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

Reserved on: 6th December, 2019

Decided on: 21st May, 2020

+ **O.M.P.(COMM) 44/2017**

SALAR JUNG MUSEUM & ANR. Petitioners

Through: Mr. P. Sukumar Pattjoshi,
Senior Advocate with
Mr. Sanjeev Joshi, Ms. Kiran
Yadav, Advocates

versus

DESIGN TEAM CONSULTANTS PVT LTD Respondent

Through: Mr. Vineet Bhagat and
Mr. Shubham Jain, Advocates.

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CORAM:

HON'BLE MR. JUSTICE PRATEEK JALAN

JUDGMENT

1. This petition under Section 34 of the Arbitration and Conciliation Act, 1996 [hereinafter, “the Act”] has been filed by Salar Jung Museum, Hyderabad, seeking setting aside of an award dated 26.12.2008 [hereinafter, “the award”]. The impugned award was rendered by a sole arbitrator in favour of the respondent herein, M/s Design Team, under a contract dated 17.01.1991.

A. FACTS

2. The Salar Jung Museum of Hyderabad [hereinafter, “the Museum”] houses a significant collection of art and other objects.

In approximately the year 1989, it decided to open additional buildings in the eastern and western blocks of the Museum, and organized a national level open architectural competition for this purpose. M/s Design Team, a firm of architects from New Delhi [hereinafter, “the Architects”], participated in this competition and submitted designs, models, and rough cost estimates by way of a project report. Its entry was declared the winner of the competition. The Museum and the Architects thus entered into a contract dated 17.01.1991 at Andhra Pradesh Bhawan, New Delhi, for designing, making detailed architectural drawings, and supervision of construction of additional buildings of the Museum. The contract was for a period of 5 years (upto 16.01.1996), and the preliminary estimated cost of construction was initially ₹5.94 crores.

3. Under the contract, the Architects were required to complete drawings/designs of the building, and subsequently supervise the construction, which was to be undertaken by M/s National Building Construction Corporation [hereinafter, “NBCC”]. As per Clause 5 of the contract (reproduced below), the Architects were entitled to a fee of 4% of the approved preliminary cost estimate and consultancy fees:-

“5. Payment of Remuneration:

a) The Consultancy fees:

The employer agrees to pay to the consultant for the professional services to be rendered by him as hereinabove described at 4(I, II, III, and IV) the following fees:-

A fee calculated at the rate of 4% of the estimated cost of the work as given by the consultant including entrusted services on admissible items (clause 6) subject to a ceiling of cost of the corresponding items as per sanctioned preliminary estimate [Clause 4 I (a) and/or (b)] or in the event of changes in the scope of work leading to recasting of the said estimate, the ceiling shall be based on such revised sanctioned cost of the modified proposal.

Payments will be made after the bills are verified and cleared by the Adviser appointed by the employer.

5.(b) The above fees at 5(a) are inclusive of fees payable by the consultant to any other consultants and the associates and nothing extra shall be payable by the employer.

An amount of Rs.50,000/- paid to the consultant as an honorarium for the preparation of project report and conceptual drawings shall be adjusted in the first bill against above mentioned fees at (a) above. The above amount will be paid in instalments as specified below, subject to recovery of security deposit as per clause 7 below:

Consultancy Fees:

(i) On finalisation of preliminary drawings and preliminary cost estimates (Item 4 I(a,b,c,d,e & f) 20%

(ii) On finalisation of detailed working drawings of all disciplines given below: (Item 4 II a,b,c,d & f)

<i>Civil</i>	<i>.....15%</i>
<i>Electrical and Air Conditioning</i>	<i>.....10%</i>
<i>Others</i>	<i>.....5%</i>
<i>Total</i>	<i>.....30%</i>

- (iii) *On finalisation of detailed structural drawings* 10%
- (iv) *On finalisation of detailed estimate and tender documents, in respect of all services viz on completion of stage as per item 4 II (e)*10%
- (v) *On finalization and award of all contracts including specifications and handing over constructional drawings to contractor item 4 III (a to e)*10%
- (vi) *During construction stage on completion of:-*
 - (a) *50% of work*10%
 - (b) *100% of work finalization of all accounts completion drawings and obtaining completion certificates from local bodies etc. viz on completion of items and 4 IV (a to k)*10%

4. On 01.05.1991, the Architects intimated that the cost of construction had to be increased to ₹10.52 crores which, however, was not approved by the Museum. The site for construction having been handed over to NBCC on 15.02.1992, the Architects submitted a further revised estimate of the cost of construction on 11.08.1993, in the amount of ₹7.52 crores. This estimate was accepted by the Museum. The Architects were informed by letters dated 04.01.1994 and 13.01.1994 to prepare estimates not exceeding an outlay of ₹7.52 crores, but the Museum stipulated that professional charges would be payable to the respondent on the initial preliminary cost estimate, being ₹5.94 crores.

5. The parties were unable to agree on the amount due to the Architects under the contract. The Architects contended that the work undertaken under the contract was more extensive than the original proposal resulting in the cost of work increasing from the proposed

estimate of ₹5.94 crores to ₹10.52 crores. They therefore claimed fees on the basis of the sanctioned modified estimate, or even on the new estimate – ₹7.52 crores, and not on the preliminary estimate. It was further contended in the correspondence between the parties that, in addition to the consultancy fees stipulated in Clause 5 of the agreement, supervision charges were to be paid on the work completed after 16.01.1996 as the work was delayed. The Museum, on the other hand, contended that the Architects were only entitled to remuneration based on the estimate of ₹5.94 crores, which they had submitted at the stage of the design competition. Further, the Museum contended that the amount of supervision charges were not payable from 16.01.1996 as the contract with the Architects had ended on that date.

6. In the interregnum, the Architects, initially constituted as a partnership firm, had reconstituted into a private limited company by the name of Design Team Consultants Pvt. Ltd. It is this company which made the claim in the arbitration proceedings, and is the respondent in the present petition. The Museum resisted the claim on this ground also, arguing that the takeover of the Architects' firm by the company could not relate back to the contract, which had expired on 16.01.1996. The Architects contended, on the other hand, that the company had taken over all the assets and liabilities of the erstwhile firm, and that this was conveyed to the Museum by way of a communication dated 19.09.1996.

7. The disputes led to invocation of arbitration by the Architects, and an application filed by them before this Court under Section 11 of the Act. By an order dated 27.08.2002, this Court appointed Justice R.P. Gupta, a former Judge of this Court, as the sole arbitrator.

8. Before the learned arbitrator, the Architects relied upon clause 5(a) and 5(b) of the agreement, and submitted that the revised cost estimate of ₹10.52 crores was required to be taken into account to determine the ceiling of consultancy fees. They claimed ₹16.68 lakhs by way of balance remuneration alongwith interest at the rate of 24% p.a. thereupon.

9. The Museum defended the claim both on the grounds of maintainability and merits. The question of maintainability was urged on the ground that the respondent herein was a private limited company, whereas the Museum had entered into the agreement with a partnership firm. An objection was also raised regarding the proceedings under Section 11 of the Act, to the effect that the jurisdiction for appointment of the arbitrator lay with the courts in Hyderabad, rather than this Court. On merits, the Museum contended that although the revised outlay of ₹7.52 crores was approved, the consultancy fees payable to the respondent were required to be computed on the initial estimate cost of ₹5.94 crores. With regard to the claim of supervision charges, the Museum contended that pursuant to the letter dated 19.01.1997, the Museum paid supervision charges to the tune of ₹8,63,373/- from 24.02.1997 to 19.03.1999 to Mr.Sunil Saini (who was a partner in the erstwhile firm and subsequently a director of the respondent company). The principal defence taken by

the Museum on this account was that the Architects (as a company) had no *locus standi* to seek adjudication of disputes under the contract as the company could not be said to be an assign of the Architects' firm.

10. By way of the impugned award dated 26.12.2008, the learned arbitrator awarded consultancy fee in favour of the Architects, reckoned upon the final cost estimate of ₹7.52 crores. The balance amount awarded under this head was computed as ₹8,96,315/-. In addition, the learned arbitrator directed refund of the security money deducted from the consultancy fee paid to the respondent [₹2,13,840/-] and from the supervision charges [₹49,540/-]. Interest was awarded, not at the rate of 24% p.a. as claimed by the Architects, but at the rate of 6% p.a. An award was therefore made in favour of the Architects, for the sum of ₹18,10,706/- [with further interest at 6% p.a.], and costs of ₹96,000/-.

11. By the present petition under Section 34 of the Act, the Museum seeks setting aside of this Award.

B. CONTENTIONS

12. Mr. S. K. Pattjoshi, learned Senior Counsel for the Museum, submitted at the outset that the learned arbitrator had exceeded his jurisdiction by deciding claims other than the claim for consultancy fees. He relied upon the order dated 27.08.2002, passed by this Court under Section 11 of the Act, in support of his contention that the disputes which were referred to arbitration concerned the alleged shortfall in consultancy fees alone, and none other. Although this

objection was not raised in the course of arbitration proceedings, Mr. Pattjoshi cited the judgment of the Supreme Court in *Lion Engineering Consultants vs. State of Madhya Pradesh*, (2018) 16 SCC 758 [paragraphs 2 to 6] to submit that an objection regarding scope of the reference can be taken at any stage. On merits, he submitted that the impugned award overlooks the contractual provision that the consultancy fees were to be paid on the preliminary estimate of ₹5.94 crores, which understanding was also reflected in the Museum's letter dated 13.01.1994, addressed to the Architects. Mr. Pattjoshi further submitted that the awards on account of supervision charges and refund of security deposit were beyond the scope of the contract, and inadmissible in favour of the Architects after their reconstitution as a company.

13. Mr. Vineet Bhagat, learned counsel for the Architects, argued that the impugned award is based on a proper consideration of the materials placed before the learned arbitrator, and therefore not liable to be set aside under Section 34 of the Act. Mr. Bhagat submitted that the letter of the petitioner dated 04.01.1994 clearly indicated that the increase in the estimated cost from ₹5.94 crores to ₹7.52 crores was a consequence of changes in the design, and the letter contemplated payment of the contracted amounts by the petitioner to the respondent. He argued that the supervision charges were also payable by reason of a letter dated 19.01.97 addressed by the Museum to the Architects. Mr. Bhagat submitted that the impugned award was based on a proper consideration of the contractual terms and the evidence led before the

learned arbitrator, and was therefore not liable to be set aside under Section 34 of the Act.

C. ANALYSIS

Preliminary issues

14. Before dealing with the merits of the claims adjudicated by the learned arbitrator, I propose to consider two preliminary issues which have been urged by the Museum in this petition.

15. The first of those issues is that the claim raised by the Architects was not maintainable as the agreement was signed by them constituted as a partnership firm, whereas they had reconstituted themselves as a private limited company in the interregnum, on 19.09.1996. I find that this argument was advanced before this Court, and rejected at the stage of the application under Section 11 of the Act. A perusal of the order dated 27.08.2002 shows that the Court considered the agreement between the Museum and the Architect wherein the assigns of successors-in-office of the Architect were also included within the definition of the term “consultant”. The Court noticed that the meeting of the Board of Directors of Design Team Consultants Pvt. Ltd. dated 28.08.1996 resolved to take over all the existing assets and liabilities of the partnership firm, and that the Museum had been duly informed. On this basis, the contention of the Museum that a new arbitration agreement was required was rejected.

16. It is evident from the above that this Court considered the fact of takeover of the assets and liabilities of the erstwhile partnership firm by the company as sufficient to transfer the rights and liabilities

under the agreement dated 17.01.1991 between the parties. Noting that the agreement dated 17.01.1991 specifically incorporated reference to the successors and assigns of the parties, and that the Museum had been informed of the assignment, this Court came to a conclusion that a fresh arbitration agreement between the parties was unnecessary. The appointment of the learned arbitrator was premised on this finding. In view of the above, I do not consider it necessary to revisit this question.

17. The second objection concerns the consideration by the learned arbitrator of the Architects' claim on account of refund of security deposit and balance of supervision charges. The argument of the Museum is that the appointment of the learned arbitrator under Section 11 of the Act was confined to the Architects' claim of ₹12,86,400/-, being the differential amount of consultancy charges. In this connection, Mr. Pattjoshi has drawn my attention to the following observations in the order dated 27.08.2002:

*“...Since respondents have failed to appoint arbitrator to adjudicate the petitioner's claim for Rs.12,06,400/- with interest despite receipt of aforesaid communications dated 3rd January, 2000 and 4th April, 2000, an Arbitrator deserves to be appointed by the Court **to adjudicate the said claim.***

*For the forgoing discussion, while allowing petition, Justice R.P.Gupta (Retd.) is appointed as sole arbitrator **to adjudicate the claim referred to in the preceding paragraph.** He will make the award in accordance with law. His fee shall not exceed Rs.75,000/- which will be borne equally by both the parties.*

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(Emphasis supplied)

18. The judgment of the Supreme Court in *State of Goa vs. Praveen Enterprises* (2012) 12 SCC 581 [paragraphs 10 to 13] indicates *inter alia* that where reference to an arbitrator is to decide specific disputes mentioned in the order of the Court under Section 11 of the Act, the arbitrator’s jurisdiction is limited to those disputes. The order of this Court was limited to the claim of the Architects for a sum of ₹12,86,400/- arising out of the contractual stipulation regarding consultancy charges. To this extent, Mr. Pattjoshi is right.

19. However, it is not disputed that this jurisdictional objection was not raised by the Museum before the learned arbitrator at any stage. The question therefore arises as to whether it can be taken for the first time in proceedings under Section 34 of the Act. Mr. Pattjoshi cited the judgment of the Supreme Court in *Lion Engineering* (supra) to argue that a jurisdictional objection can be entertained for the first time under Section 34 of the Act. In *Lion Engineering*, it was contended (before a three judge bench of the Court) that the arbitrator’s jurisdiction was circumscribed by a special statute, the Madhya Pradesh Madhyastham Adhikaran Adhiniyam, 1983, which provided for a specific tribunal to adjudicate the disputes in question. Although this plea had not been taken before the arbitrator, the Court held that it could be urged before the Court under Section 34 of the Act. An earlier decision to the contrary, *MSP Infrastructure Limited vs. Madhya Pradesh Road Development Corporation Limited* (2015) 13 SCC 713, was overruled.

20. In my view, the judgment in *Lion Engineering* (supra) is distinguishable. The objection in that case arose from a statute which governed jurisdiction of the arbitrator. The Court therefore held that the public policy ground of challenge under Section 34 could be invoked by the aggrieved party. In the present case, in contrast, the challenge is not based upon any inherent lack of jurisdiction in the arbitrator but upon the reference order itself. In such a case, the party concerned cannot be permitted to participate in the arbitration proceedings, contest the claim on merits, and thereafter raise a jurisdictional objection. The underlying difference stems from the concept of consensual dispute resolution itself. Even in a case where a particular dispute is referred to the arbitrator, and the claimant thereafter seeks adjudication of other claims as well, if the respondent does not object, it can be taken to have agreed to submit the subsequent claims also to arbitration. If there were a statutory bar to submission of the additional claim, akin to the situation in *Lion Engineering* (or perhaps some other ground relatable to public policy), the situation may be different. However, where the jurisdictional objection is capable of waiver by the affected party, the failure to raise it before the arbitrator signifies consent to the arbitrator's jurisdiction. A party cannot, in such a case, participate in the proceedings without demur and then seek to assail the validity of the proceedings in the face of an unfavourable award.

21. This approach is, in my view, also consistent with the recent judgment of the Supreme Court in *Quippo Construction Equipment Limited vs. Janardan Nirman Pvt. Limited* 2020 SCC OnLine SC 419

[Civil Appeal 2378/2020, decided on 29.04.2020]. In the said judgment, the Court held that an objection regarding the venue of arbitration and holding of a common arbitration arising out of several agreements could not be taken at the stage of Section 34 by a party which did not participate in the proceedings at all. Paragraphs 23 and 24 of the judgment are reproduced below:

“23. It was possible for the respondent to raise submissions that arbitration pertaining to each of the agreements be considered and dealt with separately. It was also possible for him to contend that in respect of the agreement where the venue was agreed to be at Kolkata, the arbitration proceedings be conducted accordingly. Considering the facts that the respondent failed to participate in the proceedings before the Arbitrator and did not raise any submission that the Arbitrator did not have jurisdiction or that he was exceeding the scope of his authority, the respondent must be deemed to have waived all such objections.”

24. In the circumstances, the respondent is now precluded from raising any submission or objection as to the venue of arbitration, the conclusion drawn by the Court at Alipore while dismissing Miscellaneous Case No.298 of 2015 was quite correct and did not call for any interference. The High Court, in our view, was in error in setting aside said Order. In any case, the fact that the cause title showed that the present appellant was otherwise amenable to the jurisdiction of the Alipore Court, could not be the decisive or determining criteria.”

(Emphasis supplied)

Although the objector in *Quippo Construction* had not participated in the arbitration proceedings at all, I do not see a difference in principle

between such a case and a case where the objector had participated but not raised the objection.

22. In view of the above, the second preliminary objection raised by Mr.Pattjoshi is also rejected.

On merits

23. Turning now to the merits of the challenge, the Museum has challenged the award, both on account of consultancy fees and supervision charges. As far as consultancy fees is concerned, the argument of Mr. Pattjoshi is that as per clause 5(a), the fee payable is subject to a ceiling based on the sanctioned preliminary estimate submitted by the Architects. The Architects placed on record before the learned arbitrator, a communication dated 01.05.1991 regarding the additional scope of work, which led to the increase in the cost estimate from the “rough estimate” submitted during the competition to the “approved preliminary estimate”. This shows an increase in the scope of work from the original estimate of ₹5.94 crores to the amount claimed by the Architects of ₹10.52 crores.

24. In the course of the award [albeit while dealing with a different claim], the learned arbitrator referred to two resolutions taken by the Board of Directors of the Museum, and a meeting taken by the Secretary of the concerned department of the Government of India, with regard to the consultancy fees. The relevant discussion in the award is as follows:

“35. It is further urged that estimated cost of Rs.10.52 Crores, as estimated by the Claimant against the initial contract was not approved by the Board vide Resolution

No.I-25/91-92 dated 9.8.1991 and that the Ministry of Human Resources Development approved the financial outlay of Rs.7.52 Crores in the meeting dated 28.7.93, and that was approved by Resolution No.III-45/93-94 dated 18.8.93 and accordingly M/s Design Team were intimated on 18.12.93 about the revised financial outlay. However, according to the Respondent, Professional Fee of Design Team is payable @4% at the cost ceiling of Rs.5.94 crores and no more. It is appropriate to note in detail the Board Resolution No.1013/91-92 item No.13 therefore and Resolution No.I-25/91-92 item No.28 regarding payment of fee to Architect. These are as under. These have been filed by the Respondent with their Counter:-

Resolution No.I-13/91-92 Item No.13 dated 9.8.91:

*To consider the preliminary estimate submitted by M/s Design Team and comments of Part time Adviser Shri V.Raghvan, the Board noted that the Architect had prepared an estimate for Rs.5.94 Crores in March 1990. The Architect has now submitted an estimate for Rs.10.47 Crores i.e. within less than 1-1/2 years of his having prepared the earlier estimate. The Board consider this estimate very high which needs to be closely examined. It is resolved that the Joint Secretary, Department of Culture, Financial Adviser and the Part Time Adviser of the Museum and the Director may immediately hold a meeting with the Architect and NBCC to work out detail for the purpose of preparing the **revised preliminary estimate** for the approval of the Board. The Board may meet in the first or second week of September 1991, to take a decision in the matter.*

Resolution No. I-25/91-92 - Item No.28 Payment of Fee to Architect:

*Resolved that the estimate of Rs.5.94 Crores given by the Architect at the time of competition be taken as basis for the purpose of payment of fee to the Architect **till such time as the detailed estimates are finalized and approved by the Board.** The fee be paid only after he complete all the stages mentioned in Clause 4-1(a) to (f) of the Agreement and after the Adviser duly certifies the same. The Board observed that the revised cost of Rs.10.45 Crores was very high. The earlier estimate is only about an year old and most of the facility must have been catered for. Any increase can only be for inevitable items left over inadvertently or for proportionate increase in rate in the prevailing economic condition. The need for strict economy and austerity is paramount.*

Then there is on record a minutes of the meeting in the Chamber of Secretary, Department of Culture, Ministry of Human Resources Development, govt. of India dated 28th July, 1993, in which Shri Bhaskar Ghosh, Secretary of the Department, Shri Saroj Ghosh, Director General of National Council of Museum Science, Director and Adviser of Salarjung Museum, and the three Partners of M/s Design Team were present. The purpose was to examine in detail a Plan and Estimate of the proposed new building of Salarjung Museum and suggest suitable modification to make building more functional and also to reduce the cost of the Project. Certain modifications were suggested by Mr. Saroj Ghosh to reduce overall cost of the Project and M/s Design Team were asked to suitably modify the Plan and Estimate in the light of the suggestions made. The changes suggested were mostly in the finishings like

floorings and in costly elevational treatment. M/s Design Team desired to know ceiling on cost of the Project so that they could think over and furnish revised scheme. Mr. Saroj Ghosh suggested that the cost of Project at current price should not exceed Rs.7.50 Crores. M/s Design Design Team agreed to submit modified Plan and Estimate by 11.8.1993.

On 11.8.1993, M/s Design Team sent a revised detailed Cost Estimate of Rs.7.529 Crores with their letter dated 11.8.1993. These documents have been filed by the Respondent with their Counter. This revised estimate was prepared with reference to the decision taken in the meeting dated 28.7.93 above referred to.

On 4th January, 1994, the Museum wrote to M/s Design Team a letter No.15(iii)/94-11 dated 4.1.94 for submission of Working Drawing and Estimate regarding the new building in Salarjung Museum. This letter has been marked S-1 as well as S-18, and produced by the Claimant. The Museum wrote it in furtherance a letter dated 18.12.93 that the decision taken regarding changes already discussed by Shri Bhaskar Ghosh, Secretary in the meeting dated 28th July, 1993, hold good. The Design Team was requested to prepare estimate not exceeding an out-lay of Rs.7.5 Crores as per the marginal design changes discussed by Shri Saroj Ghosh. It was however, added that no additional cost will be paid to Design Team, 'save contracted amount'. So vide letter dated 4.1.94, Design Team was requested to complete the working drawings and estimate and forward the same before 1st February 1994."

25. These deliberations are again referred to while dealing with the claim for consultancy charges. The learned arbitrator, on an interpretation of clause 5(a) and 5(b) of the agreement, returned a finding that the agreement did not provide that ₹5.94 crores would be

the preliminary cost estimate referred to in clause 4.1(a). In paragraph 62 of the award, the learned arbitrator noted the stipulation in clause 5(b) of the agreement [wrongly mentioned in the award as clause 4.1(b)] that in the event of changes in the scope of work leading to recasting of the estimate, the ceiling shall be based on such sanctioned cost of the modified proposal. The learned arbitrator therefore rejected the Museum's contention that the preliminary cost estimate was the rough estimate given by the Architects in the project report submitted in response to the competition. Referring to the meeting dated 28.07.1993 and communication of the Museum dated 13.01.1994, the learned arbitrator further held as follows:

“66. An interesting feature is to be noted, at this stage, that the Museum itself did not treat the Rough Cost Estimate of Rs.5.94 Crores, given in the Project Report, as Preliminary Cost Estimate. This becomes clear when we read Resolution No.I-25/91-92 item No.28 dated 9.8.91 as noted in para 17 of this Award. The Resolution clearly resolves that the basis of payment to the Claimant would be Rs.5.94 Crores till such time as detailed estimates are finalized and approved by the Board. So the exact basis of fee was yet to be finalized, when detailed estimate was to be finalized. This Resolution considered the estimate of Rs. 10.52 Crores, which had been submitted by Design Team, to be high and suggested that it be examined closely. As a sequel to this close examination of the estimate, and certain changes suggested by the Experts of the Board the Claimant was asked to limit the cost of Project to Rs.7.5 Crores in view of the changes suggested, as per the Minutes of the Meeting dated 28.7.93 (Annexure D-4 to Counter). So the Architect adopted suggested changes in their fresh design and prepared the revised estimate of Rs.7.529 Crores, conveyed vide their letter dated 11.8.93 sent to Museum.

These aspects have also been noticed in this Award at para 17, in detail.

67. The Claimant's contention is that the cost estimate of Rs.10.5 Crores prepared by them was approved by the Advisor of the Board as has been expressly mentioned in the letter dated 21.5.91 bearing No.II-15(iii)/91-92-385 which letter was signed by the Director who is 'Employer' as defined under the terms of the Agreement. So according to the Claimant, this was sanctioned Preliminary Cost Estimate till this estimate was changed to Rs.7.52 Crores, which was submitted according to the subsequent Resolution dated 28.7.93. This fresh estimate of Rs.7.529 Crores was sanctioned. However, again on 4.1.94, the Director of the Museum wrote to Design Team to prepare estimate not exceeding out-lay of Rs.7.5 Crores, as per the 'marginal changes' discussed by Dr. Saroj Ghosh and that the working drawing be completed and forwarded before 1.2.94 with estimate. This was while revised estimate of Rs.7.529 Crores had been already forwarded on 11.8.93 to the Museum (Annexure D-3 with Counter). The Museum again wrote to Design team on 13.1.94 vide their letter No.15(iii)94-22 dated 13.1.94 that the total cost of the Project at the current rate shall not exceed Rs.7.5 Crores and asked the Consultant to submit all the drawings as per the modification suggested, within six weeks from 14.1.94. The net result is that it is to be taken that by that date the Museum had sanctioned the cost estimate at Rs.7.5 Crores, although Architect had given Rs.7.529 Crores. In this letter dated 13.1.94 the Director wrote to Design Team that professional charges will be paid only on Rs.5.94 Crores as per the cost estimate as submitted while submitting the Drawing Competition. This stand taken by the Director is unfounded, not as per terms of contract, un-reasonable and one sided as I have discussed above. It is not result of consensus ad idem between the parties.

68. The plea of the Respondent in their Counter is that Board had approved the financial out-lay of Rs.7.52 Crores vide their Resolution No.III-35/93-94 dated 18.8.93 and accordingly Design Team was intimated vide their letter dated 18.12.93 about it. It is urged that) this development took place because the Ministry of Human Resources Development reviewed the matter of cost and approved out-lay of Rs.7.52 Crores.

69. The net result, of all these documents, is that the Respondent approved the cost of Rs.7.52 Crores and communicated the same to the Claimant vide their letters dated 4.1.94 and 13.1.94, by instructing that drawings and estimate be accordingly submitted.”

On this basis, the learned arbitrator came to the conclusion that the Museum's assertion that the consultancy fees was payable only on the amount of ₹5.94 crores in its communication dated 13.01.1994, was a unilateral stipulation and not binding on the Architects. However, in view of the accepted position that the final cost estimate computed by the Museum was ₹7.52 crores, the learned arbitrator awarded consultancy fees on the said sum, and not on the claimed sum of ₹10.52 crores.

26. I am unable to accept Mr. Pattjoshi's submission that the award on this ground is contrary to the contract or otherwise perverse. It is evident from the aforesaid extracts of the award that the learned arbitrator duly considered the evidence placed before him, and his finding is based on the resolutions of the Museum's Board and communications addressed by the Museum to the Architects. Further, he has proceeded on an interpretation of clauses 4.1 and 5 of the agreement. The scope of Section 34 of the Act is limited;

interpretation of the agreement and appreciation of the evidence are both matters within the domain of the arbitrator. The judgments of the Supreme Court, *inter alia* in *Associate Builders vs. Delhi Development Authority* (2015) 3 SCC 49 [paragraphs 28 and 31] and *Ssangyong Engineering & Construction Co. Ltd. v. National Highways Authority of India* (2019) 15 SCC 131[paragraph 40] make it clear that the Court would not be justified in setting aside an award unless it is based on no evidence at all or on a reading of evidence (or an interpretation of the contract) which is irrational or perverse, in the sense that it draws a conclusion which no reasonable person could have reached. The award in the present case does not suffer from any such infirmity.

27. On the question of payment of supervision charges, it was undisputed before the learned arbitrator that the Museum had agreed to pay supervision charges @ 0.6% to the Architects with effect from 17.01.1996 which was subsequently enhanced to 0.8% with effect from 15.07.1998. The Museum resisted the claim on the basis that the aforesaid agreement was between the Museum and the original partnership firm M/s Design Team, and the claimant company was not entitled to the same. Following the finding that the company was the successor-in-interest of the partnership firm and thus succeeded to its rights and liabilities under the contract, the learned arbitrator held that there was no legal impediment to the company asserting the claim for supervision charges.

28. In view of my finding above, that the order of this Court dated 27.08.2002 concludes the issue of entitlement of the company to claim

under the contract, I do not find any ground to interfere with the award on this aspect also.

29. Apart from the consultancy and supervision charges, the learned arbitrator has awarded refund of security money withheld by the Museum, and interest and costs. The security deposit has been directed to be refunded on the undisputed assertion that 10% had been deducted from the Architects' invoices on account of consultancy fees and supervision charges. Mr. Pattjoshi did not press any contention to the contrary. The award of interest and costs was also well within the discretion of the arbitrator and does not call for interference.

30. In view of the above, I do not find any ground to interfere with the award dated 26.12.2008.

D. CONCLUSION

31. The petition is therefore dismissed, however, with no orders as to costs.

MAY 21, 2020
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PRATEEK JALAN, J.