$~27 (2021)

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

% *Date of Decision: 17th December, 2021*

\+ **<u>O.M.P. (COMM) 369/2021 & IA Nos. 16865/2021, 16866/2021 & 16867/2021</u>**

UNION OF INDIA ..... Petitioner

Through: Mr Sushil Kumar Pandey, Advocate with Ms Richa Pandey, Mr Kuldeep Singh, Advocates.

versus

M/S AADHAR STUMBH TOWNSHIP PVT. LTD. ..... Respondent

Through: None

CORAM:
HON'BLE MR. JUSTICE VIBHU BAKHRU

<u>VIBHU BAKHRU, J.</u> ***(ORAL)***

1. The petitioner has filed the present petition under Section 34 of the Arbitration and Conciliation Act, 1996 (hereafter the 'A&C Act') impugning an arbitral award dated 14.07.2020 (hereafter the 'impugned award') passed by the Arbitral Tribunal comprising of a Sole Arbitrator (hereafter the 'Arbitral Tribunal').

2. The petitioner states that after the impugned award was delivered, the parties filed an application under Section 33 of the A&C Act seeking certain corrections. The Arbitral Tribunal disposed of the said application. Therefore, the period of limitation under Section 34(3) of

the A&C Act is required to be reckoned from that date.

3. The petitioner states that on 10.12.2020, the petitioner filed its petition under Section 34 of the A&C Act before the District Court being OMP (COMM) 101/2020 captioned ***Union of India v. M/s Aadhar Stumbh Township Pvt. Ltd.*** However, the said petition was disposed of as withdrawn on 23.08.2021 with liberty to approach this Court.

4. The order dated 23.08.2021 passed by the learned District Court is not placed on record. However, the petitioner has asserted that the Court had granted liberty to the petitioner to file its petition in this Court and therefore, the time spent by the petitioner in pursuing its remedy before the District Court is required to be excluded for calculating the period of limitation in terms of Section 14 of the Limitation Act, 1963.

5. The present petition was filed on 28.10.2021. However, there were certain defects and the same was returned to the petitioner and was again re-filed on 17.11.2021 but all the defects were not cured and, it was again returned for re-filing. The petition was filed and returned on account of certain defects on three occasions thereafter. It was finally re-filed on 01.12.2021.

6. The petitioner contends that since the present petition was filed within ninety days of the petitioner withdrawing the said petition before the District Court on 23.08.2021, there is no delay in filing the present petition. The petitioner has filed the application [I.A. 16867/2020] seeking condonation of delay for about 335 days on the ground that it

was pursuing its petition under Section 34 of the A&C Act before the District Courts.

7. It is clear from the above that the petition filed before the learned District Court [OMP(COMM) 101/2020] was beyond the period of limitation as prescribed under Section 34(3) of the A&C Act. This was because it was filed beyond the period of three months from the date of disposal of the applications filed under Section 33 of the A&C Act, that is, 27.08.2020. The petitioner is correct that the period of limitation is to be reckoned from the date of disposal of the application under Section 33 of the A&C Act. The said application was disposed of on 27.08.2020 and, the three months period as specified under Section 34(3) of the A&C Act expired on 26.11.2020. According to the petitioner, it had filed a petition under Section 34 of the A&C Act before the District Courts on 10.12.2020, that is, after a delay of fourteen days. The said delay could be condoned for sufficient cause.

8. The petitioner had withdrawn the said petition on 23.08.2021. However, the petitioner had filed the present petition on 28.10.2021 which was sixty-five days after the petitioner had withdrawn the petition. Even if the period spent by the petitioner in pursuing the petition before the District Court is excluded, the present petition has been filed after seventy-eights days of the expiry of the limitation period of three months as stipulated under Section 34(3) of the A&C Act. The said delay is beyond the period of thirty days and cannot be condoned. Although the learned counsel has not relied upon the orders passed by the Supreme Court in ***Suo Moto Writ (Civil) 3 of 2020***; the period of

limitation was excluded by the Supreme Court and since the present petition has been filed within ninety days of 02.10.2021, it cannot be dismissed as barred by limitation.

Factual Background

9. The petitioner [CPWD, Ministry of Urban Development, Government of India] had issued a Notice Inviting Tenders (NIT) for the construction of Police Station Building and Residential Staff Quarters at Dilshad Gardens, Delhi [SH. C/o T-III-16 Nos. and T-II-32 Nos. (8 Story)] and stilt including internal electrical installation. The respondent submitted its bid, which was opened on 09.10.2012. The respondent was declared successful. The petitioner issued a Letter of Intent (hereinafter 'LoI') dated 10.01.2013 awarding the contract to the respondent at a negotiated value of ₹8,12,51,053/-, which was about 12.42% below the estimated cost of ₹ 9,27,69,818/-.

10. It was stipulated that the execution of the works would commence within fifteen days after issuance of the LoI. Thus, the works were to commence on 25.01.2013. And, they were to be completed within a period of 450 days. The expected date of completion was agreed as 19.04.2014.

11. The Final Bill was submitted on 13.07.2015 and the respondent claimed that the balance amount of ₹4,22,23,538/- was due. Thereafter, on 04.11.2015, the respondent applied for extension of time, which was granted without levy of any compensation.

12. The Final Bill was paid on 30.09.2016. The respondent had made an endorsement, which reads as *'14th bill accepted with measurement'*. Consequently, on 29.10.2016, the respondent sent a letter to the Superintendent Engineer raising certain claims and further, stated that the endorsement made by it for receiving part payment of the Final Bill was under coercion and economic duress. The Superintendent Engineer did not accept the claims as raised.

13. Thereafter, the respondent sent a letter dated 23.01.2017 referring its claims to the concerned Chief Engineer with a request that a Dispute Resolution Committee (DRC) be constituted in terms of Clause 25(1) of the General Conditions of Contract (GCC).

14. Pursuant to the request made by the respondent, the claims were referred to the DRC. The DRC did not render its decisions and accordingly, on 21.05.2018, the respondent invoked the arbitration agreement and sought reference of its claims (11 in number) to arbitration.

15. The Arbitral Tribunal partly allowed the claims and awarded a sum of ₹70,30,104/- along with interest at the rate of 9% per annum on the amount of ₹65,87,501/- with effect from 25.04.2016 till the date of the award. The Arbitral Tribunal also awarded future interest at the rate of 10% per annum on the awarded amount if the said amount was not paid within a period of three months from the date of receipt of the award.

Submissions

16. Mr Pandey, learned counsel appearing for the petitioner assailed the impugned award on, essentially, three grounds. First, he submitted that the impugned award is contrary to the terms of the Contract which provided that the contractor would not make any claim after the Final Bill. He submitted that, therefore, none of the claims made by the respondent could be entertained. He also submitted that the Arbitral Tribunal had erred in not appreciating that the respondent had made an endorsement on the 14th Bill, which read as: *'14th bill accepted with measurement'*.

17. Second, he submitted that the Arbitral Tribunal had erred in increasing the quantity of aluminium plates. He submitted that in terms of the BOQ (Bill of Quantities), the quantity of aluminium plates was fixed at 140 meters but the Arbitral Tribunal had modified the same to 248 meters and thus, had disregarded the terms of the Contract.

18. Third, he submitted that the Arbitral Tribunal had awarded a sum of ₹1,64,000/- as compensation for payments to the staff after the completion of the works. He submitted that although the Arbitral Tribunal had concluded that there was no justification for a claim regarding payment of salary to the staff after 31.12.2014, that is, after completion of the works but yet, the Arbitral Tribunal had awarded a sum of ₹1,64,000/- on that count.

Reasons and Conclusion

19. The petitioner has mentioned several grounds in the petition. However, Mr Pandey has restricted his submissions to only three

grounds as are stated above. Thus, it is not necessary to consider other grounds as pleaded in the petition.

20. The contention that the respondent was not entitled to raise any claims after the Final Bill was cleared, is unpersuasive. First of all, no such contention had been advanced by the petitioner before the Arbitral Tribunal. The petitioner had contended that the respondent had accepted the 14^{th} Bill and therefore, was precluded from claiming any additional amount. The respondent countered the aforesaid submission. It submitted that it had made an endorsement, '*14^{th} bill accepted with measurement*', under coercion as the proposed Final Bill had to be signed for receiving the admitted payments; without such signatures, the petitioner would not disburse even the payments that were undisputedly payable to the respondent.

21. The Arbitral Tribunal noted that the respondent had completed the works on 31.12.2014 and had requested that a completion certificate be issued. The said completion certificate was issued on 03.09.2015 and the respondent furnished the Final Bill on 13.07.2015. However, the amount as mentioned in the Final Bill was not cleared and the payment of the modified bill was made on 30.09.2016, that is, more than one year after the respondent had made the aforesaid endorsement. The respondent had thereafter made several representations in respect of its grievances, however the same were not redressed. The Arbitral Tribunal also noted that CV No. 68 dated 30.09.2016 (voucher through which the final payment was made) was in a standard profroma and had no provision for recording any certificate or endorsement by the contractor.

It only required a date and signature of the contractor. In addition, the Arbitral Tribunal held that the endorsement recording '*acceptance with measurement*' did not mean that the respondent had given up its right to prefer any claims over and above the payments that were made.

22. The decision of the Arbitral Tribunal is a considered one and cannot be held to be patently illegal or opposed to the public policy of India. It warrants no interference in proceedings under Section 34 of the A&C Act.

23. The contention that the Arbitral Tribunal has unilaterally changed the Contract by awarding additional payments for aluminium plates is also unpersuasive. It was the respondent's case that it had used aluminium plates of a larger size of 425 mm instead of 240 mm as that was necessary to cover the gap of 200 mm. A 240 mm wide plate, which was specified under the BOQ, would not cover the said gap. The manufacturers of the aluminium plates had recommended the use of a wider aluminium plate. The use of the said plates was accepted by the petitioner. The Arbitral Tribunal accepted the respondent's contention that it was entitled to be compensated for the additional quantum of aluminium plates used for execution of the Contract. However, the Tribunal was also of the view that the same was required to be compensated at the same rate as provided under the Contract. In order to compute the same, the Arbitral Tribunal had held that an additional length of 107.77 meters, which would cover the additional width, be paid. Instead of determining a new rate for an additional quantity, the Arbitral Tribunal has awarded an amount by determining the additional

quantity at the agreed rates. This Court finds no ground to interfere with the decision of the Arbitral Tribunal.

24. The contention that the Arbitral Tribunal had erred in awarding a sum of ₹1,64,000/- on account of staff salaries is also unpersuasive. Admittedly, the works were completed on 31.12.2014 and the petitioner was informed of the same. The completion certificate issued on 03.09.2015 indicated the date of completion of works as 25.04.2015 and the respondent was compelled to remain on site for a period of four months. The petitioner had, accordingly, claimed reimbursement of salaries paid to the staff and labourers during this period. The said claim was rejected as the Arbitral Tribunal was of the view that it was not necessary for the respondent to retain workers and other staff at site. However, the Tribunal accepted that a skeleton staff was required to be maintained by the respondent for the works and accordingly, awarded salary for the Project Manager at the rate of ₹30,000/- per month and for an Accountant at the rate of ₹11,000/- per month, for a period of four months. The award cannot be held to be vitiated by patent illegality as the view of the Arbitral Tribunal is, clearly, a plausible one.

25. In view of the above, the petition is dismissed. All pending applications are also disposed of.

VIBHU BAKHRU, J

DECEMBER 17, 2021
RK/v