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

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Date of Decision: 12.03.2024

+ **FAO(OS) (COMM) 312/2018**

M/S DEWAN CHAND

..... Appellant

Through: Mr T.P.S. Kang, Md. Zunaid and Mr
Sameer Kaushik, Advocates.

versus

KRISHAK BHARATI COOPERATIVE
LIMITED (KRIBHCO)

..... Respondent

Through: Mr Sudhir K. Makkar, Senior
Advocate with Mr S. Gupta,
Advocate.

CORAM:

HON'BLE MR. JUSTICE VIBHU BAKHRU

HON'BLE MS. JUSTICE TARA VITASTA GANJU

VIBHU BAKHRU, J. (Oral)

1. The appellant has filed the present appeal impugning orders dated 28.05.2018 and 10.09.2018 passed by the learned Single Judge in *OMP(COMM) 135/2017* captioned *Dewan Chand v. Krishak Bharati Cooperative Limited (KRIBHCO)*. The said application [OMP(COMM) 135/2017] was preferred by the appellant under Section 34 of the Arbitration and Conciliation Act, 1996 (hereafter *the A&C Act*) impugning an arbitral award dated 13.09.2014 (hereafter *the impugned award*).

2. In addition, the appellant also impugned a Supplementary Award dated 21.11.2014 (hereafter *the Supplementary Award*), which was delivered by the Arbitral Tribunal pursuant to an application filed by the appellant



under Section 33 of the A&C Act.

3. Mr Kang, learned counsel appearing for the appellant has confined the present appeal to a singular issue. According to him, the impugned award, in so far as it rejects the appellant's claim for interest amounting to ₹16,77,000/- (Claim C-4), is vitiated by patent illegality.

4. The disputes between the parties arise in respect of the contract for construction of KRIBHCO Head Office Complex, "KRISHAK BHARATI BHAWAN" at Noida, Uttar Pradesh (hereafter *the project*). The appellant had submitted its bid for a sum of ₹6,36,42,063.05/- for executing the project pursuant to the notice inviting tenders. The said bid was accepted. The work on the project commenced on 17.11.1989 and was required to be completed by 16.03.1991. The completion of the project was delayed and the construction and ancillary works were finally completed on 31.05.1994. The appellant submitted its Final Bill on 30.12.1994, which was certified by the Designated Architect on 11.12.1996.

5. The appellant raised several disputes in respect of the said contract. It claimed that the entire payment that was due, was not released. Additionally, the appellant had raised claims for extra items of work, alteration of works, escalation in the cost for execution of the work, and other claims in the nature of damages. In all, the appellant raised 23 claims in addition to other ancillary claims in respect of interest, bank charges etc.

6. The appellant claimed interest at the rate of 24% per annum on the amounts as claimed. Additionally, the appellant also raised a claim of



interest at the rate of 24% per annum on the amount of ₹18,26,110/- allegedly withheld by the respondent.

7. Whilst, some of the claims were allowed, others were rejected. As noticed at the outset, the learned counsel for the appellant has confined the present appeal to the rejection of the claim for interest on the retention money (referred to as *Claim C-4*). Therefore, it is not necessary to examine any other controversy in this appeal. As noted above, the appellant had also filed an application under Section 33 of the A&C Act for correction of the impugned award. The said application included a prayer to correct the impugned award in respect of the interest on retention money being Claim C-4. There was no typographical or such error in the impugned award in respect of the said claim. Therefore, the appellant's prayer in this regard was not entertained as being beyond the scope of Section 33 of the A&C Act.

8. The appellant's application under Section 34 of the A&C Act for setting aside the impugned award in respect of Claim C-4 was rejected by the learned Single Judge. The relevant extract of the impugned order rejecting the said contention reads as under:

“I have considered the submission made by the counsel for the petitioner, however, I find no merit in the same. The Arbitrator in his Award has found that the Retention Money deducted by the respondent from the Running Account Bills was to the tune of Rs.23,32,000/-. The same was to be released upon completion of the work by the petitioner. The period of completion of the work was extended till 31.05.1994, however, during the execution of the work itself, the respondent had released an amount of Rs.11.3 lacs in June, 1993 and a further amount of Rs.12 lacs on 02.11.1993. Therefore, the entire amount of Retention Money has been released to the petitioner even prior to the completion of the work. The



Arbitrator therefore, found that the claim for interest on this Retention Money was not justified.

I do not see any ground to interfere with this finding as the petitioner has been unable to show that any of the dates or figures given by the Arbitrator in the Award are incorrect or that there was any term in the Agreement which entitles the petitioner to claim interest on the retention money.

I may only note that the learned senior counsel for the respondent has submitted that apart from the above amount of Retention Money, the Impugned Award further directs the respondent to refund a sum of Rs.6.60 lacs [Claim No.C(2), C(3), C(4) and C(5)] by refusing to accept the case of the respondent that the same had been withheld towards Retention Money and refunded/adjusted.”

9. Before proceeding further, it would be relevant to refer to the relevant claim (Claim C-4) as set out in the Statement of Claim. Although, the Statement of Claim was not filed with the appeal, a hard copy of the same was handed over by the learned counsel for the appellant. The relevant extract of the said claim as articulated in the Statement of Claim is set out below:

“Claim No. C-4: Rs.16,77,000/-: Interest on retention money:

This claim has the genesis in the earlier claim in as much as, as the performance bank guarantee extended correspondingly. The Retention money was kept in cash by the Respondent from 91 to till 94 despite their having allowed various time extensions to the Claimant for completion of the work as the delays were beyond the control of the Claimant.

The Claimant kept on harping for release of Retention Money against Bank Guarantee but the Respondent failed to accede to the request of the Claimant hence the Claimant are claiming interest @ 24% p.a. being for the performance of business proportion on the value of retention money of 23.32 lacs for the 3 years period till such time the Respondent finally chose to release the same against Bank Guarantee the Claimants.”



10. As is apparent from the above, the said claim is not happily worded and it is difficult to understand the scope of the same. However, it is apparent that the appellant had claimed interest on the retention money of ₹23,32,000/- for a period of three years at the rate of 24% per annum. According to the appellant, the said amount had been withheld from various bills, which was required to be released. Since, according to the appellant, there was a delay in release of the said amount, it claimed interest on the amount for the period of delay. As noticed above, the claim was quantified on calculating interest at the rate 24% per annum on the retention amount of ₹23,32,000/-, for a period of three years from the year 1991-1994.

11. However, during the course of the arguments, Mr Kang handed over a statement indicating the calculation of the quantified claim of ₹16,77,000/-. According to him (and the calculation sheet handed over), the amount of ₹16,77,000/- comprises of four components. The first being interest at the rate of 18% per annum on the sum of ₹23,32,000/- (₹8,40,000/-). The second being interest at the rate of 18% per annum for five years on a sum of ₹5,35,000/-, which he states was in addition to ₹23,32,000/-. Next two components comprising amounts of ₹2,50,000/- and ₹1,05,000/- being bank charges on bank guarantee and retention amount.

12. We find no basis for the calculations as provided by Mr Kang. More importantly, it is not borne out by the articulation of Claim C-4 in the Statement of Claim, which is extracted above. It is apparent from the plain language that the appellant had quantified its claim for interest at the rate of 24% per annum on the retention amount of ₹23,32,000/- for a period of three



years from the year 1991-1994.

13. The Arbitral Tribunal had examined the said claim and rejected the same. The Arbitral Tribunal had noted that the execution of the works was delayed and was extended from time to time. The appellant had applied for extension of time for completion of works claiming that the delay was on account of other agencies and not the respondent. The respondent had granted the extension of time with the condition that there would be no extra claim on account of such extension. The Arbitral Tribunal noted that in terms of the contract between the parties, 5% of the amount payable under the R.A. Bills was required to be retained as retention money. The said amount was to be released to the appellant after handing over the completed works to the satisfaction of the respondent. The Arbitral Tribunal found that in terms of the said Clause [Clause 2.1(b)], the respondent had retained a total sum of ₹23,32,000/-. Thus, this amount was required to be released on completion of the works. Admittedly, the works were not completed till May 1994. The Arbitral Tribunal noted that the time for completing the works was finally extended till 31.05.1994, which was unconditionally accepted by the appellant.

14. It is apparent from a plain reading of the impugned award that the Arbitral Tribunal did not find merit in the appellant's claim for interest for the period from the year 1991 to 1994 for the reason that the works were not completed till then and the retention money was required to be released only on completion of the works to the satisfaction of the respondent or the Consultant. Notwithstanding the above, in fact, a sum of ₹11.3 lacs was



released to the appellant in June 1993. Further, a sum of ₹12 lacs was released against a bank guarantee. In the aforesaid context, the Arbitral Tribunal held that the appellant's claim for interest is farfetched.

15. We are unable to accept that the said conclusion of the Arbitral Tribunal vitiates the impugned award on the ground of patent illegality. It is apparent that the Arbitral Tribunal has examined the issue in dispute and its rejection of the said claim is founded on reason.

16. We, thus, find no merit in this appeal.

17. We are also of the view that it is a fit case where certain costs ought to be imposed on the appellant. This is so, because, we found it difficult to traverse through the pleadings, which are inconsistent at places. Illustratively, the appellant states that only 12 claims were filed. However, the Statement of Claim indicates that more than 23 claims were filed. The appellant has also annexed a copy of the rejoinder to the Statement of Claim and has bookmarked the same as the Statement of Claim. The Statement of Claim was not filed.

18. In view of the above, the present appeal is dismissed with costs quantified at ₹5,000/- to be paid to the respondent.

VIBHU BAKHRU, J

TARA VITASTA GANJU, J

MARCH 12, 2024
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