

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 24.02.2020

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THE HONOURABLE **Ms.JUSTICE P.T.ASHA**

O.P.No.795 of 2014

The Commissioner
Corporation of Chennai
Represented by
The Superintending Engineer (Bridges)
EVR Road, Ripon Building,
Chennai 600 003.

....Petitioner

/Vs/

1. M/s. Gammon India Ltd.,
Gammon House,
Veer Sarkar Marg,
Prabhadevi,
Mumbai 400 025.
2. Dr.D.Thirunakkarasu,
Arbitrator,
New No.60, Old No.56-B,
Anjugam Nagar, 3rd Street,
Ashok Nagar, Chennai 600 083.

...Respondents

PRAYER: This Original Petition filed under Section 34 of the Arbitration and Conciliation Act, 1996 to setting aside the award dated 01.11.2013 passed by the learned Arbitrator and directing the 1st respondent to pay the cost of this petition.

For Petitioner : Mr.P.Vasudevan

For Respondents : Mr.V.Srikanth

ORDER

The Petitioner herein is the Corporation of Chennai, who has challenged the award passed by the Sole Arbitrator, dated 01.11.2013, in and by which the learned Arbitral Tribunal has passed order and the operative portion of the said award is extracted hereunder:

“9. Conclusion:

9.1 Claim – 1: Claim towards interest for the delayed release of retention amount for the period from 01.11.2002 to 01.08.2012:

In view of the forgoing arguments and decision, the claimant is entitled for the relief by way of interest for the said period from 29.01.2007 to 28.03.2011. The claimant requested interest at the rate of 18% per annum. An interest at the rate of 9% on Rs.41,80,751.00/- is allowed and an amount of Rs.15,65,875.00/- [Rupees Fifteen Lakhs Sixty Five Thousands Eight Hundreds and Seventy Five Only] is awarded.

9.2 Claim -2: Claim towards refund of amount deducted for the shortfall collection of Tamil Nadu Labour Welfare Fund with interest for the period from 01.11.2002 to 01.08.2012.
The Award is Nil.

9.3 Claim -3: Claim towards interest from the date of reference (01.08.2012) to date of award:
The Award is Nil.

9.4 Claim -4: Claim towards interest for the period from date of award to date of payment:
A total amount of award of Rs.15,65,875.00/- will carry interest at the rate of 9% from 15-12-2013 till date of payment, if not paid before 15-12-2013.

**9.5 Claim -5: Claim towards Cost of Arbitration:
The cost of Arbitration is to be shared equally by the
parties and no amount is awarded.”**

2. The brief facts preceding the filing of the present petition under Section 34 of the Arbitration and Conciliation Act, 1996 is that the petitioner Corporation had decided to construct Mini Flyovers in Chennai at various important junctions. Work was entrusted to various contract by floating tenders. The respondent herein was the successful bidder in respect of the work relating to the Flyovers to be constructed on Royapettah High Road – Dr.Radhakrishnan Salai Junction , Dr.Radhakrishnan Salai – T.T.K.Salai Junction and Purasawalkam High Road – Perambur Barracks Road Junction. The value of the contract was a sum of Rs.1585.07 lakhs and the period for completion was fifteen months from the date of commencement namely 03.05.1999.

3. The work had been executed by the 1st respondent and dispute arose between the petitioner and the 1st respondent with reference to payment of interest on the retention amount and this was referred to arbitration. Ultimately, the Arbitrator had found in favour of the 1st respondent herein. The petitioner had taken a stand that they were unable to release the money only on account of pendency of the criminal proceedings against the 1st respondent by reason of which the entire records had been filed before the Court of Sub Judge, delayed the payment. Since, repeated request of the 1st respondent has not yielded any

result, the 1st respondent had invoked the jurisdiction of this Court and pursuant to the orders of this Court, the petitioner was directed to dispose of the representation of the 1st respondent, and thereafter, the bills were ultimately paid.

4. The only ground on which the present petition has been filed is that the 1st respondent had received the payment of initial amount of 50% without any demur and that they had not claimed interest. However, interest has been claimed on the retention amount for the first time only in the Arbitration proceedings. The petitioner would further submit that under the agreement interest and the retention amount is not contemplated and therefore the claim is contrary to the terms of the contract.

5. The learned counsel for the petitioner Mr.P.Vasudevan, would reiterate the contentions put forth in the petition, challenging the award.

6. Mr.V.Srikanth, learned Counsel appearing on the side of the respondents would submit that the above statement that interest was claimed for the first time only in the arbitral proceedings is totally erroneous. The 1st respondent has all along requested the payment of interest on the amounts due to them, during the pendency of the writ petition proceedings as well as the contempt petitions proceedings thereafter.

7. Heard the learned counsel for the petitioner and the learned counsel for the respondents and perused the records.

8. The present petition has been filed by the Petitioner on the basis that the petitioner Corporation has to pay interest as directed in paragraph No.15 of the Award which is extracted hereunder that interest should be paid only after the defect liability period:

“15. The petitioner submits that it once again made a representation on 30.10.2008 to the respondent No.1 requesting that it expedite the payment of the retention amount towards both Package I and Package II flyovers along with interest at the rate of 18% from the date of completion of the defect liability period.”

9. This would clearly prove that the contention raised by the petitioner is absolutely untenable. Interest is payable only from the date of completion of the defect liability period. It is apparent that the petitioner has not made out any grounds as contemplated under Section 34 of the Arbitration and Conciliation Act, 1996, for granting any relief in the present petition.

P.T.ASHA.J.

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10. In view of the above reasonings, this Original Petition is dismissed. The award passed by the Arbitral Tribunal, Chennai dated 01.11.2013 stands confirmed. No costs.

24.02.2020

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Index: Yes/No

To

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