(2018) 11 DEL CK 0285

In the Delhi High Court

Case No : Original Miscellaneous Petition No.500 Of 2008

Delhi Transport Corporation APPELLANT

Vs

M/S Neel Kanth Placement Services (Regd.) RESPONDENT

Date of Decision : 15-11-2018

Acts Referred:

Arbitration and Conciliation Act, 1996 — Section 34

Citation : (2018) 11 DEL CK 0285

Hon'ble Judges : Prathiba M. Singh, J

Bench : Single Bench

Advocate : Jyotindra Kumar

Final Decision : Disposed Off

Judgement

Prathiba M. Singh, J

I.A. 4581/2017 (Delay in filing Restoration Application)

1. This application has been filed seeking condonation of delay of 101 days in filing of I.A. 4580/2017 for restoration of the petition. For the reasons

stated in the application, the delay is condoned.

2. I.A. is allowed.

I.A. 4580/2017 (Restoration Application)

3. This is an application seeking restoration of OMP 500/2008 which was dismissed for non-prosecution on 2nd December, 2016. For the reasons

stated in the application, OMP 500/2008 is restored.

4. I.A. is allowed.

O.M.P. 500/2008

5. The present petition has been filed under Section 34 of Arbitration and

Conciliation Act, 1996 challenging the award of the Learned Sole Arbitrator

dated 6th June, 2008, except to the extent of award passed qua Issue No. 2 therein. Thus, the DTC does not raise a challenge in respect of amounts

awarded by the Arbitrator under Issue No.2. However, the amounts payable on the whole is under challenge.

6. The brief background is that the Respondent is an out sourcing agency through whom drivers were employed by DTC vide contract dated 28th

April, 2004. The agreement was valid for a period of one year from 28th April, 2004. Services of drivers were being availed of by DTC and payment

was made on the basis of per kilometre rate. The payments for the months of February, March, April and May, 2006, were withheld out of the sums

payable to the drivers through the Respondent, as the Respondent had not made the statutory payments under the Employment Provident Fund

(hereinafter â??EPFâ??) and Employeesâ?? State Insurance Corporation (hereinafter â??ESICâ??). The ESICâ??s recovery officer had issued

notices to DTC and had also attached its bank accounts, as the DTC was treated as the principal employer of the drivers. In view of the notices

issued by ESIC and EPF, the DTC had made the payments to the said authorities. The amounts paid to the authorities were withheld by the DTC,

from the payments payable to the Respondent. In view of the withholding of payments to the Respondent by DTC, disputes arose between the parties

and the matter was referred to arbitration.

7. The agreement was valid for a period of one year from 28thÂ April, 2004 and were thereafter renewed on an annual basis. Services of drivers

were being availed of by DTC and payment was made on the basis of per kilometre rate. It is the case of the contractor that the payments for the

months of February, March, April and May, 2006 were illegally withheld by DTC out of the sums payable to the drivers. The learned Sole Arbitrator

vide the impugned award dated 6th June, 2008 awarded sums to the Respondent, after deducting the sum payable to the ESIC and EPF, awarded a

total sum of Rs.18,75,370 /-. Learned counsel for DTC does not dispute the fact that the total claimed amount was Rs.47,82,826/- and insofar as this

amount is concerned, there is no doubt as the same is evident from a document filed by DTC in OMP 499/2008. However, the payments made by

DTC to the EPF/ESIC authorities were liable to be deducted. Thus, the Ld. Sole

Arbitrator held that the total sum due to ESIC/EPF dues was

Rs.29,07,096/-. After deducting the said amount, the remaining amount has been awarded to the contractor as per issue No.3 i.e. a sum of

Rs.18,75,370/-. No objection is raised or pressed in respect of this amount awarded.

8. The Arbitrator, further allowed DTC to retain a sum of Rs.2,89,361/-towards any penalty which may be levied by the EPF authorities for non

payment of the EPF dues. The calculations of the Arbitrator are correct as per the record as also the notices issued by the statutory authorities. No

fault can be found insofar as these findings are concerned. Insofar as the amount withheld towards possible penalty by the EPF authorities, it appears

that the penalty amount has been awarded twice by the arbitrator, once as part of the EPF dues and again as part of the balance payable by the

Respondent. This is a duplication which deserves to be corrected. Thus, the amount of Rs.2,89,361/- is liable to be reduced from the sum allowed to

be retained by the DTC. If any penalty is imposed by EPF authorities, DTC is entitled to recover the same from the Respondent.

9. Learned counsel for the Petitioner submits that as per Issue No.4, the learned Arbitrator has not clarified that the liability, if any, towards the drivers

before the Labour Commissioner is of the contractor and not of DTC. It is, seen that this Court on 31st August, 2018 has already passed similar

orders clarifying that the liabilities, if any, before the Deputy Labour Commissioner in the proceedings filed by the drivers would only be that of the

contractor and DTC would not be liable for the dues of the drivers. It is accordingly clarified that the liability of the dues of drivers before the Labour

commissioner shall be that of the Respondent-Contractor and not that of the DTC.

10. The last submission of learned counsel for DTC is in respect of the interest. In the connected similar matters, this Court has already reduced the

interest from 18% to 10% per annum from the date of award till the date of payment. The same shall be applicable even in the present case. The

payment shall be released within a period of 8 weeks by the Petitioner â?"DTC to the Respondent, failing which, interest on the total amount awarded

@ 12% per annum would be liable to be paid, on the total decretal amount till the date of actual payment.

11. With these modifications, the O.M.P. is disposed of.

