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

Date of Decision: 31st July, 2019

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O.M.P. 34/2008

UNION OF INDIA

..... Petitioner

Through: Mr. Ashok Singh, Advocate. (M:
9313649228)

versus

M/S PRADEEP VINOD CONSTRUCTIONS
CO. & ORS.

..... Respondents

Through: Mr. S. W. Haider and Ms. Pooja Dua,
Advocates. (M: 9311307710)

CORAM:

JUSTICE PRATHIBA M. SINGH

Prathiba M. Singh, J. (Oral)

I.A. 9576/2019 (for restoration)

1. The present petition was dismissed for non-prosecution with a detailed order dated 2nd July, 2019. Ld. counsel for the Union of India (*hereinafter 'Railways'*) has entered appearance after that and filed the present application seeking restoration of the petition and setting aside of the order dated 2nd July, 2019. I.A. is allowed and the petition is restored to its original number.

2. I.A. is disposed of in the above terms.

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3. The parties have been heard on merits.

4. The present petition challenges the award dated 12th October, 2007 passed by a three members' Tribunal consisting of technical members appointed by the Railways. The Respondent No.1 - M/s Pradeep Vinod

Constructions Co. (*hereinafter the 'Contractor'*) entered into an agreement with the Railways for replacement of bridge timber with steel channel sleepers on bridge No.79, 168, 196, 216, 225, 227 & 228 on DLI-UMB section under ADEN/Karnal (*'Project'*), vide Agreement No.04/KUN/DSE-I/2003-04, dated 9th April, 2003.

5. The tenders were floated by the Superintendent Engineer-I, Northern Railways and the Contractor submitted its bids. The total value of the contract was Rs.81,18,000/- and the date for completion was 31st October, 2003. A formal agreement was entered into between the parties on 9th April, 2003. The date of completion expired on 31st January, 2005 after repeated extensions being sought by the Contractor. On 6th June, 2005, the Contractor sought closure of the contract and accordingly, the contract was rescinded vide letter dated 4th July, 2005. The Contractor then submitted the final bill for release of a sum of Rs.16,01,743/- which was rejected by the Railways. Thereafter, the arbitration clause in the agreement was invoked and the General Manager, Northern Railways referred the dispute to arbitration. Claims were raised by the Contractor that were awarded by the Id. Tribunal to the Contractor. The awarded amounts are as under:

<i>Claim</i>	<i>Awarded Amount</i>
<i>Claim No.1 – Towards balance quantity to be paid for schedule item No.1 only involved 15.80 mt @ 30,700 PMT.</i>	<i>Rs.3,87,449.65</i>
<i>Claim No.2 – Towards difference in rate of channel and plate at the time of tender and on the date of procurement</i>	<i>Rs.97137.60</i>

<i>@ Rs.8000/- per MT.</i>	
<i>Claim No.3 – Towards manufacturing guard rails in Br.No.225. Qty involved 2x435 m=870m @ Rs.200/- per m</i>	<i>Rs.81,997-00</i>
<i>Claim No.4 – Towards released/refund of security deposit and earnest money</i>	<i>Rs.225659-00</i>
<i>Total awarded amount</i>	<i>Rs.7,91,243.00</i>

6. The primary ground raised by Mr. Ashok Singh, Id. counsel for the Railways is that the Contractor sought repeated extensions for completing the work and despite this the Id. Arbitral Tribunal has awarded various claims to the Contractor. Further, Id. counsel submits that the items of the agreement are set out in detail and no extra amount was liable to be paid in respect of additional claims raised, for example, in respect of guard rails, rivets etc. Id. counsel further submits that the Contractor on its own volition made requests for supplies of channels of 16.8 kg/m and/or 17.7 kg/m. However, as per the contract, the channel that was to be used was of 16.40 kg/m. It is submitted that for use of these items, since there was a comprehensive contract which covered all the items to be used for proper replacement and rates were fixed, no extra amount was payable.

7. It is further submitted by Id. counsel that the price which has been awarded, i.e. Rs.30,700/- per metric tonne is also on the higher side, inasmuch as the extra items, which have been procured are concerned. The rate of Rs. 30,700/- per MT was the rate for steel and all other components forming part of the work to be executed and could not be applied for merely some additional material used.

8. On the other hand, the submission on behalf of the Contractor is that

the manner in which the Ld. Arbitral Tribunal has quantified each of the items and has arrived at the extra amounts is quite detailed. Since the Ld. Tribunal was a technical Tribunal, no interference is warranted. Further, it is submitted that as against most of the claims raised by the Contractor, the amount awarded is only the amount which the Tribunal considered proper in terms of the use of the material by the Contractor.

9. The Court has perused the award by the Id. Arbitral Tribunal. A perusal of the discussion under claim no.1 shows that the Ld. Arbitral Tribunal came to the conclusion that the total extra steel which has been used by the Contractor is 12620 kg, which has been valued as per the rate fixed in the items of the agreement, i.e. Rs.30,700/- per metric tonne. Since for work executed, the Contractor is liable to be fully compensated as per the final bill, including all items which the Contractor had executed, the award under Claim No.1 cannot be faulted. The submission of the Ld. Counsel for the Railways that the rate was wrongly applied does not appear to be correct as a lesser rate could not have been arrived at arbitrarily by the Tribunal, when the agreement contained the agreed rate.

10. Insofar as Claims no.2 & 3 are concerned, the same relate to the difference in rate of channel and plate at the time of tender and for manufacturing guard rails. The Id. Arbitral Tribunal, being a technical Tribunal, would have examined as to what are the items covered in the document titled 'Items in the agreement' as also the difference in the rate of the channel and plate at the time of tender and actual use as also the amount payable for manufacturing guard rails. These are completely factual aspects which cannot be gone into in the present petition under Section 34 of the Arbitration and Conciliation Act, 1996. The scope of interference especially

into factual findings is limited.

11. The rate of interest that was awarded by the Id. Tribunal is @ 18% per annum after 45 days from the date of award till the date of realization of the amount. The operative portion of the award reads as under:

“The respondent should realize the award announced above within 45 days from the date of award and claimant shall be entitled to interest @ 18% per annum after 45 days from the date of award till the date of realization of the amount.”

12. Under the circumstances of this case, where the Contractor himself has sought repeated extensions and has also finally sought closure of the contract on his own, the rate of interest is modified to 10% per annum from the date of the award.

13. The petition is disposed of in the above terms.

**PRATHIBA M. SINGH
JUDGE**

JULY 31, 2019/dk