
(2023) 11 J&K CK 0025
In the Jammu And Kashmir High Court
Case No : Arbitration Petition No. 3 Of 2021

J&K Tourism Development Corporation Ltd	APPELLANT
Vs	
Indu Dhar Aima And Others	RESPONDENT

Date of Decision : 09-11-2023

Acts Referred:

Jammu And Kashmir Arbitration And Conciliation Act, 1997 — Section 31(7)(a), 37

Citation : (2023) 11 J&K CK 0025

Hon'ble Judges : Tashi Rabstan, J; Mohan Lal, J

Bench : Division Bench

Advocate : K.D.S. Kotwal, U.K. Jalali, Shivani Jalali

Final Decision : Dismissed

Judgement

Tashi Rabstan, J

1. The petitioner has filed this appeal under Section 37 of the J&K Arbitration and Conciliation Act, 1997 against the order dated 09.04.2021 passed in Arbitration Application No.44/2006, whereby the learned Single Judge while dismissing the application held that the arbitrator has bonafidely interpreted the decision of the Board of Directors and has come to the conclusion that the Board of Directors has, in principal, accepted the claim of escalation lodged by the contractor.
2. Heard learned counsel appearing for the parties, considered their rival contentions and perused the file.
3. Admittedly, phase-I and phase-II of the work relating to construction of Tourist Bungalow Sanasar was completed and handed over by the contractor to the appellants herein on 04.02.1995 and the contractor was also paid the amount in terms of the contract agreements. Although as per the Engineer-in-charge there was a delay of one year and three months in completing the works, he, however, opined that the delay was on account of reasons beyond the control of contractor. The contractor, on the other hand, laid a claim of Rs.13.39 lacs along with interest on account of escalation of costs while invoking Clause 43 of

the original agreement on the ground that the stoppage of work was on account of paucity of funds on the part of appellant herein. Accordingly, the matter was placed before the Board of Directors and the Board of Director in its meeting held on 24.09.1998 approved the proposal of the Managing Director for entering into negotiations with the contractor for payment of escalation of costs of Rs.13.39 lacs. The Managing Director was also directed to work out the modus operandi of release of payment and inform the Board accordingly; meaning thereby one can easily infer that the Board of Directors had approved for payment of escalated costs but at a negotiated price and, further, the Managing Director had to see how the payment could be released in favour of the contractor. Thus, the approval of the Board of Directors for entering into negotiations with the contractor for payment of escalation of costs leads to the conclusion that the Board members were also convinced that the delay in executing the work was not attributable to the contractor. Therefore, we are also in complete agreement with the learned Single Judge that the delay was not due to the fault of the contractor, rather, as per the report of Engineer-in-charge himself, the delay was on account of financial crunch faced by the Corporation during the year 1994-95, as such the contractor was entitled to recover the escalation cost.

4. Now we come to the next contention of learned counsel for appellant that awarding of interest at the rate of 9% is on higher side under the provisions of Jammu and Kashmir Arbitration & Conciliation (Amendment) Act, 2010, whereby it empowers the arbitrator to award interest not exceeding 6%, unless otherwise agreed by the parties.

5. Here, it is to be seen that the contract-in-question came to be awarded to the appellant in the year 1991 when the pre-amended Section 31(7)(a) of Jammu and Kashmir Arbitration & Conciliation Act, 1997 was in force, whereby in terms of the section the arbitrator was empowered to award interest at such rate as it deems reasonable on the whole or any part of the money. Whereas, the amendment came with effect from 20.04.2010. Therefore, in terms of the pre-amended provision, we do not find any reason to conclude that the arbitrator had erred in awarding 9% interest from the date of filing application for appointment of an arbitrator till its realization.

6. Therefore, in view of the above, we are not inclined to take a view other than the one taken by the learned Single Judge. The arbitration application is, accordingly, dismissed along with connected CM(s), if any.