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

% *Date of Judgment: 13th May, 2021*

+ **O.M.P. (COMM) 150/2021 and IA No. 5424/2021**

GUPTA AND CO.

..... Petitioner

Through: Mr S.K. Jain, Advocate with
Ms Stuti Jain and Mr Akshu
Jain, Advocate.

versus

DDA

..... Respondent

Through: Ms Shobhana Takiar, Standing
Counsel for DDA.

CORAM:

HON'BLE MR. JUSTICE VIBHU BAKHRU

[Hearing held through videoconferencing]

VIBHU BAKHRU, J. (ORAL)

1. The petitioner has filed the present petition under Section 34 of the Arbitration and Conciliation Act, 1996 (hereinafter the 'A&C Act') impugning an arbitral award dated 02.12.2020 to the extent that the Arbitral Tribunal has not awarded pre-reference interest in respect of petitioner's Claim Nos. 1 to 4.

2. The respondent (hereinafter 'the DDA') had issued a notice inviting tenders for the work of "*Construction of 1600 SFS houses category II & III at Trilok Puri, Pocket 'B' SH: Construction of 160 SFS houses category II & III 80 Nos. Two bedroom category II, 80 nos. three bedroom category III & 120 scooter garages under SFS*

pocket 'E' including internal development Group V".

3. Subsequently, by a letter dated 10.03.1986, the DDA awarded the said work to the petitioner. The works were to be completed within a period of twelve months from the 10th day of issuance of the letter of award, that is, by 20.03.1987. The petitioner states that it completed the contracted works on 29.08.1989 and there appears to be no dispute that the works were taken over by the DDA. However, the petitioner states that the completion of the works was not recorded and the petitioner's final bill was not made. The petitioner claims that it was informed that the Quality Control Cell of the DDA had inspected the works and therefore, the final bill could not be finalised until the Quality Control observations were closed. The petitioner claims that it continued to pursue with the DDA for processing its final bill. However, the DDA did not do so. The petitioner further claims that it was informed by the DDA that the original agreement executed between the parties was not traceable. The petitioner states that thereafter, the DDA directed the petitioner to handover surplus store material so that the final bill could be prepared by the department. The petitioner complied with the said direction, but the DDA failed to finalise the bill. The petitioner had issued a Bank Guarantee, which was renewed from time to time as the preparation of the final bill was pending.

4. The petitioner by its letter dated 09.04.2007 once again requested the DDA to finalise the bill. However, the same was not done.

5. Aggrieved by the inaction on the part of the DDA in not releasing the payments and not finalising its bill, the petitioner approached the Grievance Cell of the DDA. On 26.06.2009, the petitioner's complaint to the Grievance Cell was referred to the concerned office.

6. By a letter dated 10.12.2010, the Executive Engineer Eastern Division No.3, DDA informed the petitioner that its case was under active consideration. Thereafter, the DDA constituted a Committee to examine the petitioner's complaint. The said Committee submitted its report on 05.01.2011. The petitioner claims that the Committee recommended that the amount withheld, be released.

7. The petitioner claims that thereafter, on 17.01.2011, the petitioner was informed that the Final Bill had been prepared and was lying in the DDA's office. The petitioner claims that the said Final Bill was not in conformity with the measurements recorded by the DDA in various measurement books. However, the said Bill was accepted by the petitioner under protest. Thereafter, on 31.01.2011, the petitioner submitted its Final Bill in accordance with the measurements recorded in various measurement books.

8. Thereafter, the DDA released part payment for a sum of ₹1,64,000/- to the petitioner by a cheque dated 16.03.2011.

9. The disputes between the parties persisted and after exchange of some correspondence, the petitioner issued a legal notice dated 11.07.2011 for recovery of the balance payment. In all, the petitioner

raised thirteen claims in its notice. The petitioner claims that by a letter dated 18.07.2011, the DDA responded to the said notice admitting two of the claims but denied the others.

10. In view of the aforesaid disputes, by its letter dated 20.07.2011, the petitioner invoked the arbitration and sought reference of the disputes to an arbitrator. The petitioner also filed a petition under Section 9 of the A&C Act (OMP No. 514/2013) before this Court, *inter alia*, praying that the DDA be directed to deliver the measurement books in the custody of the Chief Engineer, DDA. This was to ensure that the said measurement books are kept safely and are not tampered with.

11. The above petition (OMP No. 514/2013) was disposed of by this Court by an order dated 09.09.2013, *inter alia*, recording the DDA's contention that six of the given measurement books would be produced before the learned Arbitrator and the balance three measurement books would be produced as and when directed by the learned Arbitrator.

12. By its letter dated 12.07.2013, the DDA appointed Sh. Lakhvinder Chaudhary, S.E. (Arbn.), DDA as the Sole Arbitrator to adjudicate the disputes between the parties. Sh. Lakhvinder Chaudhary was thereafter transferred and in his place, Sh. S.K. Jain, S.E. (Arbn.) was appointed as the Sole Arbitrator on 14.02.2014.

13. Sh. S.K. Jain also resigned as an Arbitrator as he too was transferred before the conclusion of the arbitral proceedings.

Thereafter, the DDA appointed Sh. D.V. Raghav as the Sole Arbitrator. The learned Arbitrator made its award on 09.06.2016 dismissing the petitioner's claim on the ground of limitation.

14. Aggrieved by the arbitral award, the petitioner filed a petition for setting aside the award [OMP(COMM) 443/2016]. The said petition was allowed and by an order dated 27.03.2019, this Court set aside the arbitral award dated 09.06.2016.

15. The DDA filed an appeal [FAO(OS)(COMM) 275/2019] against the said order, which was also dismissed by the Division Bench of this Court by an order dated 27.03.2019.

16. Thereafter, on 23.05.2019, the competent authority of DDA appointed Sh. M.C.T. Pareva as the Sole Arbitrator to adjudicate the disputes between the parties. The learned Arbitrator made his award on 02.12.2020, which is impugned in the present petition.

17. Before the Arbitral Tribunal, the petitioner raised seven claims which are briefly tabulated below:

Claim No.1	₹1,00,000/- on account of refund of security deposit.
Claim No.2	₹54,44,450/- on account of work executed and measured in the measurement books by DDA but not paid.
Claim No.3	₹18,50,000/- on account of escalation in terms of Clause 10-CC of the General Conditions of

	Contract.
Claim No.4	₹7,60,000/- on account of amount withheld in various bills.
Claim No.5	₹5,65,892/- on account of interest on delayed payment of ₹1,64,000/- released on 16.03.2011.
Claim No.6	Pre-suit, <i>pendente-lite</i> and future interest at the rate of 12% per annum with monthly rest.
Claim No.7	Cost of arbitration.

18. The DDA resisted the claims principally on the ground that the same were barred by limitation. The Arbitral Tribunal did not accept the aforesaid contention and partly allowed the claims made by the petitioner. The Arbitral Tribunal found that the security deposit of ₹1,00,000/- paid by the petitioner was liable to be released on 21.03.2019. Accordingly, the Arbitral Tribunal allowed the petitioner's Claim No. 1 and awarded a sum of ₹1,00,000/- in its favour.

19. The Arbitral Tribunal also found in favour of the petitioner in respect of Claim No. 2 and awarded a sum of ₹54,44,450/- in favour of the petitioner and against the respondent.

20. The Arbitral Tribunal found that the petitioner was also entitled to escalation, however, the Arbitral Tribunal computed the amount of escalation payable under Clause 10-CC of the General Conditions of the Contract at ₹8,03,348/- instead of ₹18,50,000/- as claimed by the petitioner.

21. Insofar as Claim No. 4 is concerned, the Arbitral Tribunal found that the petitioner was entitled to a sum of ₹7,60,000/-, which had been withheld by the DDA. Since the petitioner had already received a sum of ₹1,64,000/- on 16.03.2011, the Arbitral Tribunal awarded a sum of ₹5,96,000/- in favour of the petitioner against Claim No.4 (₹7,60,000/- less ₹1,64,000/-)

22. The Arbitral Tribunal also allowed Claim No.5 and awarded interest at the rate of 12% per annum on the amount of ₹1,64,000/-, from the date it was payable till 16.03.2011 – the date on which the said amount was released to the petitioner.

23. Insofar as the petitioner's claim for pre-reference, *pendente lite* and future interest is concerned, the Arbitral Tribunal awarded interest at the rate of 10% per annum against Claim Nos. 1 to 4 from 20.07.2021 (the date of invocation of arbitration) to 02.12.2020. The Arbitral Tribunal further awarded future interest at the rate of 12% per annum on the awarded amounts, from the date of the award till the date of actual payment. In addition, the Arbitral Tribunal also awarded costs amounting to ₹3,00,000/- in favour of the petitioner.

24. As noted above, the petitioner has challenged the impugned award only to the extent that the Arbitral Tribunal has not awarded any pre-reference interest on the amounts awarded against Claim Nos. 1 to 4. It is seen on a plain reading of the award that it does not indicate any reason why the petitioner's claim for pre-reference interest has been rejected. Concededly, Claim No. 6 made by the

petitioner included the petitioner's claim of pre-suit interest. However, the Arbitral Tribunal has completely ignored the same as the arbitral award does not expressly state that the said claim has been rejected and also indicates no reason for its rejection. The impugned award is completely silent as to the fate of the said claim, except that pre reference interest has not been awarded.

25. The fact that the impugned award does not award pre-reference interest would in normal circumstances lead to the conclusion that the Arbitral Tribunal has rejected such a claim. However, the said inference cannot be readily drawn. This is because the Arbitral Tribunal has allowed the petitioner's Claim No.5 – the petitioner's claim for interest on ₹1,64,000/-, which was withheld by the DDA and released belatedly on 16.03.2011. The petitioner had claimed a sum of ₹7,60,000/- on that count (Claim No.4). The Arbitral Tribunal had found in favour of the petitioner and found that ₹7,60,000/- had been wrongfully withheld by the DDA. However, the Arbitral Tribunal awarded a sum of ₹5,96,000/- as the sum of ₹1,64,000/- was released to the petitioner on 16.03.2011. This Court finds no plausible reason why the Arbitral Tribunal did not award interest on the amount that had been withheld from the bills raised by the petitioner, but award interest on the part amount that was released to the petitioner on 16.03.2011.

26. The Arbitral Tribunal had found that the entire amount of ₹7,60,000/- had been withheld by the DDA from the bills raised by the petitioner but a sum of ₹1,64,000/- had been released belatedly. Thus,

while the Arbitral Tribunal has awarded interest on amounts that were released belatedly, it has not awarded interest on the amount that had not been released.

27. It appears that that the claim for pre-reference suit has escaped the attention of the Arbitral Tribunal. As noted above, there is no discussion regarding the said claim and the Arbitral Tribunal has not expressly rejected the same. This Court finds considerable merit in the contention that the Arbitral Tribunal has completely overlooked the petitioner's claim for pre-reference interest in respect of Claim Nos. 1 to 4.

28. In the case of ***Dyna Technologies Private Limited v. Crompton Greaves Limited: (2019) 20 SCC 1***, the appellant, Dyna Technologies, and the respondent, Crompton Greaves, entered into a contract in 1994 for Dyna Technologies to set up an aquaculture unit. After the issuance of the work order and the commencement of work, Crompton Greaves terminated the contract. Dyna Technologies sought compensation for premature termination and the dispute was referred to arbitration. One of the claims pertained to the unproductive use of machineries. The Tribunal granted compensation on this ground but failed to mention any reasoning for reaching this particular conclusion. While the single judge of the Madras High Court refused to set aside the award, however, the division bench of the Madras High Court set aside that part of the award with respect to unproductive use of machineries for lack of reasoning on the conclusion. On appeal, the Supreme Court while upholding the decision of the division bench of

the Madras High Court, held as under:

“34. The mandate under Section 31(3) of the Arbitration Act is to have reasoning which is intelligible and adequate and, which can in appropriate cases be even implied by the courts from a fair reading of the award and documents referred to thereunder, if the need be. The aforesaid provision does not require an elaborate judgment to be passed by the arbitrators having regard to the speedy resolution of dispute.

35. When we consider the requirement of a reasoned order, three characteristics of a reasoned order can be fathomed. They are: proper, intelligible and adequate. If the reasonings in the order are improper, they reveal a flaw in the decision-making process. If the challenge to an award is based on impropriety or perversity in the reasoning, then it can be challenged strictly on the grounds provided under Section 34 of the Arbitration Act. If the challenge to an award is based on the ground that the same is unintelligible, the same would be equivalent of providing no reasons at all. Coming to the last aspect concerning the challenge on adequacy of reasons, the Court while exercising jurisdiction under Section 34 has to adjudicate the validity of such an award based on the degree of particularity of reasoning required having regard to the nature of issues falling for consideration. The degree of particularity cannot be stated in a precise manner as the same would depend on the complexity of the issue. Even if the Court comes to a conclusion that there were gaps in the reasoning for the conclusions reached by the Tribunal, the Court needs to have regard to the documents submitted by the parties and the contentions raised before the Tribunal so that awards with inadequate reasons are not set aside in casual and cavalier manner. On the other hand, ordinarily unintelligible awards are to be set aside, subject to party autonomy to do away with the reasoned award. Therefore, the courts are required to be careful while distinguishing

between inadequacy of reasons in an award and unintelligible awards.

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37. In case of absence of reasoning the utility has been provided under Section 34(4) of the Arbitration Act to cure such defects. When there is complete perversity in the reasoning then only it can be challenged under the provisions of Section 34 of the Arbitration Act. The power vested under Section 34(4) of the Arbitration Act to cure defects can be utilised in cases where the arbitral award does not provide any reasoning or if the award has some gap in the reasoning or otherwise and that can be cured so as to avoid a challenge based on the aforesaid curable defects under Section 34 of the Arbitration Act.”

29. It is also relevant to refer to the decision of the Supreme Court in *Som Datt Builders Limited v. State of Kerala: (2009) 10 SCC 259*.

The relevant extract of the said decision is set out below:

“20. Section 31(3) mandates that the arbitral award shall state the reasons upon which it is based, unless—(a) the parties have agreed that no reasons are to be given, or (b) the award is an arbitral award under Section 30. That the present case is not covered by clauses (a) and (b) is not in dispute. In the circumstances, it was obligatory for the Arbitral Tribunal to state reasons in support of its award in respect of Claims 1 and 4-B. By legislative mandate, it is now essential for the Arbitral Tribunal to give reasons in support of the award. It is pertinent to notice here that the 1996 Act is based on UNCITRAL Model Law which has a provision of stating the reasons upon which the award is based.

21. In *Union of India v. Mohan Lal Capoor* [(1973) 2 SCC 836 : 1974 SCC (L&S) 5] this Court said: (SCC p. 854, para 28)

“28. ... Reasons are the links between the materials on which certain conclusions are based and the actual conclusions.”

22. In *Woolcombers of India Ltd. v. Workers' Union* [(1974) 3 SCC 318 : 1973 SCC (L&S) 551 : AIR 1973 SC 2758] this Court stated: (SCC pp. 320-21, para 5)

“5. ... The giving of reasons in support of their conclusions by judicial and quasijudicial authorities when exercising initial jurisdiction is essential for various reasons. First, it is calculated to prevent unconscious unfairness or arbitrariness in reaching the conclusions. The very search for reasons will put the authority on the alert and minimise the chances of unconscious infiltration of personal bias or unfairness in the conclusion. The authority will adduce reasons which will be regarded as fair and legitimate by a reasonable man and will discard irrelevant or extraneous considerations.”

23. In *S.N. Mukherjee v. Union of India* [(1990) 4 SCC 594 : 1990 SCC (Cri) 669 : 1991 SCC (L&S) 242 : (1991) 16 ATC 445] the Constitution Bench held that recording of reasons

“(i) guarantee consideration by the authority; (ii) introduce clarity in the decisions; and (iii) minimise chances of arbitrariness in decision-making.” (SCC p. 612, para 35)

25. The requirement of reasons in support of the award under Section 31(3) is not an empty formality. It guarantees fair and legitimate consideration of the controversy by the Arbitral Tribunal. It is true that the Arbitral Tribunal is not expected to write a judgment like a court nor is it expected to give elaborate and detailed reasons in support of its finding(s) but mere noticing the submissions of the parties or reference to documents is no substitute for reasons which the Arbitral Tribunal is obliged to give. Howsoever brief these may be, reasons must be indicated in the award as that

would reflect the thought process leading to a particular conclusion. To satisfy the requirement of Section 31(3), the reasons must be stated by the Arbitral Tribunal upon which the award is based; want of reasons would make such award legally flawed.”

30. Ms. Takiar, learned counsel appearing for the DDA, did not counter the contention that the Arbitral Tribunal had ignored the petitioner’s claim for interest in respect of amounts awarded under Claim Nos. 1 to 4. She, however, stated that DDA was also aggrieved by the impugned award and had filed a petition before the District Judge (Commercial Court, North), being *OMP(COMM) 5/2021* captioned *DDA v. Gupta and Co.* She submits that if the impugned award awarding other claims in favour of the petitioner are rejected, the petitioner’s claim for pre-reference interest on Claim Nos. 1 to 4 would also meet the same fate.

31. Mr. Jain, learned counsel appearing for the petitioner, submits that the District Judge would have no jurisdiction to entertain the said petition in view of Section 42 of the A&C Act. He submits that the petitioner had already moved this Court way back on 15.05.2013 by filing an application under Section 9 of the A&C Act (being OMP No. 514/2013), which was disposed

32. In view of the above, this Court considers it apposite to set aside the impugned award to the extent that the Arbitral Tribunal has not considered the petitioner’s claim for pre-reference interest on Claims

Nos. 1 to 4 awarded in its favour. It is so directed.

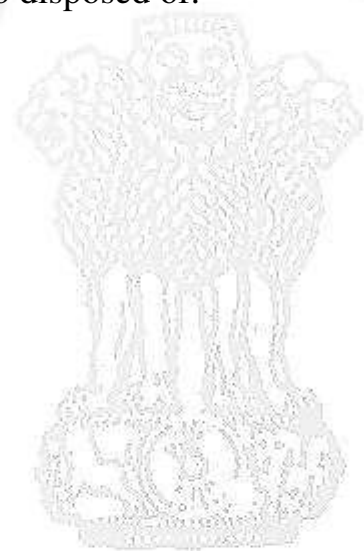
33. It is clarified that nothing stated in this order shall preclude the DDA from pursuing its petition to set aside the impugned award [OMP (COMM) 5/2021].

34. Needless to state that the same would be considered on its own merits. All rights and contentions of the parties including on the question of maintainability of the petition are reserved.

35. The petition is disposed of in the aforesaid terms. The pending application is also disposed of.

MAY 13, 2021
RK/pkv

VIBHU BAKHRU, J



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