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

+ FAO(OS) (COMM) 181/2022 & CM APPLs.31540-31541/2022

UNION OF INDIA

..... Appellant

Through: Mr.Ashok Singh, Advocate.

versus

OM VAJRAKAYA CONSTRUCTION COMPANY

..... Respondent

Through: Mr.S.W.Haider, Advocate with
Ms.Pooja Dua, Advocate.

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Date of Decision: 20th March, 2023

CORAM:

HON'BLE MR. JUSTICE MANMOHAN

HON'BLE MR. JUSTICE SAURABH BANERJEE

J U D G M E N T

MANMOHAN, J (Oral):

1. Present appeal has been filed challenging the order dated 20th December, 2021 passed by the learned Single Judge in O.M.P. (Comm) No.299/2021, whereby the objections of the Appellant under Section 34 of the Arbitration and Conciliation Act, 1996 have been partially allowed.
2. Learned counsel for the Appellant states that though the impugned award was set aside with regard to *pendente lite* interest, yet the challenge with regard to the remaining Award was dismissed. He states that claims No.5, 6, 7 and 8 were incorrectly allowed, as the same were based on an erroneous finding that the delay was attributable to the Appellant. He states

that the learned Single judge has erred in observing that the finding of delay was a question of fact and the same could not be interfered in a Section 34 petition.

3. He states that the reasons given by the respondent for delay in execution of the contract and as upheld by the Ld. Arbitrator are vague and the delay in days attributable to each reason has not been quantified.

4. *Per contra*, learned counsel for the respondent-contractor, who appears on advance notice, states that various extensions were granted to the respondent-contractor under Clause 17A of GCC – which provides for extension of time on account of delay not attributable to a contractor. He also emphasises that the extensions were granted without levying any penalties or liquidated damages on the respondent-contractor.

5. This Court is of the opinion that the impugned order has correctly held that Arbitrator had evaluated the matter placed before it to come to a well considered view that the delay was attributable to the Appellant since the resources deployed by the Respondent could not be deployed in entirety due to several reasons, including non-availability of drawings, non-availability of free site for execution, non-sanctioning of ESP (Engineering Scale Plan), cutting of trees, etc. The Arbitral Tribunal has also found that there was extensive inter-departmental communications on record to show that the delays and hindrances pointed out by the Respondent had been admitted. The finding of the Arbitral Tribunal that the Respondent was compelled to execute additional items is a question of fact and the impugned judgment has correctly held that it cannot be interfered with in proceedings under Section 34 of the Act.

6. This Court in *Mangalwar Filling Station vs. Indian Oil Corporation Limited & Ors.*, 2021 SCC Online Del 3646 has held that once an arbitral award has been confirmed in an application filed under Section 34 of the Act, the appellate Court must be extremely cautious in disturbing concurrent findings of fact and law as they are ordinarily not amenable to interference under Section 37 of the Act. This Court further observed in the said judgment that the Appellate Court should generally not interfere unless it is apparent that the perversity of the arbitral award goes to the root of the case without a possibility of alternative interpretation that might sustain the award. The Supreme Court vide order dated 16th August, 2021 in SLP No.12125/2021 was pleased to dismiss an appeal filed against the above-mentioned judgment.

7. Consequently, the present appeal along with applications being bereft of merit is dismissed but with no order as to costs. Accordingly, the amount deposited by the appellant with the Registry of this Court shall be released to the respondent. For this purpose list the matter before Joint Registrar on 11th April, 2023.

MANMOHAN, J

SAURABH BANERJEE, J

MARCH 20, 2023
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