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*** IN THE HIGH COURT OF DELHI AT NEW DELHI**

Date of Decision: 31st May 2024

+ O.M.P. (COMM) 258/2024 and I.A. 31365/2024, I.A. 31366/2024

NEW DELHI MUNICIPAL COUNCIL

..... Petitioner

Through: Mr. Sunder Khatri, ASC *via* video-conferencing with Mr. Mayank, Advocate.

versus

N.S. ASSOCIATES PVT.LTD.

..... Respondent

Through: None.

HON'BLE MR. JUSTICE ANUP JAIRAM BHAMBHANI

J U D G M E N T

ANUP JAIRAM BHAMBHANI J.

By way of the present petition filed under section 34 of the Arbitration & Conciliation Act 1996 ('A&C Act'), the petitioner impugns the Interim Arbitral Award dated 24.01.2024 ('interim award') rendered by the learned Sole Arbitrator in relation to their disputes with the respondent.

2. The dispute in question arises from a contract for providing electrical and fire-fighting works entered into between the parties in relation to the Charak Palika Hospital, Moti Bagh, New Delhi.
3. For completeness of record, the present petition was first filed on 22.04.2024 before the learned District Judge, Patiala House Court, New Delhi; and was subsequently returned to the petitioner by that



court *vide* order dated 18.05.2024 for lack of pecuniary jurisdiction. Hence, the present petition is within time in the context of section 34(3) of A&C Act.

4. Mr. Sunder Khatri, learned ASC appearing for the petitioner submits, that by way of the interim award, the learned Arbitrator has granted two claims, purportedly based on admissions contained in the Statement of Defence dated 24.08.2023 ('SoD') filed by the petitioner. The aggregate value of the said two claims is Rs. 67,59,399/-, comprising two amounts of Rs.30,99,193/- and Rs. 36,60,206/- which arise from two different heads of claims, as detailed in the petition.
5. The court has heard Mr. Khatri at length.
6. Mr. Khatri has taken the court through the interim award as well as the reasoning contained therein, to argue that the averments contained in the SoD that have been construed by the learned Arbitrator as 'admissions' of the claims are, in fact, not clear or unequivocal admissions; and the learned Arbitrator should have read the SoD as a whole, which he has omitted to do.
7. The record shows that in the application filed by the respondent seeking judgement on admissions, they had claimed a total sum of Rs. 1,52,31,520/- by way of an interim award based on what the respondent claimed were admissions of 05 different amounts by the petitioner, of which the learned Arbitrator has granted only 02 claims by way of the impugned interim award. The respondent had also claimed a further sum of Rs. 15,92,615.53/- towards certain



deductions made by the petitioner from running bills, which also the learned Arbitrator has declined, at the interim stage.

8. The admissions on the basis of which the interim award has come to be passed are contained in the following portions of the SoD :

*“..... As per final bill prepared for electrical component gross work done amount is Rs.2,55,26,820.50 out of which Rs. 2,24,27,627/- had already been paid to the Claimant through various R/A Bills and **now gross amount of final bill of electric component against work done is Rs.30,99,193/- which is yet to be paid.....**”*

* * * * *

*“..... The Fire Officer of Fire component informed escalation of Rs.1,95,698/- by considering the prevailing unskilled labour rate i.e. Rs.522/-, Rs.534/- & Rs. 538/- of concerned different quarter in which the R/A Bill has been paid & final bill is to be paid for original contract period by considering the approved EOT of 443 days without levy of compensation and 234 days with a levy of compensation of considered. **Thus the total due escalation amount comes out to Rs.36,60,206/-.....**”*

(extracts from table at para 26 of SoD)

(emphasis supplied)

9. Furthermore, the aforesaid admissions are also contained in the petitioner's para-wise reply to the Statement of Claim filed by the respondent in the arbitral proceedings. The relevant extracts from the para-wise reply in the SoD, read as follows:

*“Claim No. 1 (ii) As per final bill prepared for electrical component gross work done amount is Rs.2,55,26,820.50/- out of which Rs.2,24,27,627/- had already been paid to the Claimant through various R/A Bills and **now gross amount of final bill of electric component against work done is Rs.30,99,193/- which is yet to be paid.** The Respondent seeks to refer and rely*



upon the contents of the abovementioned preliminary objections and submissions; the same are reiterated and are not being repeated herein for the sake of brevity.”

* * * * *

*“Claim No. 1 (iv).... The Fire Officer of Fire component informed escalation of Rs.1,95,698/- by considering the prevailing unskilled labour rate i.e. Rs.522/-, Rs.534/- & Rs.538/- of concerned different quarter in which the R/A Bill has been paid & final bill is to be paid for original contract period by considering the approved EOT of 443 days without levy of compensation and 234 days with a levy of compensation of Rs. 72,36,724/- and Deviation items have also been considered. Thus, **the total due escalation amount comes out to Rs.36,60,206/-**. The Respondent seeks to refer and rely upon the contents of the abovementioned preliminary objections and submissions; the same are reiterated and are not being repeated herein for the sake of brevity.”*

(emphasis supplied)

10. Upon a plain reading of the extracts of the SoD referred to above, this court is of the opinion that the sums, which the learned Arbitrator has opined stand *admitted* as being payable by the petitioner to the respondent, are indeed so.
11. Though Mr. Khatri has sought to read the admissions differently, to argue that what is stated in the aforesaid extractions does not amount to an *unequivocal admission* of the said amounts being due, especially at the interim stage; and that the learned Arbitrator should not have rendered an interim award when he was yet to adjudicate upon the disputes, this court is not persuaded to accept those submissions.



12. It must be appreciated that the interim award has been drawn-up, on an application of the respondent on the principles of Order XII Rule 6 of the Code of Civil Procedure, 1908 ('CPC'), which reads as follows:

ORDER XII

Admissions

6. Judgment on admissions.—(1) Where admissions of fact have been made either in the pleading or otherwise, whether orally or in writing, the Court may at any stage of the suit, either on the application of any party or of its own motion and without waiting for the determination of any other question between the parties, make such order or give such judgment as it may think fit, having regard to such admissions.

(2) Whenever a judgment is pronounced under sub-rule (1) a decree shall be drawn up in accordance with the judgment and the decree shall bear the date on which the judgment was pronounced.

(emphasis supplied)

13. The principles of Order XII Rule 6 CPC have been re-enunciated by the Supreme Court in its recent decision in *Karan Kapoor vs. Madhuri Kumar*¹ in the following words:

“24. Thus, legislative intent is clear by using the word “may” and “as it may think fit” to the nature of admission. The said power is discretionary which should be only exercised when specific, clear and categorical admission of facts and documents are on record, otherwise the court can refuse to invoke the power of Order 12 Rule 6. The said provision has been brought with intent that if admission of facts raised by one side is admitted by the other, and the court is satisfied to the nature of admission, then the parties are not compelled for full-fledged trial and the judgment and order can be directed without taking any evidence. Therefore, to save the time and money of the court and respective parties, the said

¹ (2022) 10 SCC 496



provision has been brought in the statute. As per above discussion, it is clear that to pass a judgment on admission, the court if thinks fit may pass an order at any stage of the suit. In case the judgment is pronounced by the court a decree be drawn accordingly and parties to the case is not required to go for trial.”

(emphasis supplied)

14. Furthermore, a Division Bench of this court in ***BHEL vs. Zillion Infraprojects (P) Ltd.***² has held that under section 31(6) of the A&C Act, the Arbitrator also has the power to pass a judgement on admissions. The relevant portion reads as follows :

“26. In Gammon India Ltd. case [Gammon India Ltd. v. Sankaranarayana Construction (Banglore) (P) Ltd., 2009 SCC OnLine Mad 2261], it has been held that powers under Section 31(6) of the Act, 1996 cannot be artificially restricted to exclude from its purview, the power to pass an interim award on admission. Therefore, to say that one cannot read a power akin to Order 12 Rule 6 CPC, 1908 into Section 31(6), would mitigate (sic, militate) against the very objects of the Act.”

(emphasis supplied)

15. In the opinion of this court, upon a plain reading of Order XII Rule 6 CPC, the principles of which have been followed in the arbitral proceedings, the admissions on the basis of which the interim award has been rendered in the present case, are unequivocal and clear.
16. Even otherwise, it may be observed that the principles of interference by court with an arbitral award or an interim arbitral award under section 34 of the A&C Act are very restricted and narrow³. Following

² (2023) 1 HCC (Del) 635

³ Ssangyong Engg. & Construction Co. Ltd. vs. NHAI, (2019) 15 SCC 131 at paras 37-41; PSA SICAL Terminals (P) Ltd. vs. Board of Trustees of V.O. Chidambranar Port Trust Tuticorin, 2021 SCC OnLine SC 508 at para 43;



these well-worn principles, in the present matter, this court would not interfere with the interim award *merely* because the admissions made by the petitioner in the arbitral proceedings *may be amenable* to an alternative interpretation. Even if two interpretations are possible, the correct course for this court to follow is to refrain from interfering with the interpretation given and the view taken by the learned Arbitrator, *unless* the view so taken is perverse or is such that no reasonable person would take that view. That is certainly not the case insofar as the impugned interim award is concerned.

17. As a sequitur to the above, after a careful consideration of the averments contained in the petition; on a close reading of the impugned interim award; as well as after considering the submissions made at the Bar, this court finds no ground to interfere with the impugned interim award, especially in view of the limited remit of the court under section 34 of the A&C Act.
18. Accordingly, the court finds no merit in the present petition, which is dismissed *in-limine*; without however, any order as to costs.
19. Pending applications, if any, also stand disposed-of.

ANUP JAIRAM BHAMBHANI, J

MAY 31, 2024

V.Rawat