

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION**

**ARBITRATION PETITION (L) NO.1000 OF 2018
WITH
NOTICE OF MOTION NO.2155 OF 2018**

Jhelum Infra Projects Private Limited	Petitioner
vs	
Comfort Securities Limited	...Respondent

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Mr. Ansari Shahed Ali Inayat Ali, for the Petitioner.

Mr. A.M. Saraogi, a/w. Mr. Sushil Upadhyay and Ms. Pooja Joshi, for the Respondent.

Mr. Sharan Jagtiani, Amicus Curiae present.

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CORAM : S.C. GUPTE, J.

DATED: 6 JANUARY 2020

JUDGEMENT:

. This arbitration petition challenges an award passed by a sole arbitrator on a reference arising out of a work order for construction and erection of an office building for the Respondent herein. The contract work never commenced and the work order was cancelled. The Respondent-employer had made a claim against the Petitioner-contractor. The learned arbitrator granted an award in favour of the Respondent in the sum of Rs.99,69,872/- together with interest at the rate of 24% per annum from 24 July 2015 (i.e. date of reference) till payment or realisation and also awarded costs to the Respondent totaling Rs.55,000/-. This award has been challenged by the Petitioner on various grounds.

2. The challenge has been made, according to the Respondent, beyond the period of limitation. The Respondent's case is that the award was served on the Petitioner in the same month when it was made, i.e. in August 2017; hence, the challenge petition filed on 31 August 2018 is beyond the extended period of 30 days after expiry of three months from the date of receipt of the award. It is, on the other hand, the Petitioner's case that it learnt of the award on 21 May 2018, when a summons was received from the District Judge, Jammu in an execution application filed by the Respondent. The companion notice of motion (Notice of Motion No.2155 of 2018) seeks condonation of delay, if any.

3. It is borne out by the record that on the same day, when he passed the award, the learned arbitrator had addressed an e-mail to the advocates of both parties communicating to them that the award was ready and calling upon them to collect the same. The Petitioner's advocate responded to that communication and confirmed that the award would be collected by him from the office of the Tribunal. Nothing is placed on record to show that it was actually collected by the Petitioner's advocate from the arbitrator. In the absence of any evidence to show that the award was actually served on the Petitioner, one would have to accept the Petitioner's case that it received the award only after a summons was received by it from the executing court and papers were accessed by it thereafter. If that be the case, the ensuing delay is merely of 10 days in approaching this court after expiry of 90 days from the date of knowledge of the award, i.e. 21 May 2018. The notice of motion is, accordingly, allowed by condoning that short delay of 10 days.

4. Coming now to the merits of the award, the learned arbitrator has awarded the Respondent's claim in the sum of Rs.99,69,872 (together with interest) on the following basis: (i) The contract work, aggregating to a sum of Rs.12,50,00,000/-, for which Rs.4,25,00,000/- was paid by the Respondent herein (original claimant) to the Petitioner (original respondent) against a bank guarantee, never commenced; (ii) The defence of the Petitioner to the claim of return of this advance that the Respondent was responsible for identifying the land for the contract work and since that was not done, the work could not be commenced and thus it was the Respondent who was responsible for non-commencement of the contract work, was not acceptable; (iii) The 'scope of contract' described in the work order provided that it was the duty of the Petitioner herein to provide and pay for all land, materials, labour and tools; thus, it was the duty of the Petitioner to identify the land and pay for it, and not of the Respondent herein to do so; (iv) The second defence of the Petitioner that the amount of interest of Rs.64,85,000/- paid by the Petitioner to the Respondent was not actually payable, because the latter was in breach of contract, was also accordingly not acceptable; (v) The balance sum of Rs.64,85,000/- (which was deposited with the Prothonotary and Senior Master of this Court) was the balance principal amount admittedly not paid by the Petitioner to the Respondent from out of the sum of Rs.4,25,00,000/- paid by the Respondent to the Petitioner towards mobilization advance and, accordingly, was payable to the Respondent; and (vi) The Petitioner was liable to pay interest at the contractual rate on this amount (balance principal of Rs.64,85,000/-), which was 24% p.a.

5. This award is perfectly in order. It is clearly supported by evidence and is in accordance with the contract between the parties. It takes into account all germane and relevant circumstances and materials and does not disregard any. It does not consider any non-germane or irrelevant circumstance or material. There is nothing in the award to shock the conscience of the Court. It cannot be described as an impossible or perverse award. There is, thus, no merit in the challenge.

6. Before I close the order, I must record my strong disapproval of the manner in which the present challenge is laid by the Petitioner. Apart from discussing the merits of the award, the Petitioner appears to have made wild and reckless allegations that “the award is induced by fraud and corruption”, and “the appointed arbitrator seems to have been in collusion with the respondent company”. In fact, this prompted the Court to appoint an *amicus curie* to argue the matter from the standpoint of the arbitrator's alleged misconduct. The allegations, which reflect directly on the integrity and demeanour of the Tribunal, have been made without any lawful basis and extremely lightly. Nothing is pointed out at the hearing to support such a case. This Court strongly deprecates the conduct of the Petitioner in making such wild and derogatory submissions. It calls for exemplary costs.

7. The arbitration petition is, accordingly, dismissed. The costs of the petition, quantified at R. 5 lakhs, shall be paid by the Petitioner to the Respondent.

(S.C. GUPTE, J.)