000 lakhs paid by the respondent without factoring in interest is also an objection which at this stage I do not deem necessary to entertain.

9.1. The reason why I say so is simply this. The learned arbitrator has, in his own wisdom, taking into account the entirety of circumstances decided to adjust the amount paid by the respondent, in the first instance, against the principal sum and, thereafter, granted

¹ **Section 34. Application for setting aside arbitral award.**

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[(2A) An arbitral award arising out of arbitrations other than international commercial arbitrations, may also be set aside by the Court, if the Court finds that the award is vitiated by patent illegality appearing on the face of the award: Provided that an award shall not be set aside merely on the ground of an erroneous application of the law or by re-appreciation of evidence.]

interest to the petitioner. Therefore, this is not a ground on which I would interdict the award.

9.2. Furthermore, to my mind, if the petitioner was really aggrieved by such an adjustment, it would have moved an application under Section 33 of the 1996 Act. The fact that such an application was not moved only shows that the learned arbitrator took a conscious decision and that it was not a case of oversight as was sought to be portrayed before me.

10. In any event, insofar as this petition is concerned, I am not inclined to interfere with the award on this score as also on the other aspect pertaining to the interpretation of Clause 12 of the MOU.

11. Accordingly, the petition is dismissed.

RAJIV SHAKDHER, J

AUGUST 20, 2019
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