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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**+ **FAO(OS) 114/2017****M/S HARCHARAN DASS GUPTA**

..... Appellant

Through: Mr. Harish Malhotra, Sr. Advocate
with Mr. Anoop Kumar, Advocate.

versus

AZAD HIND COOP GROUP HOUSING SOCIETY LTD

..... Respondent

Through: Mr. P. S. Singh and Mr. Manu Arya,
Advocates.

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Date of Decision: 15th February, 2024**CORAM:****HON'BLE THE ACTING CHIEF JUSTICE****HON'BLE MS. JUSTICE MANMEET PRITAM SINGH ARORA****JUDGMENT****MANMOHAN, ACJ : (ORAL)**

1. This appeal has been filed under Section 37 of the Arbitration and Conciliation Act, 1996 ('Act of 1996') challenging the impugned judgment dated 14th February, 2017, passed in OMP No. 77/2010, whereby learned Single Judge set aside the Award dated 4th March, 2009, read with amended/corrected Award dated 14th September, 2009, passed by learned Sole Arbitrator in Arbitration Petition No. 279/2004 in respect of Issue Nos. 1, 7 and 8. The learned Single Judge also set aside the corresponding award of interest on the said amount.

2. The parties herein had entered into an agreement dated 12th September, 1996, for construction of housing complex comprising of 104 dwelling units for a consideration of Rs. 4,53,06,176/- ('the project'). A further sum of Rs. 5,00,000/- was given towards Mobilization charges to the Appellant. The Appellant was to complete the work within twenty seven



months i.e., on or before 18th December, 1998. Subsequently, disputes arose between the parties on account of non-payment of Running Account (RA) Bills of the Appellant by the Respondent.

3. The parties thereafter, entered into a Memorandum of Understanding ('MoU') dated 19th July, 2002, wherein it was agreed that for the balance work, the Respondent would pay a lump-sum of Rs. 80,75,000/- to the Appellant with no escalation. The Appellant was required to complete the work by 18th November, 2022, however, as per the Respondent the same was not completed by the Appellant. The Respondent-Society terminated the MoU on 10th July, 2003 and had the balance works completed by itself. This led to disputes between the parties, which were referred to Arbitration.

4. The matter was referred to Arbitration wherein the learned Arbitrator vide Award dated 4th March, 2009, read with amended/corrected Award dated 14th September, 2009 (collectively referred to as 'Award'), awarded an amount of Rs. 32,33,593/- in favour of the Appellant.

5. The Award was challenged by the Respondent in the petition filed under Section 34 of the Act of 1996. The learned Single after examining the Award, vide impugned judgment held that the learned Arbitrator had not provided any reasons whatsoever to arrive at its conclusion that the Appellant was entitled to the difference between the amount under the MoU and the amount already paid.

Submissions of counsel for parties

6. Learned senior counsel for the Appellant states that while awarding the amount, the learned Arbitrator took into consideration the amount payable under the MoU i.e., Rs. 80,75,000/-, the amount already paid by the



Respondent for the work done by the Appellant i.e., Rs. 48,41,407/- and finally had deducted the amount spent by the Respondent on the said works at the risk of the Appellant i.e., Rs. 13,52,660/-. He states that this approach is a possible and a plausible view taken by the Arbitrator and did not warrant any interference much less setting aside of the Award to this extent. He states that the learned Single Judge could not have substituted the view taken by the Arbitrator with its own view. He states that the aforesaid method adopted by the Arbitrator reflects the reasons which weighed with it while passing the Award.

6.1. He states that it was not within the ambit of the Court to evaluate whether the view taken by the learned Arbitrator was justified on the evidence available on the record?

6.2. He states that the Court could not have looked into the reasonableness of the reasons recorded by the Arbitrator or disagreed with the reasons given in the Award. He states that the Court could not have set aside the Award on account of the reasoning therein being inadequate or imperfect.

6.3. He states that the findings of the learned Arbitrator while deciding counter claim no.1 to hold that the Respondent is entitled to claim a sum of Rs. 13,52,660/- from the Appellant towards the balance work carried out at its risk and costs has attained finality. He states that the findings on this counter claim have been upheld by the Court and consequentially no interference was merited with the Award passed in respect of issue numbers 1, 7 and 8.

7. In reply, learned counsel for the Respondent states that the Appellant had delayed the project and did not adhere to the time schedule, due to



which the members of the Respondent Society suffered losses. He states that the members had to live in rented accommodations due to the non-completion of flats in the project. He states that as per the MoU, the work executed by the Appellant had to be certified by the Architect and thereafter considered for payment. He states that the Architect certified work amounting to Rs. 41,98,805/- only. He states that the Project was abandoned by the Appellant and had to be completed by the Respondent Society at the risk and cost of the Appellant which caused further delays in completion.

7.1. He states that the Appellant was not entitled to the value of Rs. 32,33,593/-, for the unexecuted portion of the work awarded by the Arbitrator as there is no evidence on record that the Appellant completed the said work. He states that therefore, the Appellant was not entitled to any further payment as he had led no evidence to prove the execution of balance work before the Arbitrator.

Findings and analysis

8. This Court has heard the learned senior counsel for the Appellant and the counsel for the Respondent.

9. The learned Arbitrator in the Award has held that the Appellant is entitled to an award of Rs. 32,33,593/- against issue no.1. The findings of the learned Arbitrator in regard are recorded at paragraph 21 which reads as under:

“21. Having said that MOU did not cease to exist it remained alive, there is no question of claimant claiming 24th R/A bill. As regard 23rd R/A bill that stood settled vide the MOU. At the same time we cannot loose sight of the fact that the claimant did execute the work at site till 10th July, 2003 i.e. till the contract was terminated. According to claimant, he completed the balance work as indicated in Annexure-I of MOU. If claimant had completed the balance work as indicated in Annexure II of MOU he would have got



Rs.70,75,000/-, as against that he has been paid Rs.48,41,407/-. Thus, he would be entitled to the balance amount of Rs.22,33,593/- which will be subject to adjustment against the amount, if any, incurred by the respondent in purchase of material and for getting the work done at the risk of the claimant, if any. Order accordingly.”

10. In addition, the learned Arbitrator partially allowed counter claim no.1 in favour of the Respondent herein and awarded a sum of Rs. 13,52,660/- in favour of the Respondent Society. This amount was liable to be adjusted from the aforesaid award of Rs. 32,33,593/- against issue no.1. Thus, the net amount awarded to the Appellant against issue no.1 was Rs. 18,80,933/-.

11. The learned Arbitrator while awarding the amount against issue no.1 in favour of the Appellant has presumed, without referring to any evidence, that the entire work, indicated in Annexure – II of the MoU for the value of Rs. 80,75,000/-, was executed by the Appellant. On the contrary, it was the specific assertion of the Respondent that Appellant failed to complete the works enlisted in said Annexure II of the MoU, which led to its termination on 10th July, 2003; and the balance work was completed by the Society with its own efforts. The Respondent Society relied upon the certification of verification of work, issued by its Architect, in terms of Clause 12 of the MoU to contend that no further payments were due and payable to the Appellant in the absence of the certification from the Architect. The Respondent Society has admitted making payment of Rs. 48,41,407/- in favour of the Appellant after the signing of the MoU as against the lumpsum payment of Rs.80,75,000/- reserved under the MoU. Therefore, in the absence of any verification from the Architect for the execution of the work



for the balance amount, the learned Arbitrator was obliged to return a finding based on evidence that indeed the Appellant had executed the works enlisted in Annexure - II of the MoU, entitling the Appellant to its claim, before awarding the differential amount of Rs. 32,33,593/-.

12. The method adopted by the learned Arbitrator of simplicitor adjusting the amount of counter claim no.1 from the differential amount awarded under issue no.1, cannot substitute the fundamental requirement of actual evidence by the Appellant of execution of balance works under Annexure - II of the MoU. The learned Arbitrator has not recorded any reasons for arriving at the finding that the Appellant is entitled to the differential amount.

13. It is settled legal position¹ that a finding based on no evidence at all and or if an Arbitrator gives no reasons for an award, it would be in contravention of Section 31(3) of Act of 1996 and would amount to a patent illegality on the face of the award. The learned Single Judge has therefore, rightly set aside the amount awarded against issue no.1 and the corresponding award of interest on the said amount.

14. We, therefore, find no merits in this appeal and the same is dismissed. Pending applications stand disposed of.

ACTING CHIEF JUSTICE

MANMEET PRITAM SINGH ARORA, J

FEBRUARY 15, 2024/msh/aa [Click here to check corrigendum, if any](#)

¹Ssangyong Engg. & Construction Co. Ltd. v. NHAI, (2019) 15 SCC 131 Para 39 and Associate Builders v. DDA, (2015) 3 SCC 49 Para 42.2