

P.C. Sharma and Co. Vs. Delhi Development Authority

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SooperKanoon Citation : sooperkanoon.com/692604

Court : Delhi

Decided On : Apr-01-1997

Reported in : AIR1997Delhi1786; 70(1997)DLT521

Judge : K. Ramamoorthy, J.

Acts : [Arbitration Act, 1940](#) - Sections 30

Appeal No. : Suit No. 1727 of 1994 and Interim Application No. 9624 of 1995

Appellant : P.C. Sharma and Co.

Respondent : Delhi Development Authority

Advocate for Pet/Ap. : K.M. Sharma and; A. Salwan, Advs

Judgement :

K. Ramamoorthy, J.

(1) The Arbitrator had passed the award on 30.7.1994 in favor of the claimant M/s. P.C. Sharma & Co. and against the D.D.A. The D.D.A. has filed the objections. The contract between the claimant and the D.D.A. was for the construction of 840DUs under S.F.S. in Pocket-VIII, Sector-Cat Vasant Kunj S.H. 64 Cat. III, 48 Cat. II and 80 scooter garages i.e. internal development Group II. The disputes arose between the parties and they were referred for adjudication.

(2) In Claim No. 1 the claimant has claimed a sum of Rs. 21,985.00 on account of refund of rebate deducted for payment of monthly bill without fulfilling the contingent condition. The Arbitrator had stated the claim of the claimant in the following terms: Respondents had accepted claimants' condition regarding offer of rebate of 0.25% on estimated cost of work for making monthly payments provided the gross value of the work done in any month was not less than Rs. 25,000.00 and this rebate was to be deducted from each running bill. Claimants had pleaded that provisions of the condition of monthly payment was not adhered to by respondents and that in the total time of nearly 56 months taken in completing the work, only 27 running account bills for work done were paid. The Arbitrator dealt with the objection of the D.D.A. in the following terms : Respondents have denied the claim pleading that as per Clause 8 of the contract, bills were required to be submitted by the claimants by a fixed date but they did not do so and hence they could not be paid monthly bills. This argument is not convincing as the practice in D.D.A. is that bills are invariably prepared by the departmental staff as covered in latter part of Clause 8. Since for work done on an average only one payment has been made in two month' time, the condition of monthly payment for availing rebate has been violated and hence availing of rebate is not admissible. The Arbitrator has awarded a sum of Rs. 21,985.00 against Claim No. 1. I do not find any infirmity in the reasoning and I confirm this part of the award.

(3) In Claim No. 2 the claimant has claimed as sum of Rs. 21,986.00 on account of refund of rebate deducted without fulfilling the contingent condition for payment of final bill within 6 months of the completion of work.

(4) The Arbitrator had awarded a sum of Rs. 21,986.00 . In the objection filed by the D.D.A. it is stated that the Arbitrator had rendered findings quite contrary to the conditions of the agreement and in particular had ignored Clauses 7 and 8 of the agreement. I have perused the award of the Arbitrator and the reasoning given by him for awarding an amount on Claims 1 and 2. I do not find any merits in the objections filed by the D.D.A. against Claims 1 and 2. therefore, the award of the Arbitrator on Claims 1 and 2 is upheld.

(5) The Arbitrator has dealt with Claims 3, 5 and 10 together. According to him, these claims relate to the work done by the claimant for which payments have been made at the rates less than agreed rates. These claims are. Claim No. 3 for Rs. 10,245/0 on account of final bill in respect of un-disputed items. Claim No. 5 for Rs. 59,037.35 for refund of illegal deduction made for alleged defects/deficiencies in work styling them as deduction items and Claim No. 10 for Rs. 35,136.00 on account of cost of work done but not paid in respect A.C. rain water pipes, providing grooves in plaster and plastering of exposed surface of Rcc shelves.

(6) The Arbitrator has awarded a total sum of Rs. 56,673.00 in all the three claims together i.e. Claim Nos. 3, 5 and 10. The objection filed by the D.D.A. is that the claim did not use Isi mark materials and, therefore, the deduction has been made. The Arbitrator has dealt with this aspect and I do not find any reason to defer from the view taken by the Arbitrator. Accordingly, the award for Rs. 56,673 .00 on Claims 3, 5 and 10 is upheld.

(7) On Claim No. 4, a sum of Rs. 23,000.00 has been claimed by the claimant for refund of amount illegally withheld from running bills styling them as 'CC' recoveries or the like. The Arbitrator has given the following reasons : The respondents have confirmed ad-hoc deduction of Rs. 23,000.00 from the bills. The respondents pleaded that the sum was withheld by them as the work was found to be defective - and some items of work were required to be paid at reduced rates. More than 4 years time has passed since the work got completed. Respondents have not brought out that any defect rectification work was carried out by them in this long period. Respondents final bill at exhibit R-24 indicates deductions/reductions for defects/deficiencies and thus any further with-holding of this sum is not justified. Even the houses have been occupied by the allottees. Since no action has been taken by the respondents so far to utilise the sum withheld, the same is required to be refunded. Claimants are entitled to get the refund of withheld amount. The claim is fully justified and a sum of Rs. 23,000.00 is awarded to claimants. The objection filed by the D.D.A. is that Arbitrator has erroneously omitted to consider that a sum of amount of Rs. 23,000.00 has been withheld by the D.D.A. as the work executed by the claimant was found to be

defective and the same amount had to be adjusted Along with the deductions. I am not able to accept the objection of the D.D.A. and I uphold the award of the Arbitrator on Claim No. 4.

(8) On Claim No. 6, the claimant has claimed a sum of Rs. 96,026.00 on account of refund of illegal deduction made at penal rates for alleged excess use of departmental material. The Arbitrator has awarded a sum of Rs. 68460.00 in favor of the claimant. The Arbitrator has given the following reasoning for awarding the amount: Respondents in their counter-statement of facts have clarified that for 1.825 M.T. of mild steel, 2.692 M.T. of 8 mm. and 12 mm. dia tor-steel, 416.10 metres of 20 mm. G.I. pipe and 29.85 M.T. of cement recovery had been made at double the issue rate as per provisions of Clause 42 of the contract. Respondents have also pleaded that steel was not over-weight and that issue of 20 mm. G.I. pipe was not stipulated for use in Item No. 11.1 of the agreement. The mild steel issued and used in work is of 6 mm. dia. This diameter steel being produced in the country is generally over-weight and the possibility of excess consumption beyond permissible variation and wastage being due to steel being over-weight cannot be ruled out. Exhibits C/1, C/2,C/3,C/4,C/5,C/6 also point towards the fact that some steel was over-weight. The overall variation in total quantity of torn steel is within permissible variation and wastage. Clause 42 does not state that variation and wastage in steel has to be calculated diameter-wise. So far as 20 mm. G.I. pipe is concerned, claimants had pleaded that pipe was used in Item No. 11.1 of the agreement which had not been accounted for by the respondents. Respondents have not denied this; they have only pleaded that the pipe had not been supplied for use in Item No. 11.1. This leads to the conclusion that 20 mm. G.I. pipe issued by respondents was incorporated in work only. So far as excess consumption of cement is concerned, the respondents have not pleaded that there was wastage of cement or misuse of cement. Cement consumption had been accounted for in cement register showing its use on bona fide work and the total cement consumed had been accounted for therein. Respondents have not produced any correspondence indicating that they asked for the return of excess material. Clause 42(i) requires Engineer-in-Charge to issue a notice for the return of the unused material at a place he desired. If no material remained unused and all excess material got used in work, recovery at double the issue rate will amount to

a penal action which in the absence of any loss suffered by respondents is not warranted. The respondents have not complained of any misuse of material issued by them or of its misappropriation. Under the circumstances and facts of the case, the recovery at double the issue rates is not justified. Claimants are awarded a sum of Rs. 68,460.00 for the claim which is the amount actually recovered by the respondents in their final bill for excess consumption of materials issued departmentally. The D.D.A. has filed the objection stating : Claim No. 6 The findings of the learned Arbitrator with respect to Claim No. 6 are contrary to the conditions of the agreement entered into between the parties and deserves to be set-aside. The learned Arbitrator has completely ignored Clause 42 of the agreement under which the petitioner was required to return the unused materials back to the respondents after completion of the work and in case the same was not returned the same could be recovered at double the issue rate. That after calculating the amount of material used the agreement provides for giving a variation of 5%. The learned Arbitrator has misconducted himself and the proceedings by going beyond the specific provisions of the agreement and by making hypothetical calculations as the agreement itself provided specific method of measurements and wastage etc. to be given That mild still is a separate item, but however, the same has been clubbed with steel by the learned Arbitrator. The award being contrary to the conditions of the agreement deserves to be set-aside. No exception can be taken in law to the reasoning given by the Arbitrator. Accordingly, the award on this claim is upheld.

(9) On Claim No. 7, the claimant has claimed a sum of Rs. 43,971 .00 on account of cost of work done in straightening and cutting of steel reinforcement. This claim was rejected by the Arbitrator.

(10) On Claim No. 8, the claimant has claimed a sum of Rs. 2,000.00 on account of short payment because of wrong measurements in respect of Item No. 6.1 pertaining to T-iron frames. The D.D.A. has filed the objection stating that the Arbitrator has given no reason or basis for making the award under this claim and the award being without reasons is liable to be dismissed. I reject the objection filed by the D.D.A. against this claim and the sum of Rs. 703.00 awarded by the Arbitrator on this claim is upheld.

(11) On Claim No. 9, the claimant has claimed a sum of Rs. 8,683.00 on account of illegal deductions made for alleged non finishing of exposed surface of Rcc under Item No. 3.10. The Arbitrator has referred to the facts and has held that : Claimant has stated that the operation of Item 3.10 of the agreement was not attracted as in the Rcc work done by them, there was no permanently exposed unflustered surface or if any such space was there, area of the same was less than 0.5 sq. m. and as per applicable Cpwd specification, no deduction for rendering was to be done in such cases. Respondents pleaded that the area less than 0.5 sq. m in each location had not been accounted for in the measurements recorded for agreement Item No. 3.10. Respondents have filed measurements recorded by them for this item. It is seen that at most of the locations the area measured is less than 0.5 sq. m. Area exceeding 0.5 sq. m. is occurring only at some locations and this area works out to nearly 615.55 sq. m. Respondents have measured an area of 1170.23 sq. m. for this item. Claimants are thus entitled for refund of deduction made for 554.68 sq. m. approx. at agreement rates. A sum of Rs. 4115.00 is awarded to claimants for this claim. The D.D.A. has filed the objection stating that the Arbitrator has not given any reasons. I am not able to appreciate the objection filed by the D.D.A. against this claim and therefore, the same is upheld.

(12) On Claim No. 11, the claimant has claimed being a balance payment of Rs. 2,50,000.00 under clause 10CC of the agreement as the D.D.A. had followed a wrong method in determining the compensation already paid. The Arbitrator had awarded a sum of Rs. 2,28,082.00 giving reasons to the award in the following manner : The claimant in support of their claim has submitted detailed calculations vide Annexure I, statements 1 to 18. A perusal of these calculations shows that the claimants have applied the pre-determined percentage of labour and material before subtracting the cost of material issued by the department from 85% of the value of work done. The respondents during oral hearings argued that as per provisions of Clause 10cc of the agreement, the cost of materials issued by the department at fixed rate has to be deducted from 85% value of the work done before applying there-determined percentages of material and labour in the work and that they had done their calculations accordingly. The work consists of two components viz. material and labour. The percentages of these components as

pre-determined by respondents are 75% for material and 25% for labour. The 75% component fixed for materials includes the cost of materials issued by respondents at fixed rates. No escalation is payable on this material. However, in handling and incorporating these materials in work, labour is engaged and utilised and escalation on this labour cost is to be paid. The calculations for escalation payments as adopted by respondents result in denying this admissible escalation on labour. At the same time, escalation on materials gets accented for on the higher side. This discrepancy is eliminated in the calculations submitted by claimants. If value of work done is considered as 'X' and the cost of material issued by respondents recoverable at fixed cost is taken as 'Y', the value of work done on which escalation is payable as per respondents calculations, works out to (i) For materials Part = $0.6375 X - 0.75y$ (ii) For labour part = $0.2125 X - 0.25y$ Clause 10CC lays stress that full cost of materials issued by department should be deducted from 85% value of work done. While as per (i) and (ii) above, though full cost of materials is getting deducted yet 75% is being deducted from materials part and 25% from the labour part. This discrepancy is eliminated in claimants' calculations where the escalation on material and labour part works out as below for same connotation of X and y:- (iii) On material part = $0.6375 X - y$ (iv) On labour part = $0.2125 X$ In (iii) above full value of material issued by the respondents at fixed cost (y) is getting deducted from the material element of work and no deduction for material issued is occurring in labour element. It thus clear that in the spirit of Clause 10(cc), the calculations as submitted by claimants are more rational and to the point compared to respondents' calculations. I consider the claim as just and fully established and award to claimants a sum of Rs. 2,28,082.00 for this claim as per details furnished by claimants in Annexure I to the statement of facts of the claimants. The D.D.A. has put its case in the following terms. The findings of the learned Arbitrator with respect to Claim No. II are contrary to the conditions of the agreement entered into between the parties and deserves to be set-aside. The learned Arbitrator has gone beyond the conditions of the agreement in making an award under this claim has therefore committed misconduct for which the award is liable to be set aside. Clause 10CC of the agreement provided that in case there is increase in the prices of material and of labour during the currency of the contract the petitioner would be entitled to the

same as per the formula laid down in the contract. However, the learned Arbitrator has substituted his own formula with that of the formula agreed to between the parties and has gone beyond the conditions of the contract entered into between the parties for which the award deserves to be set aside. That even for the sake of arguments through not admitting the formula suggested by the learned Arbitrator is followed, the findings would be erroneous, as the calculations on the basis of which the award has been given, differ from the same. Instead of deduction 100% cost of the materials supplied/service rendered by the department under Clause 10 and 34 of the agreement, as specifically provided under the clause and also by the learned Arbitrator the petitioner has made deductions @ 85% only, i.e. the material and labour parts have been computed as under, against that suggested by learned Arbitrator. As suggested by As per calculation learned Arbitrator, of the claimant. (1) On material $0.6375 X - Y$ $0.6375 X - 0.85 Y$ part (2) On labour part $0.2125 X$ $0.2125 X$ Thus it would be seen that the labour payment worked out by the petitioner is on account of above mentioned anomaly. That even otherwise the award deserves to be set aside as it was never agreed to between the parties that 19(cc) would be worked out as per the formula suggested by the petitioner and the Arbitrator.

(13) The learned Counsel for the D.D.A. contended on the basis of the objection made by the D.D.A., that the Arbitrator had not followed Clause 10CC of the agreement and the Arbitrator had no jurisdiction to follow different formula and by adopting a method which runs counter to Clause 10 (cc). The The Arbitrator has committed an error which is apparent on the face of the record and that the method adopted by the Arbitrator is erroneous in law that amounts to misconduct on the part of the Arbitrator. Learned Counsel for the D.D.A. Ms. Anusuya Salwan relied upon the judgment of the Supreme Court in *Associated Engineers Company v. Government of Andhra Pradesh and Ors.*, : [1991]2SCR924 and submitted under similar circumstances the Supreme Court held that it was not open to an Arbitrator to go beyond the terms of the agreement and, in particular, when a formula had been evolved by the parties which is incorporated in the agreement.

(14) The Arbitrator, it could be seen, had only taken for calculation the formula in the Clause 10cc and he has only amplified the contents of the formula and has

arrived at the figure. I do not find any substance in the argument of the learned Counsel for the D.D.A. that the Arbitrator has gone beyond the formula in Clause 10 (cc). thereforee, I confirm the award on this claim.

(15) On Claim No. 12, the claimant claimed a sum of Rs. 1,02,000.00 on account of payment under Clause 10 (cc) of the agreement on the amount of final bill and their claims which are subject matter of this Arbitrator. The D.D.A. has filed the objection stating that the findings of the Arbitrator with respect to this claim are erroneous as the Arbitrator has not given any reason or there is no basis for the said award. The Arbitrator has awarded a sum of Rs. 27,561.00 in favor of the claimant. thereforee, I confirm this part of the award.

(16) Claim No. 13 is rejected by the Arbitrator.

(17) On Claim No. 14, the claimant has claimed a sum of Rs. 1548.00 on account of short payment received on account of wrong deviation of rates of extra and substituted items under Clause 12 of the agreement. I uphold the award passed by the Arbitrator.

(18) On Claim No. 15, the claimant has claimed a sum of Rs. 1,20,000.00 on account of release of Bank guarantees furnished towards security deposit and incidental expenses on unnecessary and illegal revalidation of Bank guarantees from time to time. The Arbitrator has rejected this part of the claim. I confirm this part of the award.

(19) The Claim No. 16 was rejected by the Arbitrator.

(20) On Claim No. 17, the claimant has claimed a sum of Rs. 6000.00 on account of refund of rebate deducted on payment made towards escalation under Clause 10 (cc) of the contract. No objection has been filed by the D.D.A. The Arbitrator has awarded a sum of Rs. 5,248.00 . I uphold this part of the award.

(21) On Claim No. 18, the claimant has claimed a sum of Rs. 1570.00 on account of cost of kerosene oil used to convert bitumen 80/100 to S/90. The D.D.A. has filed the objection stating that the claimant has not used the kerosene at all. The Arbitrator had awarded a sum of Rs. 1567.00 on the following reasoning:

Respondents were required to supply S-90 bitumen for executing agreement Item No. 15.7 of 2 cm thick premix carpet and Item No. 15.8 of seal coat. The bitumen actually supplied was 80/100 grade and not S-90 grade. 80/100 grade bitumen is different than S-90 grade. It, therefore, became necessary for claimants to mix kerosene to 80/100 grade bitumen to get required workability. Since the work has been done as per Cpwd specifications which require use of kerosene oil, the claimants are entitled for the reimbursement of this extra cost which would not have been necessary had the respondents issued bitumen of grade S-90. The claim is justified and a sum of Rs. 1567.00 is awarded to claimants. The award of the Arbitrator is reasonable and I do not find any reason to interfere with it. therefore, this part of the award is confirmed.

(22) On Claim No. 19 the claimant has claimed a sum of Rs. 4,558.00 on account of refund of rebate deducted at the rate of 1% of the gross value of E.I's and S. Is without fulfilling the precedent condition of timely sanctioning them. The D.D.A. has filed objection stating that the Arbitrator has not given any reason or basis for making an award under this claim and therefore committed misconduct for which the award deserves to be set aside. The Arbitrator had noted that the D.D.A. had not denied the contention of the claimant. I have perused the objection filed by the D.D.A. stating that the award is without any reasons and without any basis. I do not find any merits in the objection. therefore, the award is upheld on this claim.

(23) Claim No. 20 is rejected by the Arbitrator.

(24) On Claim No. 21, the claimant has claimed a sum of Rs. 5,00,000.00 on account of salary of Engineers and staff and other unanticipated over-heads at site and head office for prolongation of contract due to acts of omission and commission by the D.D.A. The Arbitrator has awarded a sum of Rs. 2,17,800.00 giving the following reasons : The respondents have mainly relied on condition No. I of Specifications and conditions attached to the contract which reads as below :

'The contractor must get acquainted with the proposed site for the works and specifications and conditions carefully before tendering. The work shall be executed as per programme approved by the Engineer-in-Charge. If part of the site is not available for any reason or there is some unavoidable delay in supply of

materials stipulated by the department, the programme of construction shall be modified accordingly and the contractor shall have no claim for any extras or compensation on this account'.

This condition does not talk about extension of time at all and hence cannot be related to time of the contract. As per this condition, a programme has to be prepared for completing the work and the same has to be approved by the Engineer-in-Charge. It further states that if there is delay on the part of respondents in making site available or in supply of stipulated materials, the programme of construction for completing the work would be modified accordingly. Further, the contractors shall have no claim for any extras or compensation on this account. The stress in this condition is on preparing an initial programme and then updating the same periodically. Since there is no mention in the condition about extended date of completion, it is certain that the modification of the programme is required to be done with the end objective of completing the work in the time of completion stipulated in the contract. Since time for completing the work as specified by the department has to be considered as of the essence of the contract, any modification of programme has to be with end date remaining same. It is evident that any modification of initial programme on account of time lost keeping the end date same, would mean deployment of additional resources which would positively mean extra expenses for the claimants. It is these extra expenses or compensation which, as per Condition No. 1, have not been considered payable to the contractors. The respondents have neither produced the initial programme nor any modified programme to substantiate their view-point. In the absence of these, there is no proof available on record that a mutually agreed date of completion other than the stipulated date of completion ever existed during the stipulated contract period. It is, therefore, to be inferred that no programme was initially prepared and that no modified programme was drawn out after review of the work progress and reasons of delay. Moreover, this Condition No. 1 has also to be read Along with Clause 2A of N.I.T. which states that the site of the work was available. This representation by respondents was incorrect as site for a number of blocks was under stay orders. In view of this unambiguous provision in the contract a natural assumption on the part of contractors would have been that no problems in site availability would arise. It is, therefore, not

possible to accept respondents' contention and interpretation of the provisions of condition No. 1 of Specifications and Conditions attached to the contract. Respondents reference to Clause 10 of the contract is also found to be overstretched. Clause 10 does not provide unrestricted and unhindered powers to respondents to supply stipulated materials as and when they like. They have stipulated time for completion as 12 months for this contract. As per provisions of this contract, the claimants were required to complete only that much of work which could be done with materials supplied in 18 months' time. For getting total work completed, the respondents therefore, should have supplied entire material in 18 months' time. This clause therefore defines a maximum reasonable time for issue of all and entire materials which in this case is 18 months. Another 3 months' time after 18 months can be considered for incorporating these materials in work. It would therefore be reasonable to conclude that as per this clause a maximum period of not more than 21 months can be considered as reasonable for completing the work. In the present contract, respondents have considered delay of 1364 days justified as against a period of 9 months which can be considered reasonable under Clause 10 of the contract. It is seen that certain items of materials stipulated for issue like shutters, some S.C.I, fittings and pipes, aldrine, 20 mm. G.I. pipe etc. had been supplied by respondents even more than 2 years after the stipulated date of start. The delay of 1089 days on the part of respondents over and above the delay of nine months for which respondents can be considered to get protection under Clause 10 of the contract entitles the claimants for compensation and damages. Claimants had applied for extension of time justifying of 2156 days (Exhibit C/44). This period includes delays on account of non-availability of site, nonavailability of stipulated materials and also on account of various other hindrances like non-approval of stack-arrangements and samples of sponge plaster, non-supply of drawings for rear and front Courtyards, external water supply, sewer lines, internal development plans, Desu cable duct routing etc., not according permission for fixing of shutters for want of test reports, non-approval of C. I fittings for water supply lines, decision regarding change of location of Indian W.C. and wash basin etc. Such concerned items are at S. Nos. 6,7,8,9,10,. 11, 12,13,14,16,17,19 and 26 of exhibits C/44. This exhibit also shows period of 5.1.1989 to 30.9.1989 as period in waiting for

physical handing over of quarters directly to allottees. The delays on account of hindrances other than those covered by Clause 10 of the contract and non-availability of site is 917 days. After considering all the facts of this case and various provisions of contract, I find that the claimants are entitled to receive compensation for prolongation of contract by total 1089 days (say 36.3 months) out of which 917 days are on account of reasons other than site availability and delay in supply of stipulated materials and the remaining period of 172 days (after eliminating overlapping period) for hindrances and delays in making site and stipulated materials available. The prolongation of contract definitely results in extra expenditure on staff, T&P; machinery etc. which have to be necessarily kept and maintained at site for a period longer than catered for at the time of submission of tender. The claimants are entitled to be compensated for these losses keeping in view the principles of mitigation of losses. A graduate engineer is required to be provided on the work as per agreement Clause No. 36. On head mistry, one store clerk, one accounts clerk are also essentially required at site. Claimants have projected 4 Nos. supervisors employed on work which is normal on a work of this magnitude. An accountant is also considered indispensable. Salaries as claimed by claimants for various categories of staff are, however, considered to be on higher side. It is assessed that claimants' loss on an average on this amount would have been of the order of Rs. 6,000.00 only per month for 36.3 months keeping mitigation in view. A sum of Rs. 2,17,800.00 is awarded to claimants for this claim.

(25) The D.D.A. has filed the objection in the following terms : That under these claims the learned Arbitrator has awarded Rs. 2,17,800.00 on account of damages for prolongation of the contract and Rs. 88,385 .00 on account of loss of profitability for prolongation of the contract. The basis of the award for both these claims i.e. Claim Nos. 21 and 22 is that there had been a breach of contract on part of the respondents in not making available the site, materials and drawings. It is submitted that the Arbitrator by awarding damages in the shape of loss of profitability and on account of contemplated overheads has in fact awarded damages over damages. The award with respect to these claims deserve to be set aside as it amounts to award of double damages. That the learned Arbitrator has completely misinterpreted the contract entered into between the parties as the

contract clearly states that the petitioner would not be entitled for any compensation or damages in case of delay in handing over of part of the site and or material. The learned Arbitrator has therefore, committed error in ignoring the terms of the agreement entered into between the parties.

(26) The Arbitrator has given very cogent reasons for coming to the conclusion and I uphold the award on this claim.

(27) On Claim No. 22, the claimant has claimed a sum of Rs. 14,77,953.00 on account of loss of profitability for prolongation of contract due to acts of omission and commission by the D.D.A. The Arbitrator had awarded a sum of Rs. 88,385/- @ 15% per annum interest from the date of award till the date of realisation. The D.D.A. had filed the objection.

(28) Learned Counsel for the D.D.A. Ms. Anusuya Salwan submitted that Claim Nos. 21 and 22 relate to the damages and the Arbitrator can award damages only on one account and therefore, the awarding of damages on Claim Nos. 21 and 22 is erroneous. She relied upon the judgment of the Supreme Court in Union of India v. Jain Associates, (1994) 1 Arbitration Law Reports 494. The facts of the case before the Supreme Court are entirely different and therefore, the argument on behalf of the D.D.A. that the Arbitrator had committed an error in awarding both the claims is erroneous cannot at all be accepted.

(29) On Claim No. 23, the claimant has claimed interest on amount due to them but not paid. The Arbitrator has held :

(A) Pre-suit interest on amounts awarded against Claims 4,9 and 17. In addition, they are also entitled to receive pre-suit interest on the item of Ac rain water pipes. Claim 10(i). The total amount on which pre-suit interest is payable works out to Rs. 57,712.00 . Simple interest @ 12% per annum is awarded on Rs. 57,712.00 from, 6.12.1991 to 22.1.1994.

(B) Pendente lite interest on amounts awarded against Claims No. 3,4, 5,6,8,9, 10, 14 and 17. The amount on which pendente lite interest is admissible works out to Rs. 1,59,747.00 . Simple interest @ 15% per annum on this amount of Rs.

1,59,747.00 is awarded from 23.1.1994 to the date of publication of award.

(C) No future interest will be payable if the respondents make payment of awarded amounts against various claims within two months of publication of this award. If no payment is made in the above specified period, simple interest @ 15% per annum on total awarded amount of Rs. 7,71,670.00 will be payable from one day after the publication of the award up to the date of decree or actual payment whichever is earlier.

(30) In all, the Arbitrator had awarded a sum of Rs. 7,71,670.00 in addition to the release of the bank guarantee. The Arbitrator had passed the following award.

(A) On a sum of Rs. 57,712.00 from 6.12.1991 to 22.1.1994 @ 12% per annum.

(B) On a sum of Rs. 1,59,747.00 from 23.1.1994 up to the date of publication of award @ 15% per annum.

(C) If award is implemented by respondents within two months from the date of publication, no future interest will be payable. If respondents fail in this regard future interest on a sum of Rs 7,71,670.00 @ 15% per annum will be payable from one day after the publication of this award up to the date of decree or actual payment whichever is earlier.

(31) After considering all the claims, I confirm the award passed by the Arbitrator. The award is made rule of the Court. Accordingly, there shall be a decree directing.

(A) the DDA/respondent to pay to the Claimant/petitioner a sum of Rs. 7,71,670.00

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(B) the DDA/Respondent to pay interest to the Claimant/petitioner on the sum of Rs. 57,712.00 from 6.12.1991 to 22.1.1994 @ 12% per annum.

(C) the DDA/Respondent to pay interest to the Claimant/petitioner on the sum of Rs. 1,59,747.00 from 23.1.1994 to 30.7.1994 @ 15% per annum.

(D)the DDA/Respondent to pay interest to the Claimant/petitioner on the sum of Rs. 7,71,670.00 from 31.7.1994 till the date of realisation @ 15% per annum.

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