

HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT SRINAGAR

AA 13/2024 CM(6308/2024)
Caveat 2136/2024

CHIEF ENGINEER (AF) UDHAMPUR ZONE MILITARY ENGINEER SERVICE AND ORS.

...Appellant/Petitioner(s)

Through: Mr. Nazir Ahmad Bhat, Advocate.

Vs.

M/S NYZ INFRA TECH ST AVENUE AND ANR.

...Respondent(s)

Through: M/s Owais Sareer, Danish Wani, Advocates.

CORAM: HON'BLE MR. JUSTICE RAHUL BHARTI, JUDGE

ORDER
16.10.2024

1. With the appearance of counsel for the caveators, caveat lodged shall stand discharged.
2. A contract agreement No. CEAUFU-18 of 2018-19 for the work of “provision of Central Air Conditioned Auditorium at AF Station Awantipur” came to be executed between the Union of India and the respondent concern M/S NYZ INFRA TECH ST Avenue Panthachowk Srinagar.
3. The value of the contract allotted to the respondent is Rs.7,65,02,780/-. The commencement of the contract was from 15.09.2018 and the intended completion by

14.08.2020 which came to be extended upto 31.10.2021 but is reported to be still in execution stage.

4. During currency of the execution of the contract, certain disputes and difference led the parties to contract to an arbitration on account of arbitration clause obtaining in the contract.
5. The Engineer-in-Chief, vide his letter dated 09.08.2021, came to appoint an arbitral tribunal comprised of sole arbitrator Mr. Rajinder Paul Singal, ADG (arbitration).
6. In the dispute under adjudication, the respondent No.1- M/S NYZ Infratech ST, came forward with the following claims; (1) Order of declaration that the alleged corrigendum dated 20.01.2018 does not form part of contract agreement and as such is null and void for all purposes; (2) for payment of expenditure involved in providing foundation of building No.1 of Schedule 'A' Part-1 Section-1 as per drawing No. ADG/2017/ST/004 Sheet No.3R/19. The Union of India came forward with its counter claim to the effect of recovery on account of minus do due to change in foundation drawing Rs. 83,55,896.00.
7. In terms of an award dated 08.08.2022, the arbitral tribunal came up with its reasoned finding with respect to claims No. 1 and 2 of the respondent No.1 holding that

Corrigendum published on 20.01.2008 not to form part of the tender and consequently not the part of the contract agreement. Claim No.2 of the respondent No.1 was held not sustainable by holding that respondent No.1 was to execute the foundation work as per drawing No. ADG/2017/ST/004 Sheet 3R/19 without any deviation (+/-).

8. The counter claim of the Union of India was also disallowed.
9. However, with respect to the claim for release of withheld amount alongwith compensation for making under payment in RARs, learned arbitral tribunal came forward with the award of an amount of Rs.66,04,115/- in favour of the respondent No.1 with the interest @ 11% per annum on the said amount of Rs.66,04,115/- with effect from 20.05.2019 to 08.08.2022 aggregating to the amount of Rs. 23,34,599/- as interest and the two combined together amounting to Rs. 89,38,714/-.
10. The Union of India came to be directed to pay the said amount within 90 days from the date of publication of the award or whichever is earlier otherwise the same to carry 9% simple interest per annum on the awarded amount.
11. It is this award which came to be questioned under section 34 of the Arbitration and Conciliation Act 1996

before the court of Principal District Judge, Pulwama, which vide an order dated 10.08.2024, came to uphold the award dismissing challenge under section 34 of Arbitration and Conciliation Act 1996, so made by the Union of India through Chief Engineer (AF) Zone Military Engineering Service Air Force Udhampur.

12. The Chief Engineer (AF) Zone Military Engineering Service Air Force Udhampur joined by two co-appellants have now come forward with an appeal under section 37 of the Arbitration and Conciliation Act 1996 before this Court.

13. Issue notice. Same is accepted by M/s Owais Sareer and Danish Wani, Advocates on behalf of the respondent No.1.

14. Registrar Judicial, Srinagar to requisition the arbitration record from the learned arbitrator -Rajinder Paul Singhal. The official/residential address of learned Arbitrator to be provided by the counsel for the appellant to the Registrar Judicial, Srinagar within a period of 10 days whereupon Registrar Judicial, Srinagar to address a communication to the learned arbitrator for submission of the arbitration record in full before this Court.

15. Registrar Judicial, Srinagar shall also requisition the record of file No. 02/2022 disposed of on 10.08.2024

titled *Chief Engineer (AF) Zone Military Engineering Service Air Force Udhampur & Ors. Vs. M/s NYZ Infra Tech ST Avenue Panthchowk Srinagar & Anr.*, from the court of learned Principal District Judge Pulwama.

16. In the meantime, the appellants are directed to deposit the entire awarded amount i.e. Rs. 89,38,714 with the Registrar Judicial, Srinagar within a period of eight weeks positively.
17. List on 18.12.2024. In the meantime, the execution proceedings before the court of Principal District Judge Pulwama, shall remain in abeyance.

(RAHUL BHARTI)
JUDGE

Srinagar
16.10.2024
Muzammil. Q