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

Date of decision: 18th July, 2019

+ **O.M.P. 462/2009**

MUNICIPAL CORPORATION OF DELHI

..... Petitioner

Through: Mr. Sunil Goel, Standing Counsel
(M-9810215488)

versus

M/S SURENDER KISHAN GUPTA & ANR.

..... Respondents

Through: Mr. Uttam Datt, Ms. Sonakshi Singh
& Mr. Rajat Sharma, Advocates (M-
9810041776)

CORAM:

JUSTICE PRATHIBA M. SINGH

Prathiba M. Singh, J. (Oral)

I.A. 3339/2018 (for delay) & I.A. 3338/2018 (for restoration)

1. For the reasons stated in the applications, the delay in filing the application for restoration is condoned. The petition is restored to its original number. I.As are disposed of.

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2. The matter has been heard on merits. The petition under Section 34 of the Arbitration and Conciliation Act, 1996 arises out of the impugned award dated 31st March, 2009 passed by the Ld. Sole Arbitrator. The Respondent was the contractor who was awarded a contract for construction of Jan Suvidha Complex under Y.A.P. in Jahangirpuri at D-840, D-870, D-1100, D-1150, D-1800, D-175, E-140 (20 seater double storey). The work order no. EE/BR-II TC/2001-02/53 was issued on 24th October, 2001.

3. The date of start of work was 2nd November, 2001 and the stipulated date of completion was 1st May, 2002. There was a delay in the completion

and the work was finally completed on 29th June, 2002. The work was fully executed by the contractor. Various claims were raised. Disputes were referred to arbitration vide orders passed in Arb. Pet. No.18/2004. The contractor raised the following claims before the Ld. Arbitrator:

- **Claim No.1 – sum of Rs.10,79,533/- towards work done and not paid**

The Ld. Arbitrator awarded the entire amount.

- **Claim No.2 – Loss of profits of Rs.4,42,202/-**

The claim was reduced to Rs.1,89,478/- by the Contractor itself. The Ld. Arbitrator awarded Rs.1,42,643/- on account of this claim.

- **Claim No.3 – sum of Rs.75,845/- toward infructuous expenditure for retaining staff, etc. during the prolonged period of contract**

The Ld. Arbitrator awarded Rs.60,830/- on account of this claim.

- **Claim No.4 – refund of security deposit of Rs.5 lakhs**

The said amount was fully awarded by the Ld. Arbitrator.

- **Claim No.5 – interest on presuit, pendentelite and future.**

The Ld. Arbitrator awarded pre-suit interest @ 12% p.a and future interest.

- **Claim No.6 – sum of Rs.1,50,000/- being the cost of Arbitration**

The Ld. Arbitrator awarded Rs.1 lakh on account of this claim.

4. The present petition under Section 34 was filed on various grounds. However, in Ground No. C, the Petitioner averred as under:

“C. Because the Ld. Arbitrator failed to appreciate that the non-claimant is ready to pay the claimant to the extent of the provision of the contract except the interest and cost of arbitration as claimed by the claimant. The department has offered to pay all the amount on 5.5.2008 but the respondent failed to accept the same and hence consequently interest or any claim cannot be awarded to respondent”

5. Thus, the only objections raised by the Petitioner – MCD is in respect of interest and costs.

6. Mr. Sunil Goel, Ld. counsel appearing for the Petitioner submits that the above ground cannot be construed as an admission in respect of loss of profits claimed and infructuous expenditure, but only in respect of Claim No.1 and Claim No.4.

7. He submits that Ground No. F is a general ground and covers the challenge to the remaining claims. The same reads as under:

“F. Because the Ld. Arbitrator erred in not exercising its jurisdiction fairly and reasonably and without satisfying the objections raised by the non-Claimant, allowed the award in favour of the Claimant.”

8. The Court has perused Ground No. C and Ground No. F. It is clear that the only challenge is to the interest and costs of arbitration. There is not even a single ground in the petition which mentions about the loss of profits claim or the infructuous expenditure claim. Thus, it is not permissible for the

Petitioner to expand the grounds at this point.

9. Insofar as interest is concerned, Ld. counsel submits that the contract was awarded to the contractor out of the Yamuna Action Plan, construction of Sulabh Shauchalaya, which was a project funded by the Japanese Government. The delay in payments to the contractor was because there was a stoppage of receipt of funds from the Japanese Government. Under these circumstances, Ld. counsel submits that the pre-suit interest and the post-award interest may be moderated so that huge burden is not placed on the MCD.

10. Ld. counsel for the Respondent submits that the interest awarded is reasonable under the fact and circumstances.

11. The Court has considered the submissions. The only challenge is in respect of interest and costs. Owing to the unique nature of this project, and the fact that the MCD offered some outstanding amounts in 2008 itself which was rejected by the Contractor, it is directed that the impugned award in respect of award of interest is modified to the extent that interest would be liable to be paid on the awarded sums in Claims 1-4, from the date of award in respect of all the claims @ 8% p.a. from the date of award except Claim No.5. The costs of arbitration is reduced to Rs. 50,000/- from 1 lakh.

12. Payment be made by MCD within 8 weeks, failing which, interest on the entire amount would be liable to be paid @ 10% p.a till date of payment.

13. The O.M.P is disposed of in the above terms.

PRATHIBA M. SINGH
JUDGE

JULY 18, 2019/Rahul