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HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT SRINAGAR

…

AA no.06/2020

Pronounced on: 02.02.2023

Union Territory of J&K

……. Petitioner(s)

Through: Mr D.C.Raina, Advocate General
with Mr Ilyas Laway, Advocate

Versus

M/s S. P. Singla Constructions Pvt. Ltd.

……Respondent(s)

Through: Mr Anirudh Wadhwa, Advocate &
Mr Aditya Mittal, Advocate

***CORAM*:**

HON'BLE MR JUSTICE VINOD CHATTERJI KOUL, JUDGE

JUDGEMENT

1. This Appeal under Section 37 of J&K Arbitration and Conciliation Act, 1997 (for short "*Act*") has been preferred against judgement dated 1st February 2020, passed by Principal District Judge, Srinagar, in a petition under Section 34 of the Act, titled as *Chief Engineer Mughal Road Project v. M/s S. P. Singla Constructions Private Limited* in File no.02/2018 Arbitration and for setting aside the same on the grounds mentioned therein.
2. The case set up by appellant is that an/ NIT no.01/2020 dated 31st April 2010, was issued by Superintending Engineer, Mughal Road Project, on behalf of Governor of erstwhile State of J&K, inviting tenders for construction of seven bridges on Shopian-Bafliaz Section

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of Mughal Road. Respondent also participated and being successful in bidding process was awarded the contract on Turnkey Basis for a contract price of Rs.55.75 Crores vide Agreement no.CE/MRP Agreement/2 of 2010 dated 14th October 2010. The contract was for design and construction of Seven number of steel trussed girder (double lane) bridges of different spans having aggregate length 461 RM (Approx.) on Mughal Road Project from Shopian to Bafliaz in J&K State, which included planning, detailed survey, soil investigation, collection of hydraulic data and structural design along with execution (complete job) on Turnkey Basis as per scope of the work. The work was to be completed within 24 calendar months as per the terms and conditions of the contract and the work had to be completed up to 8th November 2012. However, the work completed on 18th September 2013, i.e., it took more 387 days. In terms of the contract between the parties no further compensation was payable as the contract was a Turnkey Contract and the claims were raised by contractor after completing construction and after receiving full and final payment and closure of contract.

3. It is stated that contractor/respondent raised dispute as regards prolongation of time and entitlement for extension of time on account of delay allegedly attributable to appellant (employer). Contractor is stated to have appointed its nominee to Arbitral Tribunal on 19th June 2015 and on 11th August 2015 appellant/employer appointed its nominee to act as an arbitrator. Appellant nominated its Arbitrator as Shri Khalid Muzaffar. Presiding Arbitrator, namely, Justice T. S. Doabia (Retd.) was appointed by two nominated arbitrators.

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Preliminary notice was issued and first meeting proposed on 26th August 2015. Award dated 20th July 2017 was passed in favour of respondent. Challenge was thrown to the Award under Section 34 of Act before the Principal District Judge, Srinagar, who rejected the challenge. This is how the instant appeal has come before this Court.

4. Impugned Award and judgement passed by court below have been, *inter alia*, challenged on the grounds that the award as well as impugned judgment of court below, upholding the award is patently illegal being against the policy of the State and the same is in breach of the terms and conditions of contract; that the court below and Arbitral Tribunal have not considered the relevant material/ documents, arguments and the law points raised by petitioner and neither clear findings have been returned on the matter nor the case law been dealt with, thus, making the entire exercise a nullity; that arbitrators as well as court below have failed to appreciate Clause 20.1 GCC of the FIDIC Contract mandatorily prescribes that the contractor is obliged to notify the Engineer within specified time frames; that the contractor considers itself entitled to additional payments on account of any event or circumstance giving rise to the said claim; that the said requirement is in the nature of a condition precedent for the contractor to be entitled to any additional payments under the contract; that that this provision is referred in international jurisprudence as a 'Notice of Claim" provision and compliance with the said prescription has been universally held to be mandatory in order for the contractor to be entitled to any additional payment under the contract; that mandatory nature of the requirement of giving notice of claim within the time

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period as prescribed is reinforced by the fact that consequences of non-compliance with the said requirement are expressly stipulated in Clause 20.1 GCC of the FIDIC Contract itself and that the various mandatory requirements which the contractor is obligated to comply, in order to be entitled to claim any additional payments and the consequences of non-compliance are clearly stated that the contractor shall not be entitled to additional payment and employer shall be discharged from all liability in connection with the claim; that all the claims made by claimant in the present arbitration proceedings are liable to be rejected and dismissed at the threshold itself as the claimant has failed in respect of all the claims to comply with the mandatory condition precedent of giving Notice of Claim, Detailed Claim, Interim Monthly Claims and Final Claim as prescribed under Clause 20.1 of the GCC of the Contract; that the Arbitrators as well as court below have failed to appreciate that all the matters have not to be essentially referred to arbitration and only those matters are to be referred where the disputes have crept in; that respondent had never raised any dispute or claim with appellant/employer even till the final bills were submitted; that bills were accepted without any protest or demur till finalization of the bills and never was any claim made to appellant, thus, question of dispute does not arise; that had respondent raised any claim in terms of mechanism envisaged under the contract, then it would have been an occasion for an arbitral dispute; that respondent has completed the works under Turnkey Contract and has received the agreed amount under the contract which was readily accepted by respondent without any protect and demur; that by

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conduct of respondent, there was no dispute at all as respondent had received all payments submitted by way of bills; that claims raised by respondent are totally barred as per terms of the agreement arrived between parties; that disputes have been created artificially just to mint money out of the legal process by abuse of the Act in antithesis to the preamble of the Act which provides that when dispute arise then arbitrators have to adjudicate and when there was no dispute at all and no claims were raised in terms of the mechanism provided under the contract, thus the same is barred under law; that arbitral tribunal as well as court below have brushed aside the objection raised by appellant/employer regarding maintainability of claim in absence of mandatory notice and decision of DAB, simply by saying that DAB was never constituted and in terms of clause 20.6, dispute could be directly referred to arbitration, but the Arbitral Tribunal has not considered the mechanism provided for submitting claims in terms of clause 20.1 and 20.2 of GCC;

5. I have heard learned counsel for parties and considered the matter.
6. Learned Advocate General, in support of the case set up in the instant appeal, has stated that the award as well as the impugned judgement of court below upholding the Award is patently illegal being against public policy and in breach of the terms and conditions of the contract. It is averred that arbitrators as well as the court below failed to appreciate Clause 20.1 GCC of the FIDIC Contract mandatorily prescribes that the contractor is obliged to notify the Engineer within specified timeframe that the contractor itself considers itself entitled to additional payments on account of any event or circumstance

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giving rise to the said claim and that the said requirement is in the nature of a condition precedent for the contractor to be entitled to any additional payments under the contract and this provision is referred in international jurisprudence as a 'notice of claim' provision and compliance with the said prescription has been universally held to be mandatory in order for the contractor to be entitled to any additional payment under the Contract. He has made reference to ***Multiplex Construction (UK) Limited v. Honeywell Control Systems Limited, [2007] EWHC 447 (TCC)***, in which the rationale behind the prescription of timelines in construction contracts for making claims has been explained by mentioning that contractual terms requiring a contractor to give prompt notice of delay serve a valuable purpose as such notice enables matters to be investigated while they are still current and such notice sometimes gives employer an opportunity to withdraw instructions when the financial consequences become apparent. Learned Advcoate General also states that the mandatory nature of the requirement of giving notice of claim within time period as prescribed is reinforced by the fact that consequences of non-compliance with the said requirement are expressly stipulated in Clause 20.1 GCC of the FIDIC Contract itself and that various mandatory requirements which the contractor is obliged to comply in order to be entitled to claim any additional payments and the consequences of non-compliance are clearly stated that the contractor shall not be entitled to additional payment and the employer shall be discharged from all liabilities in connection with the claim. Learned Advocate General submits that all the claims made by claimant in the

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present arbitration proceedings are liable to be rejected as the claimant has failed in respect of all claims to comply with the mandatory condition precedent giving notice of claim, detailed claim, interim monthly claims and final claims as prescribed under Clause 20.1 of the GCC of the Contract. According to learned Advocate General, respondent had never raised any dispute or claim with the employer even till the final bills were submitted and that the bills were accepted without any protest or demur till finalization of the bills and never was any claim made to appellant.

7. It is also stated that arbitral tribunal as well as the court below has brushed aside the objection raised by appellant regarding maintainability of claim in absence of mandatory notice and decision of DAB, simply by saying that DAB was never constituted and in terms of clause 20.6 dispute could be directly referred to arbitration, but the Arbitral Tribunal has not considered the mechanism provided for submitting claims in terms of clause 20.1 and 20.2 of GCC. It is contended that claimant had not even once given a notice for referring a dispute muchless to DAB for obtaining its decision, therefore, there was no occasion for constitution of DAB.

8. It is also stated that learned Arbitrators have rendered the decision on matters not falling within the terms of submission to Arbitration Tribunal and matters beyond the scope of submission to Arbitrators and the award is such that there is no scope of segregating the matters submitted to arbitration tribunal.

9. According to learned counsel for respondent the instant appeal has been filed on legally and factually misconceived grounds. Counsel

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has also stated that the Contract is based on internationally accepted FIDIC conditions, i.e., International Federation of Consulting Engineering's, commonly known as FIDIC. The FIDIC conditions, as their essence, contain provisions for compensation to the Contractor to cater for each and every kind of event that may cause delay or disruption to the subject project. There are also conditions providing compensation in the event of change of scope, change of law, inflation in cost, financing cost on compound interest basis etc. It is averred that appellant by adopting FIDIC conditions of contract, itself provided remedies for all forms of contingencies in the course of the execution of the subject project. According to learned counsel for respondent, it is settled that Arbitral Tribunal is the Final Judge for construing and interpreting the provisions of the Contract and even assuming that there is an error regarding the same, it is taken to be an error within the jurisdiction of the Arbitral Tribunal and not an error of jurisdiction and that there is, thus, no scope for interference with the Arbitral Award and the Arbitral Award having withstood the test of challenge under Section 34 of the Act, by way of impugned judgement and as a consequence of which the scope for interference of this Court under Section 37 of the Act is even more limited. His further contention is that this Court in view of provisions of Section 37 of the Act cannot sit in appeal against arbitral award inasmuch as the permissible grounds of challenge are expressly set out in the statute and are extremely limited and that this Court cannot interfere with the conclusions of an arbitral tribunal even where another view/ conclusion is possible on the basis of material on record. His next

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contention is that it is not for a judicial authority while deciding a challenge to an arbitration award, to interfere with the findings of fact arrived at by an arbitral tribunal and that it is within the sole purview of arbitral tribunal to interpret various conditions of contract; besides an arbitral tribunal is not bound by strict rules of evidence and this Court cannot reappreciate the quality or the weight of the evidence considered by an arbitral tribunal in arriving at the arbitral award; even an erroneous application of law is not sufficient to interfere with an arbitral award.

10. Further submission of learned counsel for respondent is that there was a delay of about seven months in appointment of Proof Consultant by the employer as it was Proof Consultant to check all drawings and designs submitted by the Contractor and without which there could be no meaningful progress of the work. The employer caused delay in approval of designs and drawings, which adversely affected progress of the work.

11. Facts need not be reiterated. Plea before this Court is with reference to setting-aside of judgement dated 1st February 2020 passed by court below in an application under Section 34 of the Act, titled as *Chief Engineer, Mughal Road Project v. M/s S.P. Singla Construction Private Limited*; as also setting-aside the Award dated 20th July 2017.

12. The abstract statement of claims raised by respondent/contractor before the Arbitrators was:

1. Claim no.1: Work done payment out of C.V.:	Rs.2,19,54,361/-
2. Claim No.2: Refund of Service Tax/Sales Tax:	Rs.5,77,54,970/-

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3. Clam no.3: Variations and extra works:	Rs.5,23,00,000/-
4. Claim no.4: increase in rates of wages under Minimum Wages Act:	Rs.2,32,00,000/-
5. Claim no.5: Prolongation of the contract period of time and the cost thereof:	Rs.13.38 Crores with 18% interest
6. Claim no.6: Interest on delayed payments:	Rs.1,62,49,134/- plus 18% interest
7. Claim no.7: The cost of acceleration:	Rs.1,11,50,000/-
8. Claim no.8: Increase in taxes:	to be evaluated
9. Claim no.9: Escalation in cost of construction work done during extended period:	Rs.3,00,00,000/-
10. Claim no.10: Cost of arbitration:	Details to be submitted during arbitration

13. Appellant also submitted its counter claims before the Arbitrators, which are:

> "The work "Design & Construction of Seven No.steel trussed girder (Double Lane) bridges" of different spans of Mughal Road J&K State including Planning, Detailed Survey, Soil Investigation, Collection of Hydraulic Data and Structural Design along with execution was allotted in favour of M/s S.P. Singla Constructions Pvt. Ltd vide agreement NO.CE.MRP/agreement/ 2 of 201 dtd: 14th October 2010. The contractor was supposed to complete the work on all the seven bridge sites within 24 calendar months after the signing of agreement. However, as per the reports received from the respective field divisions the contractor namely M/s S. P. Singla Constructions Prvt. Ltd. has failed to complete the Seven No. bridges on Mughal Road within the stipulated time. The contractor substantially completed the allotted work on 30.11.2013, thereby delaying the stipulated time of completion, thus giving rise to implementation of liquidated damages and other penalties as per the Appendix to Technical proposal.
>
> 1. Liquidity damage
> The liquidated damages are calculated as below:
> Total Contract Value = RS.5575.00 Lacs
> Date of Start of work = 09-11-2010
> Date of Completion of as per agreement = 8-11-2012
> Date of Substantial completion of work = 30-11-2013
> Total delay in Days = 387 days
> Liquidated damages @ 0.02% of Contract Value/day
> = 0.02/100 x5574 = Rs 111500/day
>
> Total Liquidated damages for delay 387 days
> = 837x111500 = 431.505 Lacs
> OR 10% of Contract value =10/100x5575 = 557.50 lacs
> Therefore, Admissible Liquidated damages
> = 431.505 Lacs
>
> 2. Loss of Zaznar Bridge: -

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The contractor has also failed to meet all the milestones as per the bar chart/ revised bar chat submitted by him to the employer time to time. This erratic attitude of the contractor has caused an unnecessary delay in completion of the different bridges at different locations of the Mughal Road Al Zazhar RD 501 800 (Span 36 Mtrs) the bridge was washed away by a snow avalanche in February 2016 within the Defect liability period from the date of substantial completion of work, the effect of which was not envisaged by the contractor before designing the bridge.

It seems that the designer of the bridge has not taken into consideration the steep slopes of mountains having large catchment area. Also no avalanche protection measures were put in place by the contractor after construction of Zaznar Bridge. The contractor was supposed to follow the guidelines as contained in IRC-5 which was agreemental binding on designed.

For reconstruction of Zaznar bridge at least an amount as worked out below should be imposed on M/s S.P.Singla constructions Pvt. Ltd as penalty.

Cost of 1 Mtr. Bridge length	= Rs. 12.10 Lacs
Cost of 36 Mtr. Bridge length	= Rs. 435.60 Lacs
Add 60% as cost of escalation	= Rs. 261.36 Lacs
Total re-constructional cost of Zaznar Bridge	= Rs. 696.96 lacs

Due to the loss of Zaznar bridge he employer was forced to give a fair weather connectivity to the commuters by way of construction of pipe culvert and bailey bridge at the damaged site.

Cost of launching and delaunching of Bailey bridge (two seasons)	= 2 x 16 = Rs.32.00 Lacs
Cost of pipe culvert	= Rs.30.00 Lacs
Total constructional cost of pipe culvert and Bailey bridge	= Rs.62.00 Lacs

3. Revenue Losses:-

As the contractor has failed to complete the seven No. bridges within the stipulated time it has caused a great loss to the State exchequer in general by means of revenue realization at Padpawan Shopian on the Mughal Road if the bridges had been completed well in time. As per the field information received from the commercial and Sales Tax Department minimum tax realization (Revenue) for the month of October 2015 has been to the tune of Rs.13,67,870/- which means Rs.44,124/- per day.

The month of October has been taken into consideration during this month the traffic volume on the Mughal is reduced considerably due to frequent rains and snowfall on the Pir Ki Gali.

Calculation of Revenue Losses: -

Total No. of delay in days from 09.11.2012 to 30.11.2013
= 387 days

Total Loss	= Rs.44124x387 = Rs.17075988 =Rs.**170.76 Lacs**

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> 4. In addition to above, office establishment charges and overhead charges which were run for the supervision of the work of the contractor for the delay period of 387 days i.e. from 09.11.2012 to 30.11.2013 is being worked out and shall be furnished before the next date. It may be reiterated, as stated in the statement of defense and the documents relied therein, it is the contractor which was responsible for causing the delay and as consequences thereof, he is liable to compensate the answering respondent.
>
> Total amount of the counter claims
>
> Grand total = A+B+C+D = 431.505+696.96+62.00+170.76
> = Rs. 1361.23 Lacs"

14. Appellant maintained before the Arbitrators that there was no balance due under the contract since all the payments due to contractor were paid to it and only retention money was lying with it which would be released as per the conditions of the contract.

15. Now come to the impugned Award, the Arbitrators while deciding Claim No.1, held appellant cannot adjust Rs.79,26,742/- against the liquidated damages as the said amount is due to claimant and that it would be fair and reasonable to award the said amount in favour of claimant/ respondent.

The impugned Award as also order of Principal District Judge, Srinagar, to this extent is upheld.

16. While deciding Claim no.2 with respect to refund of Service Tax/Sales Tax paid by respondent, the Arbitrators have rightly said that claimant/respondent is liable to pay the service tax and held the claim no.2 not sustainable.

Impugned award and order to this extent is also upheld.

17. In deciding Claim no.3, the Arbitrators has sub-categorized the same in five Claims.

18. The Claim no.3a relates to increase in quantity of steel used in superstructure by claimant/respondent and an amount of

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Rs.3,06,30,000/- had been claimed by respondent/claimant. While deciding Claim no.3a, the Arbitrators have misdirected themselves and have given Rs.2.80 Crores on account of increase in quantity of steel in superstructure.

It appears that the Arbitrators, while misdirecting themselves in issuing impugned Award, have forget or else disregarded the fact that what contract was about and what were the contents of the contract. The contract was Turnkey Contract. When respondent partook in the bidding process. It was awarded the contract on Turnkey Basis for a contract price of Rs.55.75 Crores. The contract was for design and construction of Seven number of steel trussed girder (double lane) bridges of different spans having aggregate length 461 RM (Approx.) on Mughal Road Project from Shopian to Bafliaz in erstwhile State of J&K (now UT of J&K), which included planning, detailed survey, soil investigation, collection of hydraulic data and structural design along with execution (complete job) on Turn Key Basis as per scope of the work. The work was to be completed within 24 calendar months as per the terms and conditions of the contract and the work had to be completed up to 8th November 2012. However, the work completed on 18th September 2013, i.e., it took more 387 days. It cannot be heard saying from the mouth of respondent/contractor that it was unable to make plans about seven bridges; that it was unable to conduct survey; that it was unable to conduct soil investigation; that it was unable to collect hydraulic data; that it was unable to prepare structural design or contractor/respondent was having no information about the climatic weather/situation of these areas where bridges had to be laid/ installed

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that too during this scientific era/generation. These important aspects of the matter have been brushed aside by the Arbitrators while awarding the people's money in the amount of Rs.2.80 Lacs in favour of respondent/contractor as if it was a largesse. Even in such situation, law is to be followed.

Further to say here that Arbitrators have forgot that we are living in the scientific and computer age, where one can have easy access and information about any area of the globe about its latitudinal and longitudinal reckoning and measurements. If respondent / contractor was not having such an expertise in building the bridges, it should not and ought not participate in subject-matter of NIT. The Arbitrators while making and issuing impugned Award have tried to show as if contractor was a naïve company and unable to know about the situations obtaining on the spots.

The impugned award and order qua Claim no.3a are set-aside.

19. While deciding Claim no.3b, the Arbitrators have again travelled beyond their territory. The Arbitrators have not taken into account the importance of project. If there was any cavity detected; whose responsibility was it to remove the same; obviously it was that of the contractor and not that of appellant. The contract was with respect to laying/installing of bridges. If there was any cavity or defect in its laying or installation, the same was exclusive responsibility of contractor and for its removal the contractor is not entitled to claim a penny muchless the amount of Rs.35.00 Lacs as awarded by the

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Arbitrators.This shows and reflects the powers having been exercised by Arbitrators without satisfaction of requirements of law.

a

So, the impugned award and order insofar as it relates to Claim no.3b are set-aside.

b

20. While deciding Claim no.3c, again the Arbitrators have done injustice by awarding Rs.24,18,655/- in favour of contractor/respondent. If length of a bridge was not upto the mark, which was the sole responsibility of the contractor because when the contractor went through the NIT, it was made clear therein that it was a Turnkey based contract and every aspect of the matter was to be looked into by the contractor while responding or participating in the tender process, then how the Arbitrators have awarded the aforesaid amount shows and reflects non-application of mind on their part.

c

d

e

In short, the Arbitrators did not apply their mind to the fact that it was the contractor, which had to go on the spot(s) and make all preparations, plans, designs, surveys, assessment, for laying and installing the bridges. If there had been a miniature cavity, defect or shortcoming,the same was the sole responsibility of contractor to make good.

f

g

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It is necessary to mention here that it was a "Turnkey" contract, which in simple language means that a contract in which a company if given full responsibility to plan and build something that the employer must be able to use as soon as it is finished without needing to any further work on it themselves. This important facet of the matter cannot be ignored, but has been disregarded by the Arbitrators while passing impugned Award.

h

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All this amount given/awarded by the Arbitrators is public money and cannot be given in such a leisure way to respondent. In that view of matter, impugned award and order are set-aside to the extent of Claim no.3c.

21. Under Claim no.3d, respondent had made a claim of Rs.1,18,22,310/- on account of extra excavation. The Arbitrators awarded Rs.59.00 Lacs.

On one hand, the Arbitrators admit that there is no basis in the claim of contractor/respondent that sites were not given to them in time as it was in explicit terms found that contractor was responsible for correct positioning of all parts of works and was required to rectify any error in the positions, levels, dimensions or alignments of the works and on the other hand, the Arbitrators have decided other claims of the Arbitrators unmindful of contract being Turnkey, which need not to be defined and discussed again here.

In view of above, impugned Award and order with respect to claim no.3d are set-aside.

22. Under Claim no.3e, respondent had projected a claim of Rs.11,45,683 on account of additional hand-railing. Such a claim shows that respondent/contractor tried to over-exaggerate its claims before the Arbitrators. Such claims appear to have been devised to make something from nothing. Although claim no.3e has been rightly rejected by the Arbitrators, yet they have issued and passed impugned Award oblivious of the abovementioned facts.

23. Under Claim no.4 for increase in rates of wages under the Minimum Wages Act, Rs.2.43 Crores had been sought for by respondent relying

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on Clause 13.7 of GCC, which provides that contract prices would be adjusted to take account of any increase or decrease in cost resulting from a change in the laws of the country. Insofar as claim under the head – Claim no.4, is concerned, it has been awarded by the Arbitrators given the law laid down by the Supreme Court with respect thereto.

Thus, impugned Award and order to the extent of claim no.4 for Rs.2.25 Crores need not be interfered with or set-aside.

24. The next claim, being Claim no.5, is with respect to prolongation of contract period of time and cost thereof. The Arbitrators have awarded an amount of Rs.10.17 Crores in favour of respondent.

The first and foremost, the Arbitrators have overlooked the fact that respondent never raised claims before Dispute Adjudication Board (DAB), more particularly in view of Clause 20.2 and 20.4 of General Conditions of FIDIC Contract executed between the parties.

The Arbitrators have totally disregarded and ignored the fact qua mandate of Clause 20.6 of the agreement dated 18th December 2006, which provides that only those disputes are arbitrable which were raised before DAB and were not settled.

Not only this, respondent/contractor accepted the final bill and measurements by putting its seal and signatures without any reservation and protest, and therefore, respondent was precluded to raise any claim thereafter. This important aspect of the matter has also been disregarded by the Arbitrators.

Perusal of the file and record thereon reveals that on 18th September 2013, the bridges constructed by respondent/contractor

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were without approaches of 15 metres, which was within the scope of agreement as per IRC:5-1998 clause 20.1. Besides, River Training Works/Protection Works were not completedand, as such, respondent/ contractor delayed execution of work and did not complete it within stipulated time of completion.

The Arbitrators have forgot to go through the communications made by the Department to respondent/contractor and misdirected themselves in considering the claim of respondent. Startlingly, when a communication no.CEMRP/1422 dated 9th November 2013 issued by Technical Officer to Chief Engineer, Project Organisation/Mughal Road, to the address of respondent, for Nallah training works, load testing of bridges and treatment for protection of approaches etc., the answer of respondent to such communications was to release payments. Thereafter Chief Engineer, J&K Projects Organisation, vide letter no.CEMRP/1592-93 dated 4th December 2013, informed respondent/ contractor with caution to complete balance works viz. protection works; load testing of bridges; fixing of crash barriers on approaches; removal of debris accumulated in the waterway under the bridges, but all in vain.Vide letter dated 26th February 2014, respondent/ contractor was asked to come up with an action plan for load testing of all the seven bridges as also with the proposals/drawings for Nallah Training and other allied works. Respondent/contractor was also informed to attend a meeting with respect thereof on 6th March 2014, but respondent refused to attend the meeting. Thus, again vide letter dated 10th March 2014,

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respondent/contractor was asked to discuss the issues with the Chief Engineer on 24th March 2014.

All these important facets of the matter have been sheerly disregarded by the Arbitrators.

It is very important to make mention of here that the Arbitrators were required to think as to what were the claims projected by respondent – a contractor, before them, and that whether there was any collusiveness emanating from the proceedings initiated at the instance of the parties before them, more particularly when the amount awarded by the Arbitrators in favour of the contractor/respondent was/is the common man's money of the country.

It is the money that is to be drawn and disbursed from State Exchequer and to be given to a contractor – respondent herein. The State Exchequer is public exchequer. It is public tax that government collects from public.

It is not so easy to give away the public exchequer for an individual. That apart, when basics of the instant case are considered. Respondent/contractor, on its own volition, had entered into contract. Respondent had claimed that it had capacity and capability to lay and install such small bridges. Respondent had also claimed to have laid and installed longest bridges in the country. Thus, respondent should have the ken on all facets of the contract in question. It cannot be heard saying from the mouth of respondent that it was incapable to conduct planning, survey, investigation, collect hydraulic data and structural design along with execution (complete job) on Turn Key

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Basis as per scope of the work on the spots where bridges had to be laid/installed. However, the Arbitrators without application of mind have entertained the baseless claims of respondent, which were/are unworthy of consideration.

The impugned award and order concerning Claim no.5, are set-aside.

25. Claim no.6 has also been for payment of interest on delayed payments. The respondent was/is not entitled to any interest. The award and impugned to the extent of claim no.6 for grant of interest are set-aside.

26. Claim no.7 is with respect to cost of acceleration for an amount of Rs.4.46 Crores claimed by respondent/contractor.

On one hand the Arbitrators admit that respondent/contractor has projected claim without details and the same has, thus, become absolutely hypothetical, and on the other hand the Arbitrators have awarded Rs.1.00 Crore in favour of respondent/contractor as if the Arbitrators were giving *ex gratia* relief to the claimants of any mishap.

In that view of matter, impugned award and order relating to Claim no.7 are also set-aside.

27. Insofar as impugned Award and order to the extent of Claim no.8 is concerned, the same need not be interfered with.

28. Claim no.9 is about escalation in cost of construction work done during extended period. Respondent/contractor claimed Rs.3.00 Crores. The Arbitrators have given Rs.1.50 Crores in favour of respondent.

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In view of the elaborate discussion herein above, further reiteration thereof does not require. So, the impugned award and order qua claim no.9 are also set-aside.

29. Under claim no.10, cost of arbitration in the amount of Rs.40.00 Lacs has been given by the Arbitrators in favour of respondent without any basis. So, the impugned award and order are set-aside to the extent of claim no.10 as well.

30. The Award to the extent of interest @ 6% payable w.e.f. the date of award granted by the Arbitrators is also set-aside.

31. It may also be added here that the Principal District Judge, Srinagar, has in sheer abuse of process of law, passed impugned order and is, therefore, set-aside on the above lines.

32. The instant appeal is allowed and disposed of in terms of above.

33. Record, if any received, be returned.

(Vinod Chatterji Koul)
Judge

Srinagar4
02.02.2023
Ajaz Ahmad, PS

Whether approved for reporting? No.

HIGH COURT
JAMMU & KASHMIR AND LADAKH

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