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

+ **FAO(OS) (COMM) 185/2023 & C.M.Nos.44370-44372/2023**

COMMISSIONER TRANSPORT DEPARTMENT Appellant

Through: Mr.Anupam Srivastava, ASC for
GNCTD with Ms.Ruchita Garg,
Ms.Sarita Pandey and Mr.Anushka
Bhatnagar, Advocates.

versus

GAURAV ENTERPRISES Respondent

Through: None

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Date of Decision: 28th August, 2023

CORAM:

HON'BLE MR. JUSTICE MANMOHAN

HON'BLE MS. JUSTICE MINI PUSHKARNA

J U D G M E N T

MANMOHAN, J: (ORAL)

1. Present appeal has been challenging the order and judgment dated 23rd February, 2023 passed by the learned Single Judge in *OMP (COMM) 33 of 2023* whereby appellant's petition under Section 34 of the Arbitration and Conciliation Act, 1996 ('the Act') has been dismissed.

2. Learned counsel for the appellant states that the petition under Section 34 of the Act had been filed challenging the Award passed by the learned Arbitrator which granted the respondent a payment of Rs.2,80,70,843/- towards the balance payment of bills for the period June 2013 to March 2015 along with interest at 12% per annum dating back to the date of invocation of the arbitration clause. He further states the learned Arbitrator

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ruled that the respondent is entitled to an award of Rs.9,50,000/- towards refund of security deposit with interest at 12% per annum until realization and the cost of the arbitral proceedings.

3. Learned counsel for the appellant contends that the appellant only seeks to challenge the rate of interest awarded by the learned Arbitrator. He states that the learned Arbitrator's decision was flawed and should have been set aside by the learned Single Judge of this Court while adjudicating the appeal filed by the appellant under Section 34 of the Act.

4. He states that it is the case of the appellant that the respondent had neglected to submit the proof of Employee Provident Fund (EPF) and Employee State Insurance Corporation (ESIC) for the employees deployed as per the contract between the parties.

5. Having perused the paper book, this Court finds that the learned Arbitrator has explained the rationale behind the grant of interest at 12% per annum in para 48 of the award. The relevant portion of the said award is reproduced hereinbelow:-

“48. As per the tender/contract document, the respondent was under an obligation to clear the bills and also refund the security deposit which has not been done till date. It is a matter of record that the respondent has not received any demand from any statutory authorities after the order dated 05.09.2016 passed by the EPFAT whereby it was clearly held that the demand by EPF organisation was against the settled principles of law. The amount deposited by the claimant was directed to be returned to it with interest @ 12% p.a. At least thereafter respondent had no valid reason to Continue withholding the payment due to the claimant from June, 2013 onwards. As the respondent has been withholding these payments unauthorizedly and without any justification, therefore, the claimant is held entitled to interest @ 12% p.a from the date of invocation of arbitration clause on dated 10/27.04.2015 (Ex.CW1/10) till realisation.....”

6. From the aforesaid and in particular the order dated 05th September, 2016 passed by EPFAT, it is apparent that the appellant's defence that the



respondent had failed to furnish proof of payment of EPF and ESIC to its employees is without any basis.

7. This Court also finds that under Section 31(7)(a) of the Act, Arbitral Tribunal has the discretion to award interest at such rate it deems reasonable either on the whole or any part of the money. Clearly, the rate of interest falls within the jurisdiction of the learned Arbitrator.

8. Keeping in view the aforesaid facts and circumstances of the present case, this Court does not find the rate of interest awarded by the learned Arbitrator to be arbitrary or capricious calling for any interference by this Court under Sections 34 or 37 of the Act.

9. This Court further finds that the learned Arbitrator has not awarded any damages, as according to the Arbitrator, the interest component would constitute sufficient compensation for the respondent.

10. Accordingly, the present appeal being bereft of merit is dismissed along with pending applications.

MANMOHAN, J

MINI PUSHKARNA, J

AUGUST 28, 2023
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