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

+ **FAO(OS) (COMM) 214/2024 and CM APPL. 55439/2024 (Stay), CM APPL. 55440/2024 (Summoning Of Complete Records)**

**UNION OF INDIA EXECUTIVE ENGINEER A-DIVN.
CPWD.**

.....Appellant

Through: Mr. Niraj Kumar, Sr. Central
Govt. Counsel with Mr.
Chaitanya Kumar, Adv.

versus

M/S. ROSHAN REAL ESTATE PVT. LTD.Respondent

Through: Ms. Anusuya Salwan, Mr.
Bankim Garg, Mr. Rachit
Wadhwa and Ms. A. Salwan,
Advs.

CORAM:

HON'BLE MR. JUSTICE YASHWANT VARMA

HON'BLE MR. JUSTICE DHARMESH SHARMA

ORDER

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26.11.2024

CM APPL. 55441/2024 (27 Days Delay)

1. Bearing in mind the disclosures made, the delay of 27 days in filing the instant appeal is condoned.

2. The application shall stand disposed of.

**FAO(OS) (COMM) 214/2024 and CM APPL. 55439/2024 (Stay),
CM APPL. 55440/2024 (Summoning Of Complete Records)**

3. This appeal is directed against the judgment dated 28 May 2024 and in terms of which the petition under Section 34 of the **Arbitration**



and Conciliation Act, 1996¹ has come to be dismissed by the learned Single Judge.

4. That judgment would indicate that the solitary issue which was canvassed for consideration pertained to relief accorded by the **Arbitral Tribunal²** insofar as Claim No. 1 was concerned. Against the claimed amount of INR 6.46 crores, the AT had awarded an amount of INR 1.15 crores. The said claim pertained to the extra items of work and which were governed by Clause 12.2.A of **General Conditions of Contract³**.

5. The learned Single Judge has, on the basis of the evidence that was placed before the AT found that the rates had been duly approved by the Engineer-in-Charge and which fact also stands reflected in paragraph 22 of the order under challenge. The said paragraph is extracted hereinbelow:

22. The Arbitral Tribunal at paragraph 8.4.6.6 records that the documents relied upon by the respondent shows that the rates for extra items were approved by the Engineer-in-Charge in whose presence the whole work was executed. Further, the Arbitral Tribunal in 8.4.6.7 also records that the Superintending Engineer on 25.03.2019 approved the extra item statements. For perusal, paragraphs 8.4.6.6 and 8.4.6.7 reads as under:

"8.4.6.6. The claimants also relied on the documents filed by them on pages 97 to 147 in their rejoinder which shows that the rates were approved by the engineer in charge, in whose presence the whole work was executed and who was one of the officer who visited the stone quarry at Telangana and other places with other officers, approved the quarry and stone, and was also well aware about the rates etc. The letter dated 25/03/2019 evidence filed at page 97 of the claimants rejoinder and from pages 98 to 147 are the statement as well as analysis of rates duly signed by the officers of the respondents office are part of the enclosures. The letter indicate the rates proposed by

¹ Act

² AT

³ GCC



the E.E to S.E on 25.03.2019 with all supporting documents.

8.4.6.7. The letter dated 25/03/2019 addressed to the Superintending Engineer in the list of enclosures sent with the letter shows as under:

- 1. Approved extra item statement I & II*
- 2. Approved deviation statement No. I & II*
- 3. Analysis of rates (With Invoices)*
- 4. Copy of agreement.”*

6. It is in light of the above that the AT ultimately placed reliance on the rates as identified by the Engineer-in-Charge and proceeded to grant relief under Claim No. 1.

7. Before us, learned counsel for the appellant has been unable to establish that the aforesaid conclusion suffers from any manifest or patent perversity. Consequently, we find no justification to invoke our powers conferred by Section 37 of the Act.

8. The appeal fails and shall stand dismissed.

YASHWANT VARMA, J.

DHARMESH SHARMA, J.

NOVEMBER 26, 2024

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