

(2006) 07 DEL CK 0136
In the Delhi High Court
Case No : OMP 281 of 2005

Municipal Corpn. of Delhi

APPELLANT

Vs

Rama Construction Co.

RESPONDENT

Date of Decision : 19-07-2006

Acts Referred:

Arbitration and Conciliation Act, 1996 — Section 11, 11(2), 28(3), 34, 34(2)

Citation : (2006) 3 ARBLR 276 : (2006) 131 DLT 613

Hon'ble Judges : Manju Goel, J

Bench : Single Bench

Advocate : Mini Pushkarana, for the Appellant; Ranjana Srivastava, for the Respondent

Final Decision : Dismissed

Judgement

Manju Goel, J.—The Municipal Corporation of Delhi (in short "MCD") has filed the objections under Sections 34 and 28(3) of the Arbitration and Conciliation Act, 1996 (hereinafter referred to as "The Act") against the Arbitral Award dated 2.5.2005 passed by the sole Arbitrator-Mr.B.L.Garg. The Arbitrator was appointed by this Court vide orders dated 15.10.2004 in Arbitration Petition No. 190/2004. The respondent-M/s Rama Construction Co. was awarded the contract for construction of Jan Suvidha Complex at (i) E-7, Block, Near Park, (160 seater) single storey and (ii) D-2 Block, Near Sulabh (20 Seater) single storey in Sultanpuri, Najafgarh Zone, New Delhi vide a contract Order No. EE-Xxviii/TC/2001/509 dated 25.9.2001 for a contractual amount of Rs.68,48,000/-. Clause 25 of the Agreement provided for the dispute resolution mechanism which included the arbitration clause. On account of the dispute that arose regarding the payment due to the respondent the arbitration clause was invoked and the Arbitrator appointed u/s 11 of the Act. The Arbitrator awarded a sum of Rs.15,65,492/- towards final payment as under

(I) Rs. 15,65,492/- towards the final payment;

- (ii) Award of interest @12% per annum w.e.f. 30.6.2002 till the date of payment;
- (iii) Rs. 1,00,000/- on account of refund of security deposits.;
- (iv) Award of interest @ 12% per annum w.e.f. 30.6.2002 till the date of payment;
- (v) Rs. 30,000/- awarded towards costs and further Rs.2550/- towards the statutory cost of stamp.

2. The grounds for challenge of the Award are as under:

- 1) The composition of the Arbitral Tribunal was not in accordance with the agreement of the parties;
- 2) Clause 25 of the agreement required the contractor to seek his remedy with the Superintending Engineer and thereafter with the Chief Engineer before invoking the arbitration clause which was not followed in this case;
- 3) The payment could be made by the objection petitioner only on availability of funds and, Therefore, awarding of interest @12% per annum was against the prevalent practice in transactions between the contractor and the objection petitioner;
- 4) Interest @12% per annum awarded by the Arbitrator was higher than the prevailing rate of interest;
- 5) The Arbitrator should not have awarded interest against the objection petitioner in view of the constraints of adjusting the yearly budget and in view of the default on the part of the Government of India in releasing the requisite funds in favor of the objection petitioner.

3. So far as the first two objections are concerned, it is futile for the objection petitioner to raise them at this stage because the appropriate stage for raising these objections was during the pendency of the petition u/s 11 of the Act. The Court appointed the Arbitrator u/s 11 of the Act. This order u/s 11 has not been challenged in any proceedings so far. Accordingly, these two objections cannot now be considered.

4. The other objections relate to the rate of interest. The objection petitioner has not challenged the Arbitrator's power to grant interest. However, it is submitted that the Arbitrator should not have awarded any interest in view of the constraints under which the objection petitioner has to work and secondly, the rate of interest is higher than the prevalent market rate. There is, however, nothing on record to show that the interest rate at the relevant time was much lower than the interest awarded by the Arbitrator. So far as the propriety of awarding of interest is concerned, the same cannot be a ground for challenge as per the provisions of Section 34 of the Act. The law sought to be invoked in support of the objection is Section 34(2)(b)(ii) of the Act, which is to the effect that the Arbitral Award is in conflict with Public Policy of India. In my opinion it is

too far fetched to say that the Public Policy of India in any way stands in the way of awarding of interest against a Municipal Authority or against the objection petitioner. When the contract is entered into by the petitioner, which is a Municipal Authority, and a building contractor, interest on delayed payment is a natural corollary that has to be accepted by the two contracting parties. No Public Policy of any kind is cited which in any way precludes an Arbitrator from awarding interest on delayed payments against a Municipal Authority. The petitioner-MCD has referred to the case of Oil and Natural Gas Corporation Ltd. Vs. SAW Pipes Ltd., wherein an award of interest was set aside as the Arbitrator had awarded interest on a disputed claim which was against the terms of the contract between the parties. The judgment is clearly not applicable to the facts of the present case.

5. I, Therefore, find no merit in any of the objections raised by the objection petitioner. The objection petition is, accordingly, dismissed.