



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

% Reserved on: 28.11.2023
Pronounced on: 19.12.2023

+ **O.M.P. (COMM) 328/2022**

IN THE MATTER OF:

GORKHA SECURITY SERVICES

..... Petitioner

Through: Mr. Tarkeshwar Nath, Mr. Lalit
Mohan, Mr. Harshit Singha and Mr.
Akash Kumar, Advocates

Versus

GOVT. OF NCT OF DELHI

..... Respondent

Through: Mr. Divyam Nandrajog, Mr. Jatin
Dua and Mr. Mayan Kumar,
Advocates

CORAM:

HON'BLE MR. JUSTICE MANOJ KUMAR OHRI

JUDGMENT

I.A.12446/2022

1. By way of present application, the petitioner seeks condonation of delay of 52 days in refiling the present petition.
2. Petitioner claims that the petition was filed within the statutory period of limitation on 11.04.2022. The defects, as pointed out by the Registry were removed from time to time and lastly, the petition was refiled on 07.06.2022. The Registry remained closed for non-urgent filing on account of summer vacations and thus the defects could only be subsequently

O.M.P. (COMM) 328/2022



removed.

3. For the reasons stated in the application, the application is allowed and the delay of 52 days in refiling is condoned.

4. The application is disposed of.

OMP(COMM.) 328/2022

1. By way of present petition, the petitioner, who was the claimant (hereafter, '*the contractor*') before the Arbitral Tribunal (hereafter, '*the AT*') has raised a restricted challenge to the arbitral award dated 10.01.2022 (hereafter, the '*impugned award*').

2. Notably, the award was rendered in the context of security services provided by the contractor to the respondent under the agreement dated 30.01.2013 (hereafter, '*the Agreement*'). Initially, the contract period was for two months w.e.f. 31.01.2013, however the same was extended from time-to-time upto December, 2014. The contractor claimed that though it had provided 49 security guard and one security supervisor, it did not receive the payments under the Agreement. Consequently, the contractor invoked the arbitration clause of the Agreement.

3. The AT comprising of a sole Arbitrator delivered the impugned award thereby awarding a sum of Rs.1,66,62,496/- to the contractor inclusive of refund of Rs.1,00,000/- deposited as security deposit. AT also directed the award amount to be paid within one month failing which the respondent was held liable to pay interest @9% p.a. from the date of passing of the award till realisation.

4. The respondent had assailed the impugned award vide OMP (COMM.) 05/2022. The said challenge was dismissed vide judgment dated 21.04.2023 rendered by the District Judge, Commercial Court, North East,



Karkardooma Courts, Delhi. The judgment has remained unchallenged and has therefore attained finality.

5. The only short issue raised in the present petition is the non-grant of pre-award interest by the AT.

6. Learned counsel for the contractor contended that vide its statement of claim('SoC'), the contractor had demanded interest @18% per annum on the claim amount from its due date till realisation. However, the AT provided no reason for limiting the interest period from the date of the award till realisation only.

7. Learned counsel for the respondent, on the other hand, contended that the award of interest lies within the domain of AT and it is not open for this Court to probe the mental process of the Arbitrator and speculate as to what impelled the Arbitrator to pass the award, when no reasons are given. It was further contended that the scope of interference while exercising power under Section 34 of the Arbitration and Conciliation Act (hereinafter, '*A&C Act*') is limited. The relief sought by the contractor amounts to modifying the impugned award, which power is not available with the Court under the amended Act.

8. There is no cavil with the settled position that as per the amended A&C Act, judicial interference under Section 34 is extremely limited, allowing it either to set aside the award or to remand back the matter under the circumstances mentioned in Section 34 of the A&C Act.

9. The contractor in its SoC had prayed for the grant of pre-award interest, which has not been granted by the AT. The contractor's contention that this Court has ample power to grant pre-award interest under Section 31 of A&C Act, is erroneous. The law in this regard, is well settled. In Project



Director, NHAI v. M. Hakeem & Anr.¹, it was observed that under section 34, the Court does not have the power to modify an award.

10. A perusal of the underlying Agreement would show that the same does not proscribe any party from claiming interest. In fact, the Agreement is silent on the aspect of interest. The impugned award has not specified as to why no pre-award interest was granted, even though same had been specifically prayed for.

11. There lies a discretion with the Arbitrator to award interest which must be exercised reasonably while taking into consideration factors like “the loss of use” of the principal money; the types of sums which the interest must apply; the time period over which interest should be awarded; whether simple or compound rate of interest is to be applied; whether the rate of interest awarded is commercially prudent from an economic standpoint; the rates of inflation; proportionality of the count awarded as interest to the principal sums awarded etc.²

12. A plain reading of the impugned award reveals that no reason has been penned as to the non-grant of pre-award interest. It’s not the case of the parties that they had consented that no reasons be given as per sub-clause (a) of Section 31(3), A&C Act. The stating of reasons indicates and shows application of mind to the attending facts and circumstances by an arbitrator. An unreasoned award suffers from the vice of patent illegality³. Reference in this regard may also be made to the decision of Supreme Court in Dyna

¹ (2021) 9 SCC 1

² Vedanta Ltd. v. Shenzhen Shandong Nuclear Power Construction Company Ltd., (2019) 11 SCC 465; Morgan Securities and Credits Pvt. Ltd. v. Videocon Industries Ltd., (2023) 1 SCC 602

³ Batliboi Environmental Engineers Ltd. v. Hindustan Petroleum Corp. Ltd. & Anr., 2023 SCC OnLine SC 1208



Technologies Pvt. Ltd. v. Crompton Greaves Ltd.⁴, and the relevant extract reads as under:-

“xxx

34. The mandate under Section 31(3) of the Arbitration Act is to have reasoning which is intelligible and adequate and, which can in appropriate cases be even implied by the courts from a fair reading of the award and documents referred to thereunder, if the need be. The aforesaid provision does not require an elaborate judgment to be passed by the arbitrators having regard to the speedy resolution of dispute.

35. When we consider the requirement of a reasoned order, three characteristics of a reasoned order can be fathomed. They are: proper, intelligible and adequate. If the reasonings in the order are improper, they reveal a flaw in the decision-making process. If the challenge to an award is based on impropriety or perversity in the reasoning, then it can be challenged strictly on the grounds provided under Section 34 of the Arbitration Act. If the challenge to an award is based on the ground that the same is unintelligible, the same would be equivalent of providing no reasons at all. Coming to the last aspect concerning the challenge on adequacy of reasons, the Court while exercising jurisdiction under Section 34 has to adjudicate the validity of such an award based on the degree of particularity of reasoning required having regard to the nature of issues falling for consideration. The degree of particularity cannot be stated in a precise manner as the same would depend on the complexity of the issue... On the other hand, ordinarily unintelligible awards are to be set aside, subject to party autonomy to do away with the reasoned award. Therefore, the courts are required to be careful while distinguishing between inadequacy of reasons in an award and unintelligible awards.

xxx”

⁴ [2019] 20 SCC 1



13. As noted above, the impugned award, without any discussion/reasoning, has awarded only post-award interest. The award suffers from patent illegality and to this extent, is accordingly, set aside.

14. The contractor shall be at liberty to take steps to pursue its claims in accordance with law.

MANOJ KUMAR OHRI
(JUDGE)

DECEMBER 19, 2023

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