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

+ O.M.P. (COMM) 245/2024 & I.As. 30562-64/2024.
RAGHUVINDRA SINGH YADAV Petitioner

versus

SANDEEP GOYAL & ANR. Respondents

+ O.M.P. (COMM) 490/2023 & I.A. 24131/2023.
RAGHUVINDRA SINGH YADAV Petitioner

versus

SANDEEP GOYAL & ANR. Respondents

+ O.M.P. (COMM) 68/2024 & CAV 50/2024, I.As. 2581-82/2024.
D&G CONSTRUCTIONS THROUGH
MR. YUMTO BUI (AS THE SOLE
PROPRIETOR) Petitioner

versus

MR. SANDEEP GOYAL & ANR. Respondents

+ O.M.P. (COMM) 230/2024
D AND G CONSTRUCTIONS Petitioner

versus

MR. SANDEEP GOYAL & ANR. Respondents

Appearances:

Mr. Lalit Gupta, Mr. Suyash Sinha, Mr. Tarun Gupta, Mr. Abhishek Rathi, Ms. Harshita, Mr. Rajesh Kumar Jha, Advocates for Mr. Raghuvindra Singh Yadav.

Mr. Sanjoy Gosh, Sr. Advocate with Mr. Dalip Niranjana, Mr. Pradeep Desodhya, Advocates for D and G Constructions.



Mr. Jay Savla, Sr. Advocate with Mr. Prabhat Chaurasia, Mr. Robin Chacko, Mr. Rajpal Singh, Advocates for Sandeep Goyal.

CORAM:

HON'BLE MR. JUSTICE PRATEEK JALAN

ORDER

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28.05.2024

O.M.P. (COMM) 490/2023 & I.A. 24131/2023 (stay)

1. This petition under Section 34 of the Arbitration and Conciliation Act, 1996 [“the Act”], is directed against an arbitral award dated 16.11.2023. On an application made under Section 33 of the Act, the learned Arbitrator has passed a further order/additional award dated 05.04.2024. The petitioner has challenged both these decisions in O.M.P. (COMM) 245/2024.
2. Learned counsel for the respondents do not contest the position that the validity of the award and the additional award can be adjudicated in O.M.P. (COMM) 245/2024, having regard to the fact that Section 34(3) of the Act provides for the limitation period of three months to commence on the date, when a request under Section 33 of Act is disposed of by the Arbitral Tribunal.
3. Mr. Lalit Gupta, learned counsel for the petitioner, therefore, seeks permission to withdraw this petition, without prejudice to the rights and contentions of the petitioner in O.M.P. (COMM) 245/2024.
4. The petition, alongwith the pending application, is dismissed as withdrawn.

CAV 50/2024 in O.M.P. (COMM) 68/2024

The respondents have entered appearance. The caveat is, therefore, discharged.



I.A. 2581/2024 (for exemption) in O.M.P.(COMM) 68/2024

I.A. 29902/2024 (for exemption) in O.M.P.(COMM) 230/2024

I.A. 29903/2024 (for exemption) in O.M.P.(COMM) 230/2024

I.A. 30563/2024 (for exemption) in O.M.P.(COMM) 245/2024

I.A. 30564/2024 (for exemption) in O.M.P.(COMM) 245/2024

Exemptions allowed, subject to all just exceptions.

The applications stand disposed of.

O.M.P. (COMM) 245/2024, O.M.P. (COMM) 68/2024, O.M.P. (COMM) 230/2024 & I.A. 30562/2024 (stay) in O.M.P. (COMM) 245/2024

1. These three petitions are directed against the same awards dated 16.11.2023 and additional award dated 05.04.2024.
2. The impugned awards dated 16.11.2023 and 05.04.2024 have been passed in arbitration proceedings under a Memorandum of Understanding cum Contract Agreement dated 28.11.2016 [“the Agreement”].
3. Three parties to the agreement were M/s D and G Construction, a proprietorship concern of Mr. Yumton Bui [hereinafter “D&G”], Mr. Raghuvindra Singh Yadav [“Mr. Yadav”] and Mr. Sandeep Goyal [“Mr. Goyal”].
4. The Agreement records that D&G had been awarded three contracts by the Government of Arunachal Pradesh, for rural electrification projects under the Deendayal Upadhyaya Gram Jyoti Yojana. Mr. Yadav and Mr. Goyal were approached for financial and technical assistance for execution of the projects. The Agreement broadly provides that all investments in the projects would be made by Mr. Yadav and Mr. Goyal after the date of the contract, and their investments would



be routed through a bank account in the name of D&G. D&G was responsible for implementation of the projects on the ground. The parties were to share the profits generated in execution of the contract in terms of Clause 13, which provides as follows:

“13. That all the parties agree that profit generated in the execution of the above contracts shall be divided among the parties as described below :-

(a). 34% to First Party,

(b). Rest 66% will be divided among Second Party and Third party as per Net Weighted average ratio of Net Capital/Investment made by Second Party and Third party till recovery of investment part. (Net Investment means Amount Invested Less by Amount Withdraw)”

5. The arbitral proceedings commenced upon claims being lodged by Mr. Goyal for his share of profits in terms of Clause 13 of the Agreement. He raised a claim of approximately Rs.8.06 crores against D&G and a claim of approximately Rs.14.18 crores against Mr. Yadav, alongwith interest. Mr. Yadav raised counter claims of approximately Rs.1.24 crores against Mr. Goyal and approximately Rs.29 lakhs against D&G, as well as certain declaratory claims.

6. The learned Arbitrator has awarded Mr. Goyal’s claim to the extent of Rs.6,64,86,283/-, alongwith simple interest @15% per annum from 01.07.2021 until the date of actual payment. In the additional award dated 05.04.2024, a sum of Rs.23.94 lakhs has been added to the awarded amount of Rs.6,64,86,823/-. The principal amount is thus Rs.6,88,80,823/-, with interest @15% per annum. The learned Arbitrator has rejected the counter claim asserted by Mr. Yadav.

7. One of the grievances of Mr. Lalit Gupta, learned counsel for Mr. Yadav, is that, despite the apportionment of the claims by Mr. Goyal between D&G and Mr. Yadav, the learned Arbitrator has awarded a



consolidated sum, without identifying the extent to which each of the said parties was liable. It is also the submission of Mr. Gupta that the report of an independent Chartered Accountant appointed during the course of arbitral proceedings has been partially relied upon in the impugned award, leading to a computation that the net profit from the projects was to the tune of Rs.10 crores, out of the total revenue of approximately Rs.17.83 crores. Mr. Gupta submits that the expenses attributed to Mr. Yadav in the report of the Chartered Accountant, have not been taken into account in computation of the total expenses and the net profit has, thus, been exaggerated. Mr. Gupta also submits that the learned Arbitrator has erred in granting Mr. Yadav no part or share in the profits on an erroneous computation, which ignores the Net Weighted Average Ratio provided in Clause 13.

8. Mr. Gupta lastly submits that the amounts payable under the projects were to be paid by the implementing agency in the State of Arunachal Pradesh being Arunachal Power Development Agency [“APDA”] to D&G, and the profits were to be distributed thereafter. Bypassing this arrangement, the learned Arbitrator has directed APDA to release the balance amount of Rs.5,88,85,000/- payable under the contracts awarded to D&G to Mr. Goyal. Mr. Gupta submits that this direction virtually amounts to execution of the award in favour of Mr. Goyal by directing a non-party to pay an amount receivable by D&G to Mr. Goyal directly.

9. Mr. Ghose, learned Senior Counsel for D&G, also assails the awards, on the grounds set out in OMP(COMM) 68/2024 and OMP (COMM) 230/2024, some of which are on similar lines to the arguments



of Mr. Gupta.

10. Mr. Jay Savla, learned Senior Counsel for Mr. Goyal, on the other hand, submits that the award correctly holds that D&G and Mr. Yadav colluded to withdraw various amounts from the project amount and that they inflated their investments and expenses, to diminish the share of profits payable to Mr. Goyal.

11. The matter requires further consideration.

12. Issue notice. Learned counsel are present and accept notice on behalf of the respondents.

13. By an interim order dated 04.12.2023 passed in O.M.P.(COMM) 490/2023, this Court has recorded the statement of learned Senior Counsel for Mr. Goyal to the following effect:

“2. Learned Senior Counsel for defendant No.1 submits that as and when any amount is released by the Arunachal Power Development Agency (APDA), the same would be duly informed to the court and shall not only be subject to the outcome of the present petition but also to furnishing solvent security to be considered before the Registrar General.”

14. For the present, the execution of the impugned award and additional award, as against Mr. Yadav, is stayed subject to the following directions:

- a. In the event Mr. Goyal seeks release of the amount of Rs.5,88,85,000/- from APDA, he will approach the learned Registrar General of this Court in advance, with the nature of the security proposed to be provided and supporting documents. Mr. Savla submits that Mr. Goyal proposes to provide security of immovable property held in his name or in the name of his family members. If so, his application will state the nature of the



immovable property, the ownership, whether the property is encumbered in any way and will give a valuation report by a government approved valuer. He will also furnish affidavits of undertaking of the owners of the property to the effect that the property is being offered as security for the amount proposed to be withdrawn by Mr. Goyal from APDA and that, in the event Mr. Goyal is required to reimburse the said amount or any part thereof, the same may be recovered by sale of the property. The affidavits of undertaking will also state that in such an eventuality, vacant and peaceful possession of the property will be surrendered in terms of the orders the Court may pass.

- b. Mr. Goyal may approach APDA for release of the amount, in the event the learned Registrar General records his satisfaction as to the nature and value of security offered.
 - c. In the award, the amount lying with APDA is computed at Rs.5,88,85,000/-. As noted hereinabove, the total amount of the principal amount awarded in the award and the additional award amounts to Rs.6,88,80,823/-. For the present, therefore, Mr. Yadav is directed to deposit a further sum of Rs.1 crore into Court.
 - d. Any amount deposited into Court may be kept in an interest-bearing fixed deposit.
15. Reply to the application may be filed within four weeks. Rejoinder thereto, if any, may be filed within two weeks thereafter.
16. The parties may file any additional documents, which were part of the arbitral record, in O.M.P. (COMM) 245/2024 and will also file their consolidated written submissions in O.M.P. (COMM) 245/2024.



17. List on 12.09.2024.

I.A. 2582/2024 (stay) in O.M.P. (COMM) 68/2024 & I.A. 29904/2024 (stay) in O.M.P. (COMM) 230/2024

These stay applications have been filed by D & G Construction. However, Mr. Sanjoy Ghose, learned Senior Counsel for D & G Construction, upon instructions, states that D & G Construction does not wish to press the stay applications.

The stay applications are, therefore, dismissed as withdrawn.

PRATEEK JALAN, J

MAY 28, 2024
‘Bhupi’/