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IN THE HIGH COURT OF DELHI AT NEW DELHI

Date of decision: 19.07.2024

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O.M.P. (COMM) 331/2018

SUBIR ENGINEERING WORKS (P)LTD.Petitioner

Through: Mr. Sukumar Pattjoshi, Sr. Adv.
with Mr. Sunil Kr. Mund, Mr. Dharmender,
Kumar, Advs.

versus

IIDL (IFCL INFRASTRUCTURE DEVELOPMENT LTD) & ANR.

.....Respondent

Through: Mr. Rohit Mahajan, Mr. Siddharth
Aggarwal, Mr. Shashwat Dhyani, Advs.

CORAM:

HON'BLE MR. JUSTICE JASMEET SINGH

: JASMEET SINGH, J (ORAL)

1. This is a petition filed under Section 34 of the Arbitration and Conciliation Act, 1996 (“1996 Act”) seeking partial setting aside of the award dated 25.01.2018.
2. Briefly stating the facts are that respondent No. 1 herein had entered into an MoU with the Management Development Institute (“MDI”) to undertake the work of development of the campus situated in Murshidabad District, West Bengal. Subsequently, respondent No. 1 issued a Letter of Intent (“LOI”) dated 07.10.2011 for construction of Phase- I, MDI Building, Jangipur, West Bengal to the petitioner for the construction of the MDI campus.
3. Thereafter, a contract was entered into between the petitioner and respondent No. 1 on 10.10.2011 followed by a second LOI dated 20.07.2012 being issued to the petitioner wherein respondent No. 1



intended to award the total project (Phase I and II) to the Petitioner for a cost of Rs 90 crore.

4. Thereafter, on 17.09.2012, the third and final LOI was issued and the operative portion of the said LOI reads as under:

“With reference to our Letter No. IIDL/MD/02/2011-12 with subject SUB: Construction of Phase-1, MDI Building, Jangtpur, West Bengal for an amount of Rs. 23, 72,33, 764 issued to you on October 7, 2011 we are pleased to award the total project to M/s Subir Engineering Works(P) Ltd for an amount of Rs. 90.91 Cr (Inclusive of VAT, Labour Cess and Other Applicable taxes except Service Tax) with a delivery schedule of 22 months from the date of issue of LOI.”

5. Due to disputes, arising between the parties, the petitioner invoked the arbitration clause being Clause 10 of the contract dated 10.10.2011 vide legal notice dated 06.05.2016, and the same was duly accepted by respondent No. 1 vide letter dated 08.07.2016 and with consent of both parties, a Sole Arbitrator was appointed.
6. The Arbitral Award came to be passed on 25.01.2018 by the learned Sole Arbitrator whereby respondent No. 1 was directed to pay a sum of Rs 7,68,50,750/- along with interest @6 % p.a. to the petitioner.
7. Aggrieved by the said Award, the present petition is filed with the following prayer:

“a. allow the present Petition;
b. partially set aside the impugned Award dated 25.01.2018 passed by the Sole Arbitrator Hon'ble Mr.Justice



K.Ramamoorthy (Retd) only to the extent:

(i) it reduces the quantum in Claim No.1 and Claim No.2;

and

(ii) awards a meagre interest rate of 6%; and

(iii) rejects claim Nos 6, 7, 8, 9, 10 & 12”

8. Mr. Pattjoshi, learned senior counsel for the petitioner states that the learned Sole Arbitrator has reduced the quantum in claim Nos. 1 and 2, awarded interest at the rate of 6%, and has rejected claim Nos. 6, 7, 8, 9, 10 and 12.
9. The learned senior counsel only restricts his submissions to claim Nos. 1 and 2 and on the interest granted by the learned Sole Arbitrator.
10. Learned senior counsel for the petitioner in regard to Claim No. 1 submits that the claim for price escalation and the quantum was never contested by the respondent and the learned Sole Arbitrator has only awarded the said claim on a perceived notion that the petitioner has given up its claim.
11. Learned senior counsel further submits that the petitioner and respondent No. 1 had tried to negotiate on the quantum on various occasions due to economic duress, however, since the amounts agreed on various heads were never paid by respondent No. 1, therefore, the petitioner revived its claim before the learned Sole Arbitrator.
12. With regard to Claim No. 2, he submits that the petitioner is entitled to the claim for price escalation as the learned Arbitrator could not have relied upon the pre-invocation negotiations and reduce the claim, based on a mathematical formula agreed between the parties.



13. With regard to interest, it is submitted that the interest is granted on the principle that a person deprived of the use of money to which he is legitimately entitled has a right to be compensated for the deprivation.
14. He further submits that despite coming to a conclusion that security deposit to the tune of Rs.2,72,37,786/-, which was the petitioner's money was illegally withheld by the respondents for over more than 4 years, the learned Sole Arbitrator has awarded only an interest of 6% p.a.
15. *Per contra*, learned counsel for respondent No. 1 vehemently opposes the contentions raised by the petitioner and states that the learned Sole Arbitrator has dealt with the evidence on record in detail with respect to the price Escalation bills up to the 27th RA Bill and therefore the finding of the Sole Arbitrator does not need any interference.
16. He further submits that there is no ground for interference with the said claims under the ambit of Section 34 of 1996 Act.
17. Learned counsel for respondent No. 1 also submits that the learned Sole Arbitrator has the discretionary power to award pre-award interest under Section 31(7)(a) of 1996 Act and further states that the discretion of the learned Sole Arbitrator while granting pre-award interest should not be interfered with the High Court. Reliance is placed upon *Hyder Consulting (UK) Ltd. v. Governor, State of Orissa, though Chief Secretary, (2015) 2 SCC 189*.
18. I have heard learned Counsel for the parties.
19. It is a well-settled position of law that the scope of interference as mandated under Section 34 of 1996 Act is very narrow and limited, and in order to adjudicate the matter related to the interpretation of the



contract, determination of facts and appreciation and re-appreciation of evidence, the learned Arbitrator is the best authority for the said purpose. In this regard, reliance is placed on ***Parsa Kente Collieries Ltd. v. Rajasthan Rajya Vidyut Utpadan Nigam Ltd., (2019) 7 SCC 236*** wherein the Hon'ble Supreme Court of India *inter alia* held as under:

“9.1. In Associate Builders [Associate Builders v. DDA, (2015) 3 SCC 49 : (2015) 2 SCC (Civ) 204] , this Court had an occasion to consider in detail the jurisdiction of the Court to interfere with the award passed by the Arbitrator in exercise of powers under Section 34 of the Arbitration Act. In the aforesaid decision, this Court has considered the limits of power of the Court to interfere with the arbitral award. It is observed and held that only when the award is in conflict with the public policy in India, the Court would be justified in interfering with the arbitral award. In the aforesaid decision, this Court considered different heads of “public policy in India” which, inter alia, includes patent illegality. After referring Section 28(3) of the Arbitration Act and after considering the decisions of this Court in McDermott International Inc. v. Burn Standard Co. Ltd. [McDermott International Inc. v. Burn Standard Co. Ltd., (2006) 11 SCC 181] , SCC paras 112-113 and RashtriyaIspat Nigam Ltd. v. Dewan Chand Ram Saran [RashtriyaIspat Nigam Ltd. v. Dewan Chand Ram Saran, (2012) 5 SCC 306] , SCC paras 43-45, it is observed and



held that an Arbitral Tribunal must decide in accordance with the terms of the contract, but if an Arbitrator construes a term of the contract in a reasonable manner, it will not mean that the award can be set aside on this ground. It is further observed and held that construction of the terms of a contract is primarily for an Arbitrator to decide unless the Arbitrator construes the contract in such a way that it could be said to be something that no fair-minded or reasonable person could do. It is further observed by this Court in the aforesaid decision in para 33 that when a court is applying the “public policy” test to an arbitration award, it does not act as a court of appeal and consequently errors of fact cannot be corrected. A possible view by the Arbitrator on facts has necessarily to pass muster as the Arbitrator is the ultimate master of the quantity and quality of evidence to be relied upon when he delivers his arbitral award. It is further observed that thus an award based on little evidence or on evidence which does not measure up in quality to a trained legal mind would not be held to be invalid on this score.”

20. Before going into the contentions raised at the bar, it is relevant to extract the finding of the learned Sole Arbitrator with respect to Claim No. 1 and 2.
21. Claim Nos. 1 and 2 framed by the learned Sole Arbitrator reads as under:-

“184. Claim No.1 (Claim for the payment of Price Escalation bills up to 27th RA Bill for Rs.2,91,20,595/-)



....

185. Claim No.2 (Claim for payment of price Escalation Bills from 28th RA Bill to 30th RA Bill for Rs.30,22,844/-)”

- 22.** The findings of the learned Sole Arbitrator with respect to Claim No. 1 regarding the claim for payment of the price of Escalation bills up to the 27th RA bill reads as under:-

“184.1 The defence to the claim by the first respondent is that in the meeting held on 13th, 14th and 15th January 2016 the claimant had accepted to receive Rs.95 lacs. Therefore, the claimant cannot claim anything more than the said amount.

184.2 The answer by the claimant is that the first respondent promised to pay the amount immediately. Therefore the claimant accepted to this figure owing to the fact, on account of the series of defaults in payments made by first respondent. The claimant was in financial difficulties. The claimant had used the word 'economic duress'.

184.3 The Ld. Counsel for the first respondent submitted that this case of economic duress cannot at all be sustained because with reference to claim relating to claim on VAT which was a huge amount the claimant had refused to accept.

184.4 I quite agree with submission of the Ld. Counsel for the first. respondent, the case of economic duress is projected without any consideration on the principles on



which it is based.

184.5 *Further, I notice that the claimant having given up its claim cannot try to resuscitate it before the tribunal in view of Section 63 of the Indian Contract Act 1882, which reads as under:*

“63. Promisee may dispense with or remit performance of promise.- Every promisee may dispense with or remit, wholly or In part, the performance of the promise made to him, or may extend the time for such performance, or may accept Instead of it any satisfaction which he thinks fit - Every promisee may dispense with or remit, wholly or in part, the performance of the promise made to him, or may extend the time for such performance, or may accept Instead of it any satisfaction which he thinks fit.”

184.6 *Therefore, I find that the claimant is entitled to the sum of Rs.95,00,000/ (Rs. Ninety Lakhs) towards Claim No.1”*

23. Furthermore, the learned Sole Arbitrator has dealt with claim No. 2 as under:-

“185.1 *Here also In the meeting held on 13th, 14th and 15th January 2016 the claimant had accepted to receive Rs.15,00,000/-.*

185.2 *I find that the claimant is entitled to receive Rs.15,00,000/- (Rupees Fifteen Lakh only).”*

24. In my view, as far as claim Nos. 1 and 2 are concerned, the prayers for



increase of quantum in these claims as sought by the petitioner, if allowed, would amount to a modification of the Arbitral Award which this Court while exercising its jurisdiction under Section 34 of 1996 Act cannot do. Reliance is placed on *NHAI v. M. Hakeem, (2021) 9 SCC 1* and more particularly on para 48 which reads as under:-

“48. Quite obviously if one were to include the power to modify an award in Section 34, one would be crossing the Lakshman Rekha and doing what, according to the justice of a case, ought to be done. In interpreting a statutory provision, a Judge must put himself in the shoes of Parliament and then ask whether Parliament intended this result. Parliament very clearly intended that no power of modification of an award exists in Section 34 of the Arbitration Act, 1996. It is only for Parliament to amend the aforesaid provision in the light of the experience of the courts in the working of the Arbitration Act, 1996, and bring it in line with other legislations the world over.”

25. On perusal, it is clear that the scope as mandated under Section 34 of 1996 Act does not allow the Court to modify the Arbitral Award. The principle of Section 34 requires minimal judicial interference and it provides only for setting aside awards on very limited grounds and the Court under section 34 of 1996 Act has no power to modify an Arbitral Award.
26. Even otherwise, the learned Sole Arbitrator has come to a finding that the petitioner himself had agreed in the meetings held on 13th, 14th and 15th January 2016 to receive a sum of Rs. 95 lakhs for claim No. 1 and



Rs. 15 lakhs for claim No. 2. In view of the admission of the petitioner, the learned Sole Arbitrator awarded Claim Nos. 1 and 2 for the said amount. In my view, there is no infirmity, perversity and illegality in the said finding.

27. Now coming to the aspect of interest being granted at the rate of 6% p.a. by the learned Sole Arbitrator, I am of the view, that the question of grant of interest has also been settled by the Hon'ble Supreme Court in ***Delhi Airport Metro Express Private Limited vs. Delhi Metro Rail Corporation, (2022) 9 SCC 286***, wherein it was held that the interest on Award is totally within the domain of the learned Sole Arbitrator. The Hon'ble Supreme court *inter alia* held as under:

“17. It could thus be seen that the part which deals with the power of the Arbitral Tribunal to award interest, would operate if it is not otherwise agreed by the parties. If there is an agreement between the parties to the contrary, the Arbitral Tribunal would lose its discretion to award interest and will have to be guided by the agreement between the parties. The provision is clear that the Arbitral Tribunal is not bound to award interest. It has a discretion to award the interest or not to award. It further has a discretion to award interest at such rate as it deems reasonable. It further has a discretion to award interest on the whole or any part of the money. It is also not necessary for the Arbitral Tribunal to award interest for the entire period between the date on which the cause of action arose and the date on which the award is made. It can grant interest for the entire period or



any part thereof or no interest at all.”

28. A bare perusal of the above-quoted para clearly indicates that the learned Sole Arbitrator has the discretion to award interest unless the parties have agreed otherwise. If an agreement specifies interest terms, the Arbitral Tribunal must follow it. The tribunal is not obligated to award interest and can decide the rate, the period for which interest is applicable, and whether to award interest on all or part of the amount, or not at all.
29. In the present case, the learned Sole Arbitrator after seeing the merits/demerits of the matter has awarded the interest at the rate of 6% p.a. The operative part of the impugned Award reads as under:-
- “202. Accordingly, I pass the award:*
- I. Directing the first respondent to pay the claimant Rs. 7,68,50,870/-*
- II. Directing the first respondent to pay the claimant, interest@ 6% P.A. on the sum of Rs.7,68,50,870/- from 27.10.2016 till the date of realization of the payment.”*
30. In this view of the matter, I am not inclined to interfere with the interest awarded by the learned Sole Arbitrator in a petition filed under Section 34 of 1996 Act.
31. Hence, the present petition is devoid of merits and is accordingly dismissed.
32. Pending applications, if any are disposed of.

JULY 19, 2024 / (MSQ)
(Corrected and released on 02.08.2024)

JASMEET SINGH, J