



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

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Date of Decision: July 04, 2023

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+ **FAO(OS) (COMM) 131/2023**
UNION OF INDIA

..... Appellant

Through: Mr. Sushil Kumar Pandey, Advocate.

versus

ROSHAN REAL ESTATE PRIVATE LIMITED

..... Respondent

Through: Ms. Anusuya Salwan, Mr. Bankim Garg, Ms. Simran Sakuria, Mr. Rachit Wadhwa, Ms. Sopika Singh and Ms. Nitika Salwan, Advocate.

CORAM:

HON'BLE MR. JUSTICE V. KAMESWAR RAO

HON'BLE MR. JUSTICE ANOOP KUMAR MENDIRATTA

V. KAMESWAR RAO (Oral)

CM APPL. 33316/2023 (exemption)

Exemption allowed, subject to all just exceptions.

Application stands disposed of.

FAO(OS) (COMM) 131/2023 & CM APPL. 33317/2023

1. The challenge in this appeal under Section 37 of the Arbitration and Conciliation Act, 1996 is to an order dated February 22, 2023 passed by the learned Single Judge in O.M.P. (COMM.) 335/2022 whereby the learned Single Judge has set aside the arbitral award dated March 12, 2022 to the extent of findings of the learned Arbitrator qua claim No. 6, which is a claim made by the respondent for granting the benefit of bonus because the delay



in completing the work was attributable to the appellant herein. The relevant findings of the learned Single Judge in this regard are in paragraphs 24 to 33 24, 26, 27 & 28 of the impugned order which read as under:-

“24. For the proper adjudication of the challenge raised to the finding of the Arbitrator, the observation of the Arbitrator with respect to Claim no. 6 is reproduced hereunder:-

"As per the contract clause 2A the claimants are entitled to incentives/bonus at the rate 1% of the tender amount per month of early completion of the work. The tribunal under claim No. 2/part I has already held and analyze that the total delay as per hindrance register maintained by the respondents is 1317 days and adding extra period for additional work is as per the final bill paid by the respondents is 101, this total is 1418 days whereas the actual delay is only 1078 days. Though the delay are justified & hindrances are mainly due to the Respondents but the work of 18 months was delayed for 33.5 months cannot be said to be responsible for not reminding the Respondents & not perusing with the various authorities for expediting. Therefore, it cannot be presumed that the work could have been completed early if there would have not been any hindrance.

Keeping in view of above, the Claimant is not entitled for any incentive/bonus for this claim.

Hence, Nil amount is awarded for this claim.

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26 *The statement made on behalf of the Arbitrator is merely a conclusion drawn based on the assumption that it cannot be assumed that if there were no hindrances, the work would have been completed on time without delay. However, the Arbitrator failed to elaborate the bearing of this observation on the finding regarding entitlement of the petitioner to the bonus/incentive.*

27. *Moreover, this Court also finds force in the reliance placed upon M/s N.N. Buildcon Pvt. Ltd (Supra) by the learned counsel for the petitioner, which reads as under:-*



“3. Under Claim No. 5, the respondent had claimed bonus for completion of the work prior to the stipulated period for the contract. It is contended by the counsel for the appellant that admittedly, there was a delay in completion of the work, which as per the Arbitrator was attributable to the appellant and as such, escalation was awarded to the respondent for the delay period. It was contended that as there was an admitted delay in the completion of the work, so the claim for bonus was not sustainable inasmuch as admittedly the work had been carried on beyond the original stipulated date of the completion of the contract.

7. We are of the view that the Arbitral Tribunal has correctly interpreted the bonus provision and applied the principles of calculation of the bonus. If the stipulated period awarded to the contractor for completion of the work, as in the present case, was 14 months then the contractor was entitled to complete 14 months for completion of the work. If the commencement of the work is delayed or there are hindrances in the completion of the work, which lead to a delay of a particular period, then the period by which the commencement is delayed and/or the period during which the hindrances occurred have to be excluded from the period stipulated for completion of the work. The total period available to the contractor to complete the work would be the stipulated period of completion plus the additional period during which the hindrances occurred. If after exclusion of the delay period so computed the work is completed by the contractor in a period lesser than the stipulated period for completion, the contractor would be entitled to bonus.”

28. Further, the observation in Paragon Constructions (India) Pvt. Ltd. (Supra) is also found relevant to be referred to pertaining to the question before this Court:-

“7. Claim No. 2 was with regard to the bonus for allegedly completing the work ahead of the schedule. The clause pertaining to bonus reads as under:



“In case, the contractor completes the work ahead of scheduled completion time a bonus @ 1% (one percent) of the tendered value per month computed on per day basis shall be payable to the contractor, subject to a maximum limit of 5% (five percent) of the tendered value. The amount of bonus if payable, shall be paid along with the final bill after the completion of work.”

The learned arbitrator held in favour of the petitioner as under:

“There is enough evidence on record to infer that claimants could have completed the work ahead of schedule but the extent of ahead of schedule would always remain indeterminate.”

Despite such finding, the learned arbitrator has not awarded any sum to the petitioner by way of bonus because, according to him, the work was not completed before the stipulated date and, therefore, no bonus was payable. I am unable to agree with this conclusion because the learned arbitrator had already held that the delay was attributable to the respondent. What the arbitrator ought to have done was to compute the period of delay that was attributable to the respondent and subtract it from the total period. If the result was a period less than 24 months then the petitioner would be entitled to bonus and the exact extent of the bonus could also be easily calculated. Unfortunately, the learned arbitrator has not done this. Consequently, the award is set aside in respect of the claim No. 2 also.

8. Claim Nos 3 and 4 pertain to interest and costs of proceedings and conclusion in respect of that would also follow suit. The award is, therefore, set aside and the parties are directed to go in for arbitration afresh, For this purpose, in terms of clause 25 of the agreement between the parties, the Chief Engineer CPWD incharge of the works or if there be no Chief Engineer, the Administrative head of CPWD shall appoint another sole arbitrator to adjudicate the disputes between the parties. The said appointment be made within a period



of four weeks.

29. Therefore, the analysis given by the Arbitrator is not substantiated by the single-sentenced assertion. The Arbitrator merely made a presumption and decided that the petitioner was not entitled to the bonus/incentive.

30. Reason is the soul of justice. As discussed in the foregoing paragraphs, one of the essential requirements while making an Award is furnishing reasons for the decision taken. While passing the Award with respect to Claim No. 6, the Arbitrator failed to furnish any reason for holding that the petitioner was not entitled to the bonus/incentives.

31. The learned Arbitrator need not have given elaborate, comprehensive or extensive decision regarding Claim No. 6 but the mere recording of reasons for the findings made was an indispensable requirement to be met. Fulfilling the requirements under Section 31 (3) of the Arbitration Act, is not a mere formality, but this provision makes way for a fair, reasonable and equitable opportunity to have the objective knowledge of the reasons why a claim is not decided in their favour. Accordingly, this Court finds that the principles laid down by the Hon'ble Supreme Court favour the case of the petitioner qua the requirement of passing a reasoned order being indispensable.

32. In light of the facts, circumstances, contentions raised in the pleadings, argument made on behalf of the 'parties, the observations of the Hon'ble Supreme Court, the provisions, of the Arbitration Act and the discussion in the foregoing paragraphs, this Court finds merit in the petition and is inclined to allow the, same.

33. Accordingly, the instant petition is allowed and the Arbitral Award dated 12th March 2022 is set aside to the extent of the finding of the Arbitrator qua Claim No. 6."

2. The submission of Mr. Sushil Kumar Pandey, learned counsel for the appellant is by drawing our attention to page 696 of the paper book to contend that the learned Arbitrator has categorically held that no one party to the agreement was at fault in causing the delay in executing the contract.



He states, the learned Single Judge could not have interfered with such findings particularly in view of the provisions of Section 34 (2) of the Arbitration and Conciliation Act, 1996. In this regard, he has drawn our attention to grounds 'B' & 'C' of the appeal.

3. We are not in agreement with the submission made by Mr. Pandey which is by overlooking the conclusive finding of the learned Arbitrator in paragraph 8.2.6.11 page 697 which is reproduced as under:-

“8.2.6.11.. Having regard to relevant facts as discussed above, I am of view that respondent has committed a serious breach which is of the most fundamental nature and which goes to very root of contract. Thus, the respondent is entirely responsible for the prolongation of contract.”

4. On a perusal of the conclusion, it is clear that the learned Arbitrator has held that it is the respondent, that is the appellant herein who is entirely responsible for prolongation of the contract. If that be so, the reliance placed by Mr. Pandey is clearly untenable/misplaced.

5. In this background, the learned Single Judge has in paragraph 26 held that given such a finding, the learned Arbitrator should have elaborated on the claim made by the respondent herein with regard to bonus and incentive. In fact, the learned Single Judge has relied upon the judgment of a Co-ordinate Division Bench of this Court in ***Union of India Vs. M/s N.N. Buildcon Pvt. Ltd. 2015 SCC OnLine Del 11647***, more particularly in paragraph 3 which also relates to the claim of bonus because of the delay in completion of work. The finding of the learned Single Judge is that the analysis given by the learned Arbitrator has not been substantiated. According to the learned Single Judge, the Arbitrator has merely made a presumption and decided that the respondent herein was not entitled to bonus



and incentive without furnishing any reason. It is in the above background that the learned Single Judge has set aside the award drawn by the learned Arbitrator, in respect of claim No. 6 with which we agree.

6. The appeal is accordingly dismissed. No costs.

V. KAMESWAR RAO, J

ANOOP KUMAR MENDIRATTA, J

JULY 4, 2023/A

