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

+ **FAO(OS) (COMM) 46/2020, C.M. Nos. 7808/2020 (stay), 7809/2020 (Exemption), 7810/2020 (delay in filing) and 7811/2020 (delay in re-filing)**

M/S PREM KRISHNA ASSOCIATES & ANR Appellants
Through: Mr. G. Sivabalamurugan, Advocate.

versus

SINOCHEM INDIA COMPANY PVT LTD Respondent
Through: Mr. Dibya Nishant, Mr. Pallav Kumar
and Mr. Rajan Singh, Advocates.

CORAM:

HON'BLE MS. JUSTICE HIMA KOHLI

HON'BLE MS. JUSTICE ASHA MENON

ORDER

% 28.02.2020

1. The appellant/petitioner is aggrieved by the judgment dated 14.10.2019, passed by the learned Single Judge dismissing a petition filed by it under Section 34 of the Arbitration & Conciliation Act, 1996 (in short '**A & C Act**'), directed against an Award dated 19.6.2019, passed by the learned Sole Arbitrator whereunder, a sum of Rs.2,25,14,240/- has been awarded in favour of the respondent with interest @ 9% p.a., with effect from 05.3.2018.

2. At the outset, learned counsel for the appellant states that though no plea was taken by the appellant either in the Section 34 petition filed before the learned Single Judge [OMP (COMM) 424/2019] or in the grounds taken in the present appeal to assail the judgment dated 14.10.2019, there is an arithmetical error in calculating the amount due and payable by the appellant to the respondent under the Award inasmuch as it was overlooked by the learned Sole Arbitrator that while allowing Claim No. 1 raised by the respondent on account of loss due to missing material to the tune of Rs.2,14,18,769/-, Claims No.2, 3 and 4 towards loss of profit due to loss of business, loss of reputation and goodwill and expenses on account of travel and lodging, respectively, were rejected on the ground that no foundational facts have been pleaded by the respondent.

3. It is submitted by learned counsel that despite the above findings, while calculating the amount finally awarded in para 7.15 of the Award, the learned Sole Arbitrator has erroneously factored in the amounts that were claimed by the respondent under Claims No.2, 3 and 4 and were rejected and proceeded to award a sum of Rs.2,43,05,890/- in favour of the respondent, after deducting a sum of Rs.17,91,650/-, claimed by the respondent on account of raising invoices pertaining to the period beyond the terms of reference. Learned counsel states that the Sole Arbitrator ought to have deducted a sum of Rs.17,91,650/- from Rs.2,14,18,769/- awarded in favour of the respondent under Claim No. 1, which would have brought the figure down to Rs.1,96,27,119/- whereas, a sum of Rs.2,25,14,240/- has been awarded in favour of the respondent.

4. Ideally, the appellant ought to have taken recourse to Section 37 of

the A & C Act and should have approached the Sole Arbitrator for a correction of the Award within the stipulated time. But that was not done. Even thereafter, the appellant failed to raise the aforesaid plea either before the learned Single Judge in the Section 34 petition or before this court while taking the grounds of appeal to assail the impugned judgment. However, since learned counsel for the respondent who appears on advance notice, fairly concedes that there has been an error in calculating the amount payable to the respondent and states that he has no objection to the said correction being carried out in these proceedings, it is clarified that the respondent would be entitled to a sum of Rs.1,96,27,119/-, against Claim No.1 alongwith interest and costs, as awarded in para 8 of the impugned Award.

5. No other ground has been urged by learned counsel for the appellant to assail the impugned judgment except for taking the aforesaid plea.

6. Accordingly, the present appeal is disposed of along with the pending applications in the light of the concession given by learned counsel for the respondent as recorded above. The Award shall be enforced by the respondent against the appellant on the aforesaid terms.

HIMA KOHLI, J

ASHA MENON, J

FEBRUARY 28, 2020

Ap/NA