



\$~14

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

+ **O.M.P. (COMM) 360/2020 & I.A. 2139/2020**

HOTEL CORPORATION OF INDIA LTD. Petitioner

Through: Mr Narender Hooda, Sr. Adv. with
Ms Akshada Mujwar and Mr Shaurya
Lamba, Advs.

versus

NS ASSOCIATES PVT. LTD. Respondent

Through: Mr M Tarique Siddiqui, Mr Sunil
Verma, Mr M Bilal and Mr Abhishek,
Advs.

CORAM:

HON'BLE MR. JUSTICE JASMEET SINGH

ORDER

29.04.2024

%

1. This is a petition under Section 34 of the Arbitration and Conciliation Act, 1996 seeking to partly set aside the impugned Award dated 19.10.2019 with respect to claim Nos. 1 and 17.

2. Mr Hooda, learned senior counsel appearing for the petitioner states that in the final Award dated 19.10.2019, the learned Sole Arbitrator in paragraph 49 has held as under:

“49. In regard to extra items the Claimant had raised a demand of Rs. 1.08 Crs. which was reduced by the Respondent to Rs.34 lacs only. The Respondent’s witness RW-1 during his cross-examination and replies to the interrogatories could not explain as to on what basis this amount was reduced by the Accounts Department of the Respondent. The grounds for reduction were



not communicated even to the Claimant. It is admitted that before the finalization of this amount the Architect appointed by the Respondent had already been removed and he had never finalized the rates/value of the extra items. In the absence of any material on record as to why and on what basis the amount of Rs.1.08 Crs. was reduced to Rs.34 lacs only, it has to be held that the reduction of this amount was arbitrary and illegal. The Claimant is therefore entitled to recover a sum of Rs. 74 lacs from the Respondent towards the balance price of the extra items.”

3. Mr Hooda states that thereupon in paragraph 50, the learned Arbitrator has awarded :-

“(c) Rs. 74 lacs reduced in regard to the extra items.”

4. To substantiate his arguments, learned senior counsel has drawn my attention to the contract between the parties and more particularly Clause 26.4 of the contract. It is stated that *“Further, as per clause 26.4- Schedule of instructions in respect of such additional items and their quantities will be issued by the Architect with the prior consent from the Owner.”*

5. Mr Hooda states that for allowing extra items, there was a requirement of “prior consent from the owner”. He states that as far as Rs. 74 lakhs is concerned, there is no prior consent from the owner and hence the petitioner had correctly reduced the said amount from the running bill. He states that the learned Arbitrator has gone beyond the terms of the contract in awarding this amount of Rs. 74 lakhs.

6. I have heard learned senior counsel for the petitioner.



7. In the present case, a perusal of the reasoning given by the learned Arbitrator in paragraph 48 clearly shows that the respondent's witness who appeared and gave his testimony was unable to give any reasons as to why this amount of Rs. 74 lakhs was reduced. The witness did not rely upon Clause 26.4 or state that there was no prior consent from the owner.

8. Para 48 and 49 is reproduced under:-

"48. The Respondent had also reduced from the Final Bill a sum or Rs.5,54,075.60 paise on account of defective material/workmanship. Various letters are on record which show that the Claimant was removing defects in work as and when those were pointed out. There is no satisfactory evidence on record to establish defects in the material used by the Claimant. If the Claimant was using any defective material it was the duty of the Architect or the Representatives of the Respondent to stop it from using the same in the work awarded to it. Therefore, after considerable lapse of time between the execution of the work and the scrutiny of the Final Bill, the Respondent was not justified in raising such objections and make deductions from the amount payable to the Claimant. This deduction, therefore, was unjustified and unsustainable. Therefore, the deductions of Rs.33, 78,293.05 paise, Rs.8,89,876.40 paise and Rs.5,54,075.60 paise were unjustified and as such these amounts remain payable to the Claimant.

49. In regard to extra items the Claimant had raised a demand of Rs.1.08 Crs. which was reduced by the Respondent to Rs.34 lacs only. The Respondent's witness RW-1 during his cross-examination and replies to the interrogatories could not explain as to on what basis this amount was reduced by the Accounts Department of the Respondent. The grounds for



reduction were not communicated even to the Claimant. It is admitted that before the finalization of this amount the Architect appointed by the Respondent had already been removed and he had never finalized the rates/ value of the extra items. In the absence of any material on record as to why, and on what basis the amount of Rs.1.08 Crs. was reduced to Rs.34 lacs only, it has to be held that the reduction of this amount was arbitrary and illegal. The Claimant is therefore entitled to recover a sum of Rs.74 lacs from the Respondent towards the balance price of the extra items.”

9. In addition, there is also no material on record to show that the amount which was released by the petitioner (approx. Rs.34 lacs) had any kind of prior approval from the owner.

10. In this view of the matter, I am of the opinion that the learned Arbitrator has correctly appreciated the facts, the evidence before the learned Arbitrator and has awarded this amount of Rs. 74 lakhs.

11. Mr Hooda, learned senior counsel for the petitioner is also pressing claim No. 17 relating to litigation cost.

12. Section 31A of Arbitration and Conciliation Act reads as under:-

“31A. Regime for costs.—(1) In relation to any arbitration proceeding or a proceeding under any of the provisions of this Act pertaining to the arbitration, the Court or arbitral tribunal, notwithstanding anything contained in the Code of Civil Procedure, 1908 (5 of 1908), shall have the discretion to determine—

(a) whether costs are payable by one party to another;

(b) the amount of such costs; and

(c) when such costs are to be paid.



Explanation.—For the purpose of this sub-section, “costs” means reasonable costs relating to—

(i) the fees and expenses of the arbitrators, Courts and witnesses;
(ii) legal fees and expenses;
(iii) any administration fees of the institution supervising the arbitration; and (iv) any other expenses incurred in connection with the arbitral or Court proceedings and the arbitral award.

(2) If the Court or arbitral tribunal decides to make an order as to payment of costs,—

(a) the general rule is that the unsuccessful party shall be ordered to pay the costs of the successful party; or
(b) the Court or arbitral tribunal may make a different order for reasons to be recorded in writing.

(3 ...

(4)...

(5)....”

13. In this view of the matter, awarding litigation costs is the discretion of the learned Arbitrator and this Court will not entertain the litigation costs awarded by the learned Arbitrator. In addition, the costs awarded are Rs. 5 lakhs which in my view are reasonable and fair.

14. The petition is dismissed.

APRIL 29, 2024/sr

JASMEET SINGH, J

[Click here to check corrigendum, if any](#)