

IN THE HIGH COURT OF DELHI AT NEW DELHI

% Judgment delivered on: 19.04.2022

+ **O.M.P. (COMM) 300/2020**

DELHI DEVELOPMENT AUTHORITY Petitioner

versus

**M/S WATCON WATER SPECIALISTS PVT.
LTD. & ANR.** Respondents

Advocates who appeared in this case:

For the Petitioner : Ms. Kanika Singh, Adv.

For the Respondents : Mr. Kirti Uppal, Sr. Adv. with Mr. Prateek
: Solanki and Mr. Shaurya Rohit.

**CORAM
HON'BLE MR JUSTICE VIBHU BAKHRU**

JUDGMENT

VIBHU BAKHRU, J

1. The Delhi Development Authority (hereinafter '**DDA**') has filed the present petition under Section 34 of the Arbitration and Conciliation Act, 1996 (hereinafter '**the A&C Act**') impugning an Arbitral Award dated 30.10.2014 (hereinafter '**the impugned award**') delivered by a Sole Arbitrator (hereinafter '**the Arbitral Tribunal**').

2. The impugned award was rendered in the context of disputes that had arisen between the parties in relation with three agreements dated

20.02.2010, 24.02.2010 and 26.02.2010 respectively (hereinafter collectively referred to as '**the Agreements**').

Factual Context

3. DDA issued a Notice Inviting Tender (hereinafter '**NIT**') regarding (i) construction and refurbishment of training venues at Siri Fort Sports Complex (hereinafter '**Project no. 1**'); (ii) refurbishment of training venues at Yamuna Sports Complex (hereinafter '**Project no. 2**'); and, (iii) work of Commonwealth Games Village near Akshardham Temple (hereinafter '**Project no. 3**') from all eligible contractors. [Project no.1, Project no.2 and Project no.3 are hereinafter collectively referred to as '**the Projects**'].

4. Pursuant to the said NIT, the respondent (hereinafter, '**WWS**') submitted its bids for executing the Projects on 02.01.2010. WWS's bid was accepted after negotiations and DDA issued three separate Letters of Award (hereinafter '**LoA**') dated 09.02.2010, 15.02.2010, 17.02.2010 in respect of Project no. 2, Project no. 3 and Project no. 1 respectively. Thereafter, the Agreements were executed between the parties on 20.02.2010 for Project no. 3; on 24.02.2010 for Project no. 1; and on 26.02.2010 for Project no. 2. These were for the contract value of ₹4,79,95,245/-, ₹4,03,29,907/- and ₹4,07,31,638/- respectively.

5. Under the terms of the Agreements, DDA agreed to reimburse WWS for the service tax payable/applicable. However, the reimbursement was contingent upon the submission of proof of payment to the concerned department. Additionally, DDA was required

to pay WWS the charges for airlifting of equipment as provided by WWS in its tender.

6. The stipulated date of completion for Project nos. 1 and 3 was 24.07.2010 and for Project no. 2 was 20.06.2010. WWS contends that it had completed the work on or before the stipulated dates. However, DDA disputes the same. According to DDA, Project nos. 1 and 3 were completed on 15.09.2010 and Project no. 2 was completed on 28.09.2010.

7. By a letter dated 29.01.2011, WWS informed DDA that the airfreight charges were billed within the price of the equipment and they were unable to provide separate bills for air lifting charges. WWS explained that this was due to complex taxation issues and no agency was able to provide separate bills for airlifting of goods. Additionally, WWS claimed that the charges for airlifting of goods were a part of the tender and these had already been accepted by DDA, thus, necessitating no further details.

8. WWS claims that DDA, through various correspondence in the month of June, 2011, insisted on separate bills for air freight charges. WWS further claims that, it sent letters to the concerned authorities requesting for release of payments. However, DDA did not take any action in respect of the same.

9. WWS contends that, subsequently, by a letter dated 31.10.2011, addressed to the Member Engineering of DDA, it referred to the Dispute Resolution Clause under the Agreements and requested for the

appointment of an arbitrator; however, DDA did not take any further steps pertaining to the requests made by WWS. DDA, disputes the same.

10. WWS approached this Court by way of a petition under Section 11 of the A&C Act and requested for the appointment of a sole arbitrator to adjudicate the disputes between the parties. The said petition was allowed. By an order dated 25.05.2012, this Court referred the parties to arbitration and appointed the learned Sole Arbitrator.

11. The claims made by WWS in the Statement of Claims and as awarded in terms of the impugned award are tabulated below:

CLAIM No.	PARTICULARS	CLAIMED AMOUNT	AWARDED AMOUNT
1.	Reimbursement of Service Tax for Siri Fort Complex	₹12,30,636/-	₹12,30,636/-
2.	Interest on Claim No.1 at the rate of 18% per annum Awarded simple interest at the rate of 12% per annum	₹4,15,937/-	₹2,45,086/-
3.	Air Lifting Charges towards equipment placed on Siri Fort Sports Complex	₹13,71,000/-	₹13,71,000/-

4.	Interest on Claim No.3 at the rate of 18% per annum Awarded simple interest at the rate of 12% per annum	₹4,52,430/-	₹3,01,620/-
5.	Reimbursement of Service Tax for Akshardham Complex	₹17,80,000/-	₹17,80,000/-
6.	Interest on Claim No.5 at the rate of 18% per annum Awarded simple interest at the rate of 12% per annum	₹2,38,252/-	₹3,21,669/-
7.	Interest on Claim No.5 from October, 2011 to 30.06.2012 at the rate of 18% per annum Awarded simple interest at the rate of 12% per annum	₹32,164/-	₹18,799/-
8.	Air Lifting Charges towards equipments placed on Akshardham Complex	₹24,41,000/-	₹24,41,000/-

9.	Interest on Claim No.8 at the rate of 18% per annum Awarded simple interest at the rate of 12% per annum	₹8,05,530	₹5,37,020/-
10.	Reimbursement of Service Tax for Yamuna Sports Complex	₹13,86,567/-	₹13,86,567/-
11.	Interest on Claim No. 10 at the rate of 18% per annum Awarded simple interest at the rate of 12% per annum	₹4,17,533.43/-	₹2,73,266/-
12.	Air Lifting Charges towards equipment placed on Yamuna Sports Complex	₹13,71,000/-	₹13,71,000/-
13.	Interest on Claim No.12 at the rate of 18% per annum Awarded simple interest at the rate of 12% per annum	₹4,52,430/-	₹3,01,620/-
14.	Interest on delayed payment	₹41,03,811.65/-	NIL
15.	<i>Pendente lite</i> and future interest at the rate of 18% per		₹32,42,199/-

	annum on Claim No.1 to 14 Awarded at the rate of 12% per annum		
16.	Cost of Arbitration including Legal Fees	₹5,50,000/-	NIL

12. DDA filed its Statement of Defence, however, it did not raise any counter-claims.

The Impugned Award

13. The Arbitral Tribunal allowed majority of claims preferred by WWS. By the impugned award, the Arbitral Tribunal entered an award of a sum of ₹12,30,636/- towards the reimbursement of service tax for Siri Fort Complex (Claim No.1); an amount of ₹13,71,000/- towards the air lifting charges of equipment placed on Siri Fort Sports Complex (Claim No.3); an amount of ₹17,80,000/- towards reimbursement of service tax for Akshardham Complex (Claim No.5); an amount of ₹24,41,000/- towards the air lifting charges of equipment placed on Akshardham Complex (Claim No. 8); an amount of ₹13,86,567/- towards reimbursement of service tax for Yamuna Sports Complex (Claim No. 10); an amount of ₹13,71,000/- towards air lifting charges towards equipment placed on Yamuna Sports Complex (Claim No. 12). The Arbitral Tribunal further awarded simple interest at the rate of 12% per annum from the date of completing the aforesaid actions to the date

of submission of the claims to the Delhi High Court Arbitration Center. Additionally, the Arbitral Tribunal awarded *pendente lite* interest at the rate of 12% per annum from 01.07.2012 to the date of the award, amounting to ₹32,42,199/-. The Arbitral Tribunal also awarded future interest at the rate of 12% per annum from the date of the award till its realization, in case the awarded amount was not paid by DDA within a period of ninety days of the award.

14. Aggrieved by the impugned award, DDA has filed the present petition.

Submissions

15. Ms Singh, learned counsel appearing for DDA, assailed the impugned award, essentially, on three grounds. First, she submitted that as per the relevant clauses of the Agreements, the reimbursement for air lifting charges was contingent upon WWS producing the requisite documentation as proof of having incurred the said air lifting charges. She contended that the amount mentioned in the Agreements is the maximum amount payable as airlifting charges. She submitted that WWS was required to establish the amount paid as airlifting charges for seeking any reimbursement of the same. However, WWS has failed to do so. It had submitted airway bills that did not mention any specific amount as airlifting charges. She referred to the decision of this Court in ***Delhi Development Authority v. M/s Eros Resorts & Hotels LTD.: O.M.P. (COMM) 455 of 2019 and O.M.P. (COMM) 456 of 2019, decided on 22.03.2021***, in support of her contentions.

16. Second, she submitted that the impugned award results in unjust enrichment and the same is contrary to the fundamental policy of Indian Law. She referred to the decision of the Supreme Court in ***Patel Engineering Ltd. v North Eastern Electric Power Corporation Limited: (2020) 7 SCC 167*** and of the Bombay High Court in ***M/s Angerlehner Structurals & Civil Engineering Co. And Ors v. The Municipal Corporation of Greater Mumbai And Ors: (2017) SCC OnLine Bom 1743***, in support of her contention.

17. Lastly, she submitted that the Arbitral Tribunal has awarded interest on the interest and the Arbitral Tribunal had no jurisdiction to do so. She referred to the decision of a Coordinate Bench of this Court in ***North Delhi Municipal Corporation v. M/s Ravi Builders: (2018) SCC OnLine Del 10126***, in support of her contention. Further, she submits that the rate of interest awarded by the Arbitral Tribunal is excessive. She referred to the decisions of the Supreme Court in ***Oriental Structural Engineers Pvt. Ltd. v. State of Kerala: AIR 2021 SC 2031*** and ***Krishna Bhagya Jala Nigam Ltd. v. G. Harischandra Reddy and Ors.: (2007) 2 SCC 720***, in support of her contention.

18. Mr. Uppal, learned senior counsel appearing for WWS, countered the aforesaid submissions. He submitted that the term “relevant document” was unclear and ambiguous. He submitted that all the relevant documents in the possession of WWS had already been submitted. He further contended that DDA’s demand for a separate bill for airlifting charges was not stipulated in the Agreements. He referred to the decision of the Supreme Court in ***Bank of India v. K. Mohandas:***

(2009) 5 SCC 313 and contended that true construction of a contract is dependent upon the language of the agreement, and not on subsequent communications.

19. He conceded that the awarded amount in respect of Claim No.7 is unsustainable and amounts awarded against Claim No.15 may be readjusted as well.

Reasons and Conclusion

20. At the outset, it is relevant to note that DDA has confined the challenge to the impugned award to the amounts awarded against Claim nos. 3, 4, 7, 8, 9, 12, 13, 15 and 16. Claim nos. 3, 8 and 12 relate to award of airlifting charges in respect of the Agreements and Claim nos. 4, 9 and 13 are claims for interests on the airlifting charges as claimed under Claim nos. 3, 8 and 12 respectively. Claim no.7 is in respect of interest on Claim no.5; and, Claim no.15 is for *pendente lite* interest.

21. The controversy in the present petition, principally, relates to the award of airlifting charges and interest.

22. The LoAs expressly provided for payment of airlifting charges. The LoA in respect of Project no. 1 (Siri Fort Sports Complex) contained a specific note, which reads as under:

“Note:- The Air lifting charges are restricted to Rs.13,71,000/- (Rs. Thirteen Lacs Seventy One Thousand Only) subject to reimbursement to expenses on production of relevant documents by

the Agency. It may also be ensured that the product confirms to the approved specifications.”

23. Similar clauses were also included in the LoAs for Project nos. 2 and 3. The LoA dated 15.02.2010 in respect of Project no. 3 contained a specific clause, which reads as under:

“Percentage for the purpose: 3.44% below (Three point Four Four percent of clause-12 below the estimated cost) excluding the cost of air lifting charges Rs. 24,41,000/- only subject to reimbursement of expenses on production of relevant documents by the agency.”

24. The LoA for Project no. 2 contained a clause, which reads as under:

“4. The Airlifting charges are restricted to Rs.13,71,000/- (Rs. Thirteen lacs Seventy one thousand only) subject to reimbursement of expenses on production of relevant documents submitted by you & conforming the products to the approved specifications.”

25. It is DDA’s case that since all the aforementioned clauses expressly provided for reimbursement of charges, the same would be permissible on production of sufficient evidence to establish that WWS had incurred the said costs. Airlifting charges, as referred, were capped and in the event WWS established that the costs incurred had exceeded

the maximum amount as stipulated, WWS would not be paid any amount in excess of the specified amounts.

26. The dispute between the parties, essentially, related to the construction of the words ‘relevant documents’ as used in the relevant clauses as set out above. The ‘relevant documents’ were not specified. WWS claimed that once it had established that the equipment had been airlifted, it would be entitled to the amounts as mentioned in the LoAs. WWS also claimed that there were no separate bills for airlifting charges as those were included in the cost of the equipment, which was airlifted. It had established that the equipment was airlifted and the charges for the same (which were included in the bills) were paid. And, it was not possible for bifurcating the bills, to separately indicate the costs of goods as well as the airlifting charges.

27. The Arbitral Tribunal had examined the aforesaid clauses in the context of WWS’s claim that it was not feasible to separately show the charges incurred by it for airlifting the equipment. The Arbitral Tribunal was of the view that the ‘relevant documents’ in the circumstances would be such documents, which established that, in fact, the equipment had been airlifted. It is important to note that one of the factors that persuaded the Arbitral Tribunal to accept this view was that the amount of the said charges was considered by DDA while evaluating the bids submitted by various bidders. The bids submitted by WWS were found to be the lowest after considering the said charges. In this view, it was reasonable to assume that DDA was required to reimburse the said charges subject to WWS establishing that the goods had been airlifted.

28. It was established from the material on record that, in fact, the goods in question had been airlifted. The airway bills for the same had been produced. In addition, there were communications on record whereby WWS had invited the representatives of DDA to inspect the goods at the airport warehouses before clearance.

29. The principal question to be addressed is whether the Arbitral Tribunal's interpretation vitiates the impugned award on the ground of patent illegality. It is well settled that the question as to interpretation of the terms of a contract fall within the jurisdiction of the Arbitral Tribunal. In ***MSK Projects India (JV) Ltd. v. State of Rajasthan and Anr.: (2011) 10 SCC 573***, the Supreme Court had observed "If the arbitrator commits an error in the construction of the contract, that is an error within his jurisdiction."

30. In ***Indian Oil Corporation Ltd. Through its Senior Manager v. M/s Shree Ganesh Petroleum Rajgurunagar Through its Proprietor Mr. Laxman Dagdu Thite, Civil Appeal Nos. 837-838 of 2022, decided on 01.02.2022***, the Supreme Court held as under:-

"44. An Arbitral Tribunal being a creature of contract, is bound to act in terms of the contract under which it is constituted. An award can be said to be patently illegal where the Arbitral Tribunal has failed to act in terms of the contract or has ignored the specific terms of a contract.

45. However, a distinction has to be drawn between failure to act in terms of a contract and an erroneous interpretation of the terms of a contract. An Arbitral Tribunal is entitled to interpret the terms and conditions

of a contract, while adjudicating a dispute. An error in interpretation of a contract in a case where there is valid and lawful submission of arbitral disputes to an Arbitral Tribunal is an error within jurisdiction.

46. The Court does not sit in appeal over the award made by an Arbitral Tribunal. The Court does not ordinarily interfere with interpretation made by the Arbitral Tribunal of a contractual provision, unless such interpretation is patently unreasonable or perverse. Where a contractual provision is ambiguous or is capable of being interpreted in more ways than one, the Court cannot interfere with the arbitral award, only because the Court is of the opinion that another possible interpretation would have been a better one.”

31. In ***Steel Authority of India Ltd. v. Gupta Brother Steel Tubes Ltd.***: (2009) 10 SCC 63, the Supreme Court observed as under:

“18.(ii) An error relatable to interpretation of the contract by an arbitrator is an error within his jurisdiction and such error is not amenable to correction by courts as such error is not an error on the face of the award.”

32. In a recent decision of the Supreme Court in ***Delhi Airport Metro Express Pvt. Ltd. v. Delhi Metro Rail Corporation Ltd.***: 2021 SCC OnLine SC 695, the Supreme Court has further explained the ground of patent illegality in the following words:

“25. Patent illegality should be illegality which goes to the root of the matter. In other words, every error of law committed by the Arbitral Tribunal would not fall within O.M.P. (COMM) 503/2019 Page 16 of 19 the expression ‘patent illegality’. Likewise, erroneous application of law cannot be categorised as patent

illegality. In addition, contravention of law not linked to public policy or public interest is beyond the scope of the expression 'patent illegality'. What is prohibited is for courts to re-appreciate evidence to conclude that the award suffers from patent illegality appearing on the face of the award, as courts do not sit in appeal against the arbitral award. The permissible grounds for interference with a domestic award under Section 34(2-A) on the ground of patent illegality is when the arbitrator takes a view which is not even a possible one, or interprets a clause in the contract in such a manner which no fair-minded or reasonable person would, or if the arbitrator commits an error of jurisdiction by wandering outside the contract and dealing with matters not allotted to them. An arbitral award stating no reasons for its findings would make itself susceptible to challenge on this account. The conclusions of the arbitrator which are based on no evidence or have been arrived at by ignoring vital evidence are perverse and can be set aside on the ground of patent illegality. Also, consideration of documents which are not supplied to the other party is a facet of perversity falling within the expression 'patent illegality'."

33. Undeniably, the question raised by DDA regarding interpretation of the clauses of the LoA, is a substantial one. However, bearing the aforesaid principles in mind, this Court is required to confine the examination in these proceedings to whether the view expressed by the Arbitral Tribunal is perverse and one, that no person could possibly accept. Clearly, the view of the Arbitral Tribunal is a plausible view. Given the fact that the airlifting charges were included in the evaluation of the bids and the bid of WWS was found to be the lowest; it would stand to reason that the airlifting charges are included as a part of the agreed consideration. Payment of the same was subject to WWS

producing the relevant documents. In these circumstances, it would be plausible to hold that ‘relevant documents’ would mean such documents so as to establish that, in fact, the goods had been transported by air. In addition, the Arbitral Tribunal also accepted the view that it was not feasible for WWS to separately indicate the airlifting charges as they were included in the bills.

34. This Court is unable to accept that the aforesaid view of the Arbitral Tribunal is patently erroneous. Thus, DDA’s challenge to the impugned award insofar as it relates to WWS’s Claim nos. 3, 8 and 12, is liable to be rejected.

35. DDA’s challenge to the award of interest in respect of airlifting charges that remained outstanding [Claim nos. 4, 9 and 13], are also contingent on DDA succeeding in its challenge to Claim nos. 3, 8 and 12. Since, the same have not been accepted, DDA’s challenge to award of interest on airlifting charges also fails.

36. The only question, relating to award of interests, that requires to be examined is in respect of the Arbitral Tribunal’s decision to allow Claim nos. 7 and 15. The Arbitral Tribunal accepted WWS’s claim for reimbursement of service tax in respect of Project no. 3 and awarded an amount of ₹17,80,000/- (Rupees Seventeen Lakhs and Eighty Thousand) on account of service tax paid by WWS. DDA has not impugned the decision of the Arbitral Tribunal to allow the said claim. WWS had further claimed interest at the rate of 18% per annum on the said amount of ₹ 17,80,000/-, paid as service tax. The said claim was partly allowed and the Arbitral Tribunal had awarded interest at the rate

of 12% per annum on the amount of service tax from the dates on which it was deposited till 30.06.2012. The Arbitral Tribunal quantified the same at ₹3,21,669/-. In addition to the above, the Arbitral Tribunal also allowed WWS's claim for further interest (Claim no. 7) on the aforesaid amount of ₹3,21,669/-. Clearly, an award of interest on interest cannot be sustained. Mr Uppal, learned senior counsel appearing for WWS, had readily conceded that the claim of interest on interest was unsustainable and the impugned award to that extent is liable to be set aside.

37. In view of the above, the amount of ₹18,799/- awarded against Claim no. 7, is set aside.

38. It is also noted that the Arbitral Tribunal had awarded *pendente lite* interest at the rate of 12% per annum on all the claims, which would also include interest awarded in respect of the service tax and airlifting charges (Claim nos. 2, 4, 6, 7, 9, 11 and 13). The Arbitral Tribunal had quantified *pendente lite* interest at the rate of 12% per annum on the amount of ₹1,15,79,283/- at ₹32,42,199/-. It is apparent that *pendente lite* interest on the amount of awarded interest, in effect, amounts to awarding interest on interest, which is impermissible. Thus, the impugned award, to the extent it allows *pendente lite* interests on interests, as stated above, is set aside.

39. The Arbitral Tribunal has also awarded future interests at the rate of 12% per annum on the entire awarded amount including interests. This Court finds no infirmity with the award of future interests, even though it includes interest on pre-award interests. In terms of Section

31(7)(a) of the A&C Act, an arbitral tribunal is empowered to include interests on any sum awarded in the arbitral award. Further, in terms of Section 31(7)(b) of the A&C Act, the amount awarded is also liable to carry interests unless the award indicates otherwise. Thus, an arbitral tribunal would also have the power to award future interests on the awarded amounts, which as expressly provided under Section 31(7)(a) of the A&C Act, may include interests on the amounts awarded.

40. In this view, there is no infirmity in the impugned award inasmuch as, the Arbitral Tribunal has awarded future interests at the rate of 12% per annum on the awarded amounts. However, since the amounts awarded against Claim no. 7 and further *pendente lite* interests on interests as awarded against Claim no. 15 have been partly set aside, the future interests would run only in respect of the amounts so ascertained and not on the amount of ₹1,48,21,482/-, as awarded in the impugned award.

41. The impugned award to the extent that it relates to WWS's Claim no.7 and further *pendente lite* interests on interests awarded against Claim nos. 2, 4, 6, 7, 9, 11 and 13 is, accordingly, set aside.

42. The petition is disposed of in the aforesaid terms.

VIBHU BAKHRU, J

APRIL 19, 2022

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