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

% *Date of decision: September 5, 2023*

(2)+ FAO (COMM) 119/2023, CM APPL. 30001/2023

GUMBI SOFTWARE PRIVATE LIMITED ..... Appellant

Through: Ms. Bhakti Pasrija and Mr. Moksh Pasrija, Advs.

versus

NATIONAL SKILL DEVELOPMENT CORPORATION ..... Respondent

Through: Ms. Gunjan Sinha Jain and Ms. Tanya, Advs.

CORAM:
HON'BLE MR. JUSTICE V. KAMESWAR RAO
HON'BLE MR. JUSTICE ANOOP KUMAR MENDIRATTA

V. KAMESWAR RAO, J. (ORAL)

1. This appeal has been filed by the appellant challenging the order dated March 31, 2023 passed by the learned District Judge (Commercial Court)-02, Patiala House Court, New Delhi in OMP (COMM) 138/2021, whereby the learned District Judge has dismissed the petition filed by the appellant herein under Section 34 read with Sections 12, 13 and 16 of the Arbitration and Conciliation Act, 1996.

2. The petition under Section 34 was filed by the appellant challenging the award dated December 21, 2020 rendered by the Ld. Arbitrator in a dispute between the parties. The learned

Arbitrator rejected the claim of the appellant for balance payment of ₹9,65,081/- and held that the appellant is required to refund an amount of ₹51,76,521 to the respondent herein with interest of ₹7,76,478/- for the period between October 1, 2019 to December 31, 2020 as well as interest @10% on ₹59,52,999/- (₹51,76,521 + ₹7,76,478) from January 1, 2021 till release of payment by the appellant to the respondent.

3. The only submission made by the learned counsel for the appellant is with regard to issue No.1. Issue No.1 as framed by the learned Arbitrator is the following:

> *"Whether claimant's claim for boarding, lodging @ ₹600/- per day per candidate taken as per revised Udaan guidelines dated January 24, 2013 against ₹300 per day as per special condition of MoU dated February 25, 2013(Schedule 1-B) is justifiable?*

4. The learned Arbitrator has given the following finding on the said issue:

> *"From above it transpires that the claimant had agreed for financial as well as other terms and conditions of MOU dated 25.02.2013, even though revised Udaan guidelines dated 24.01.2013 was in vogue. The contract is' a valid contract. The word revised guidelines mentioned in clause 2.l(ii) of general terms of MOU will be considered any revision in guide lines which will be made after 25.02.2013. Further special terms and conditions of MOU which also include payment @Rs 300/ per day per candidate against boarding and lodging charges will prevail in this contract. Further request of revision of proposal of claimant was never accepted by Respondent or by any other stake holder of the*

project. As per clause 7.3 of MOU, any amendment or variation in the tenns of MOU would be by way of note of amendment in writing signed by authorized Representative of both the parties. No such note of amendment was ever executed. The Claimant in. their written submission dated 14.12.2020 have submitted that the special conditions (B) Clause (iv) b of standard MOU reads as under:

"Boarding and Lodging cost: As per all India Service House Rent Allowance Rules, 1977 (i.g. Rs600to Rs. 300on1y per candidate per day depending up on the location of the training for a maximum of 180 days from the start of training. Therefore, as per aforesaid provision the claimant was entitled for reimbursement of Rs.600 per candidate per day on accowit of boarding and lodging charges."

The above clause referred by claimant is not in the Clause B(iv) of special condition of executed MOU. In clause B (iv) of the Schedule of signed MOU, the claimant has agreed that "it shall bind itself with the terms of the Udaan scheme norms for reimbursement where the claimant inter alia agrees to Rs300 per candidate per day for boarding and lodging charges and has further agreed that any cost incurred over and above the prescribed rates will be borne by the claimant". The Judgment of Supreme court in the matter of National Fertilizers versus Puran Chand Nangia (2000)8 SCC344, referred by claimant relates to payment of market rates for the quantity of executed items more than20% of tendered/agreed quantity. In the present case the claimant failed to execute even 50% of agreed number of students even in 2 years against schedule agreed time of 1 year. The Respondent never reduced the number from agreed number of300 for which MOU was executed. The Judgment referred by claimant related to dispute between Next tenders (India) private limited

(Petitioner) versus Ministry of Commerce &Industry and others (Respondent) speaks that the award of contract, whether it is by a private party or by a public body or state, is essentially a commercial transactions. In arriving at a commercial decision consideration which is paramount is commercial consideration. In the instant case claimant had agreed for commercial terms as per special conditions of the contract executed between above two parties.

Therefore, considering all the factors mentioned above, the undersigned is of considered opinion that claim of claimant for payment of boarding and lodging charge @ Rs.600/- per day per candidate for training period against Rs.300/- per day as per special condition of MOU entered between two parties on 25.02.2013 does not merit consideration as such rejected ."

5. According to the learned counsel for the appellant, the Memorandum of Understanding (MoU) executed between the parties is primarily relatable to both project proposal and approval. Her submission is that proposal which became the subject matter of MoU dated February 25, 2013 was given by the appellant on December 24, 2012 for imparting training and providing employment to 5700 candidates in five years based on the then prevailing Udaan guidelines @ ₹600 per candidate, which has been denied by the learned Arbitrator.

6. Suffice to state that approval was accorded on January 21, 2013 by the respondent for training and employment of 300 candidates only in one year @ ₹300 per candidate for boarding and lodging. Accordingly, the appellant approached the respondent for

obtaining financial assistance under the scheme / project Udaan to the tune of ₹3,45,00,000/- as a grant, excluding fixed cost of ₹62,500/- per candidate to be granted as per the prevailing Udaan guidelines towards successful completion of training and providing employment to 300 candidates in one year.

7. New revised Udaan guidelines were issued by the MHA on January 24, 2013. The Udaan guidelines also resulted in financial norms like the latest / ceiling of payment / reimbursement of amount against various items. Clause 20 (6) of the new revised Udaan guidelines issued on January 24, 2013 also envisaged norms for reimbursement under old pattern of the scheme. Based on the proposal approved, the appellant entered into an agreement with the respondent on February 25, 2013. As per the agreement, i.e., MoU, the appellant was required to impart training and employment to 300 candidates in one year @ ₹300/- per candidate for boarding and lodging per day.

8. After entering the agreement, the appellant started the process of imparting training to the youths of J&K. The appellant could not impart training to 300 candidates even in about two years. Though the appellant could impart training to 112 candidates, it provided employment to only 63 candidates in about two years. The appellant submitted the utilization certificate of the fund of ₹2,76,00,000/- which was disbursed to the appellant by the respondent in the year 2018, about four years after the start of the project and receipt of funds, taking boarding and lodging charges @600 per candidate per day instead of ₹300. But the case of the

appellant was that they had taken the rate as per revised Udaan guidelines issued by MHA from January 24, 2013. While submitting the certificate of utilization of funds of ₹2,76,00,000/- paid to them, the appellant claimed an additional amount of ₹9,65,081/- over and above ₹2,76,00,000/-. The respondent after verifying the certificate of utilization of fund as per the terms and conditions of MoU dated February 25, 2013 advised the appellant to refund an amount of ₹56,76,521/- to the respondent as the appellant was entitled for ₹2,19,23,479/- only for imparting training and providing employment.

9. The learned Arbitrator has allowed the counter-claim of the respondent in its favour by holding that the claim of the appellant of boarding and lodging charged @600/- per day per candidate for training period against ₹300 per day as per special condition of MoU entered between two parties on February 25, 2013 does not merit consideration and as such needs to be rejected, and allowed the counter-claim of the respondent for ₹56,76,521/-.

10. We have already reproduced the finding of the Tribunal on issue No.1 above. From the finding of the learned Arbitrator, it is clear that the claim of the appellant for boarding and lodging @ ₹600/- per day per candidate was not as per the terms and conditions of the MoU which stipulated payment of ₹300/- per day per candidate against boarding and lodging. So, in that sense, the claim was not as per the MoU.

11. The plea of the learned counsel for the appellant that MoU clearly stipulates that the project approval and proposal shall be

part of the MoU, Ms. Gunjan Sinha Jain, learned counsel appearing for the respondent has drawn our attention to the proposal, Annexure-III (page 143) which was part of the MoU to contend that boarding and lodging was @₹300/- per day and moreover the appellant had agreed to perform the project as per the project proposal in view of the Udaan guidelines. Therefore, the appellant could not have made a claim for boarding and lodging @₹600 per day per candidate. Her submission that the plea of the learned counsel for the appellant that as per Udaan guidelines, the appellant shall be entitled to ₹600/- per day per candidate was rightly denied by the learned Arbitrator, more so when the MoU was executed after the Udaan guidelines on February 25, 2013 by the appellant, is appealing.

12. We find that the learned District Judge has also reproduced the general terms and conditions of the MoU at page 85 under the heading "Special Conditions". It is clear that for boarding and lodging an amount ₹300/- was to be paid. The learned District Judge was of the view that the award passed by the learned Arbitrator was based on appreciation of facts and evidence and law after giving all reasonable opportunities to the parties. According to him, the reasoning of the learned Arbitrator was logical and the Court cannot substitute its own view or conclusion of law or fact to come to a conclusion other than that of the learned Arbitrator. Even the plea of the learned counsel for the appellant is that as per clause 20 (iii) of Udaan Guidelines dated January 24, 2013 stipulated ₹600/- per day as boarding and lodging cost, is

misplaced and not correct. Even the said clause clearly stipulates that the rates given therein were indicative and the same was subject to approval by PAC / PEC and there is no dispute that PAC/PEC approved the boarding and lodging approval given by CCEA on January 24, 2013 for disbursement of funds under the old scheme of boarding and lodging of ₹300 per day and not ₹600 per day. The relevant clause has been reproduced as under:

DISBURSEMENT OF FUNDS UNDER OLD SCHEME

Table: Training Cost Components

	Element of Budget	Indicative cost per trainee (In Rupees)
A.	To be borne by MHA	
(i)	Travel* (Road/Rail fare from J&K to the training destination)	4000
(ii)	**Boarding and lodging (@Rs. 300 per day for 270 days)**	**81000**
(iii)	Stipend @ Rs.2500 per month)	30000
(iv)	Placement Cell fee (To be restricted to actual)	10000
	Subtotal (A)	125000
B	To be borne by the Corporate	
(i)	Training fee	125000
	Total (A + B)	250000

So the reliance placed by the learned counsel for the appellant is totally misplaced and incorrect.

13. We are of the view that the learned District Judge was right in rejecting the petition under Section 34 of the Arbitration and

Conciliation Act, 1996 challenging the award dated December 21, 2020 *vide* the impugned order.

14. We do not see any merit in the appeal. The same is dismissed.

<u>CM APPL. 30001/2023</u>

Dismissed as infructuous.

V. KAMESWAR RAO, J

ANOOP KUMAR MENDIRATTA, J

SEPTEMBER 5, 2023/*jg*