IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

ARBITRATION PETITION NO. 376 OF 2018

Union of India ... Petitioner
Acting through
Dy. Chief Engineer (C-I),
Western Railway, Churchgate,
Mumbai – 400 020.

Versus

Arshie Construction Co.
A 401, Madhuban CHS,
Off Yari Road, Varsova,
Andheri (W), Mumbai – 400 061. …Respondent

Mr. Chetan Agrawal for Petitioner.
Mr. Arthav Sanghvi i/b Praxis Legal for Respondent.

CORAM : K.R.SHRIRAM, J.
DATED : 25th JANUARY 2021.

P.C. :

1. This is a petition impugning an order and award dated 31st March, 2017. The contractual terms provided for the General Manager, Western Railway to nominate the Arbitral Tribunal. For the purpose of this matter, I do not consider it necessary to go into details as to how the tribunal came to be constituted. Suffice to say, the tribunal consisted of one Shri.Vivek Dixit, Sr. Divisional Electrical Engineer (Sub)/W. Rly/Mumbai Central as presiding arbitrator, Shri. Vivek Narula, Sr. Divisional Engineer

(East)/W.Rly/Mumbai Central (presently Sr. DEN (Co)/Western Railway/ Bhavnagar) and Smt.Sumathi Bhardwaj, Dy. Financial Advisor & Chief Account Officer/W. Rly/Churchgate as joint arbitrators. Subsequently vide DGM Western Railway letter no. WC/118/511/ARB Dt. 1.9.2016, Sh. Anand Kumar was nominated as joint arbitrator in place of Smt. Sumati Bhardwaj.

2. Respondent was appointed as contractor for the work of heavy repair to drainage, shop roof AC sheeting, pit line, service building etc. in EMU workshop at Mahalaxmi in Mumbai Division of Western Railway with a completion period of ten months from the date of issue of letter of acceptance.

3. The Arbitral Tribunal had given directions and opportunities to the parties to submit their pleadings. Respondent to this petition made seven claims. Claim No.1 - Balance amount payable for work executed under agreement and extra items of work for Rs.12,00,000/-, Claim No.2 - Refund of security deposit deducted from R.A. Bills for Rs.5,00,000/-, Claim No.3 - Part of security deposit in the form of Bank guarantee encashed by Railways for Rs.5,00,000/-, Claim No.4 - EMD amount FDR/Pay order encashed by Railways for Rs.50,000/-, Claim No.5 - Compensation for loss of profit for Rs.8,30,000/-, Claim No.6 - Interest @ 18% per annum on above claims, and Claim No.7 - Cost of litigation.

4. The Arbitral Tribunal after considering the documentary evidence filed, came to a conclusion that the delay in completion of work under the contract was due to reasons solely attributable to petitioner. The Arbitral Tribunal has noted that respondent vide their letter dated 22nd December, 2006 has elaborated various reasons for non-completion of the work by 31st December, 2006 primarily non-availability of site, delay in supply of rails, variation of quantities etc. Respondent had also, in view thereof sought an extension upto 31st March, 2007 subject to mutually agreed revised rates. Petitioners have given extension to claimants on 11th January, 2007 but have imposed penalty of 1.5% per week liquidated damages from 16th February, 2007 to 31st March, 2007. The Arbitral Tribunal has observed that issues raised by respondent pertaining to reasons of delay have not been replied at all by petitioner. The Arbitral Tribunal therefore come to a conclusion after considering the documents that petitioners have not countered the detailed reasons of delay as contested by respondent and also observed that petitioner has imposed penalty without giving reasons.

5. But what clinched the issue in favour of respondent is petitioner's letter dated 9th May, 2014 where petitioner has stated that final bill amounting to Rs.11,20,562/- was prepared on the basis of joint measurement and is kept in Railway custody as risk and cost amount after termination of contract. In other words petitioner has admitted that

amount of Rs.11,20,562/- was payable to respondent but it is holding back the payment since petitioner had a counter claim. Since the Arbitral Tribunal came to a conclusion that delay was attributable to petitioner, it also granted the other claims being Claim Nos.2, 3 and 4.

6. The Arbitral Tribunal however rejected respondent's entitlement to increased rates as the same was unjustified as per GCC. Even compensation for loss of profit (Claim No.5) has been rejected and Claim No.6 for interest has also been rejected. Cost of litigation has been directed to be shared equally between the parties.

As regards petitioner's counter claim, the Arbitral Tribunal, in view of its findings under Claim No.1 of respondent has concluded that counter claim was unjustified and rejected the counter claim.

7. The scope under Section 34 of The Arbitration and Conciliation Act, 1996 (the Act) is very limited. In the petition challenging the award, petitioner has not stated whether its grievance was under Section 34 (2) (a) (i), (ii), (iii), (iv) or (v) of the Act. Though, petition is not clear, I will assume that petitioner has approached this court under Section 34 (2) (b) (ii).

8. No case also is made out as to why the award is in conflict with the public policy of India. The award is well considered. The reasoned award was passed by an Arbitral Tribunal of three arbitrators, all appointed by the General Manager of petitioner.

9. In the circumstances, petition stands dismissed with cost in the sum of Rs.50,000/- (Rupees Fifty Thousand Only).

10. Petitioner shall also pay interest on the amount awarded as per provisions of Section 31 (7) (b) of The Arbitration and Conciliation Act, 1996.

(K.R. SHRIRAM, J.)