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Arb.O.P(Com.Div).No.191 of 2021
and A.No.3783 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE: 27.06.2023

CORAM

THE HON'BLE Mr. JUSTICE KRISHNAN RAMASAMY

Arb.O.P (Com.Div.) No.191 of 2021
and A.No.3783 of 2021

The Deputy Chief Electrical Engineer,
(Furnishing-I),
Integral Coach Factory (ICF),
Chennai - 600 038.

... Petitioner

versus

M/s.Jyoti Electricals,
Mirchaibari,
Katihar,
Bihar - 854 105.

...Respondent

Prayer: Arbitration Original Petition filed under Section 34 of the Arbitration and Conciliation Act, 1996, to set aside the arbitral award dated 25.11.2019 and subsequent order dated 13.02.2020 passed by the Arbitrator.

For Petitioner : M/s.T.P.Savitha

For Respondent : Mr.R.Saravanan



Arb.O.P(Com.Div).No.191 of 2021
and A.No.3783 of 2021

ORDER

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This Arbitration Original Petition has been filed by the petitioner seeking to set aside the arbitral award dated 25.11.2019 and subsequent order dated 13.02.2020, passed by the Arbitrator.

2.Learned counsel appearing for the petitioner would submit that originally the contract was entered between the petitioner and the respondent on 19.12.2017 and the said contract was ordered for a period of 90 days starting from 01.01.2018 to 31.03.2018. But, on 23.03.2018 the petitioner extended the period for completion of work till 30.06.2018. However, since the respondent consistently failed to execute the work as per the given targets, without any other option the petitioner terminated the contract on 20.04.2018. After the termination of the contract, the respondent is not entitled for any amount for the work already completed by them as per Clause 16 (4) (f) of General Conditions of Contract (GCC). The Arbitral Tribunal without considering all these aspect, has awarded amount for the work completed by the respondent and also awarded higher interest at the rate of 16% and the



Arb.O.P(Com.Div).No.191 of 2021
and A.No.3783 of 2021

same are liable to be set aside and hence, prayed to set aside the award passed by the learned Arbitrator.

3.On the other hand, learned counsel appearing for the respondent would submit that the time for completion of work was extended till 30.06.2018. However, the petitioner has illegally terminated the contract on 20.04.2018. The allegation of the petitioner is that the respondent has not completed the work. If the petitioner had not terminated the contract before the extended time, the respondent would have completed the work. The Arbitral Tribunal considering that the termination of contract is pre-matured and the same is not in accordance with the terms and conditions of the contract, has awarded a sum of Rs.9,18,438/- for the portion of work completed by the respondent and also ordered to return the Security Deposit, Performance Guarantee & Earnest Money Deposit, which would come about Rs.11,89,295/-.



Arb.O.P(Com.Div).No.191 of 2021
and A.No.3783 of 2021

4.Heard the learned counsel appearing for the petitioner as well as the respondent.

5.The admitted fact is that the time for completing the work was granted by the petitioner till 30.06.2018. It is also admitted fact that the termination was made on 20.04.2018 i.e nearly 80 days before the time granted for completing the work and the petitioner has not justified the termination is in accordance with law. Therefore, the Tribunal after having come to the conclusion that the termination is illegal, has ordered to return EMD along with payment for the work already completed. Further, the Tribunal has stated that since the termination is illegal, then automatically Clause No.16(4)(f) of the General Contract Conditions (GCC) would not come into operation.

6.This Court does not find any illegality or any contravention on the award passed by the learned Arbitrator. It appears that only the petitioner has committed illegality in terminating the contract on 20.04.2018. Therefore, this Court is not inclined to entertain this petition. Though this Court is not inclined to entertain this petition, with regard to the interest aspect, this Court feels that



Arb.O.P(Com.Div).No.191 of 2021
and A.No.3783 of 2021

the interest awarded by the Arbitrator at the rate 16% is on the higher side and hence, the same is reduced to 8%.

7. With the above observation, this petition is partly allowed. No costs. Consequently, connected application is closed.

27.06.2023

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Arb.O.P(Com.Div).No.191 of 2021
and A.No.3783 of 2021

KRISHNAN RAMASAMY.J.,

rst

Arb.O.P (Com.Div.) No.191 of 2021
and A.No.3783 of 2021

27.06.2023