

**HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT JAMMU**

Case:- AA No. 17/2014
CM No. 6550/2023

Union of India and anotherPetitioner(s)

Through: Mr. Vishal Sharma, DSGI.

Vs

M/s Khajuria Construction Co. Respondent(s)

Through: Mr. R. K. Gupta, Sr. Advocate with
Mr. Udhay Bhaskar, Advocate.

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

ORDER
(03.06.2024)

1. The institution of this petition under Section 34 of the Jammu and Kashmir Arbitration and Conciliation Act, 1997 dates back to **18.03.2014** preferred by two petitioners led by Union of India thereby impugning an arbitration award dated **23.12.2013** passed by sole arbitral tribunal of Sh. Satish Chandra, Chief Engineer relatable to construction work done in the year **2006** allotted on a lump sum amount of **Rs. 1,67,83,971/-** under contract No. **CEUZ-11/2006-2007** to the respondent as a contractor who came to complete the contract work on **18.06.2008** on an extension basis.
2. The arbitral dispute having arisen between the petitioners and the respondent in regard to the execution of the contract work, the matter was referred for arbitration to the arbitral tribunal of Sh. Satish Chandra, Chief Engineer.

3. Before the arbitral tribunal, the respondent had lodged the following claims:

(a) **Claim No. 1 original as well as modified:** To cost of Payment of work done (extra items provided) in respect of serial item No. 1 of schedule 'A' Part-III A not paid. (Amount of claim: Rs. 55,000/-) and

Loss suffered due to omission of scope of work to the tune of approximately 24% (Minus) and work done not measured recorded and accounted for in 4th RAR/Final bill in respect of Schedule 'A' Part III A Serial Item No. 1 on serial page No. 23 (R) of CA. (Amount of Claim: Rs. 8,81,794.00/-)

For this claim, the arbitrator came to grant award of Rs. 2,83,430/-.

(b) **Claim No. 2:** To cost payment of damages/loss suffered due restrictions imposed on the movement of transport (load carrier) in the city (no entry) from 7.00 am to 9.00 pm and also restrictions imposed by the judicial orders of Hon'ble High Court 'no entry' for the load carriers for the area coming enroute in the way to the site of work i.e., 'C' hill area from 7 AM to 9 PM. (Amount of claim: Rs. 41,95,992.78/-)

For this claim, the arbitral tribunal came to grant award of Rs. 7,69,320/-.

(c) **Claim No. 3:** To cost payment of extra work done not paid in respect of serial item No. 6 of schedule 'A' part III-A i.e providing 'AMF Control Panel" not specified in the CA. (Amount of claim: Rs. 1,00,000/-)

Respondent was awarded **nil** amount by the arbitral tribunal.

- (d) **Claim No. 4:** To cost of payment of loss suffered due to extra work done not paid in respect of providing cement slurry @ 3 kg/Sqm after carrying out tucking to RCC retaining wall surface before doing the plaster 5 mm thick in CM 1:3 as required vide serial item No. 9 of schedule 'A' part II. (Amount of claim: Rs. 4,20,000/-).

Respondent was awarded **nil** amount by the arbitral tribunal.

- (e) **Claim No. 5:** To cost of payment of loss suffered due to bad debt, advance paid to the labour, labour run away with heave advances as complete site was not provided in one go, therefore, the advance paid could not be liquidated. (Amount of claim: Rs. 50,000/-).

Respondent was awarded **nil** amount by the arbitral tribunal.

- (f) **Claim No. 6:** To cost payment of work done not paid in respect of excavation and earth work required for filling in RCC retaining wall, earth purchased and brought to site from outside the MOD land with lead exceeding 15 KMs. (Amount of claim: Rs. 7,52,500/-).

For this claim, the arbitrator came to grant award of Rs. 1,41,900/-

- (g) **Claim No. 7:** To cost of payment of final bill not paid. (Amount of claim: Rs. 6,00,000/-) and

Claim No. 8: To cost payment of damages/loss suffered due to non-payment of final bill withheld beyond six months the

maximum time specified for payment of final bill, loss sustained in turnover and profit thereon. (Amount of Claim: Rs. 6,30,000/-).

Since both the claims were linked together, the arbitral tribunal has awarded an amount of Rs. 200/- for claims No. 7 and 8.

- (h) **Claim No. 9:** To cost of payment of loss/damages suffered on the retention money retained in final bill by the respondent more than the prescribed period of one year of defect liability period of the work. (Amount of work: Rs. 3,00,000/-).

For this claim, the arbitrator came to grant award of Rs. 1,27,000/-.

- (i) **Claim No. 10:** to cost payment of loss suffered due to uncontractual and illegal recoveries being made from the final bill. (amount of claim: Rs. 92,972/-).

For this claim, the arbitrator came to grant award of Rs. 5,34,124/-.

- (j) **Claim No. 11:** To cost payment of damages suffered in excess overheads and loss of profit due to prolongation of the contract period on account of inordinate delay in completion of work attributed to Union of India. Claim based on Hudson formula. (Amount of claim: Rs. 26,57,462.09/-).

Respondent was awarded **nil** amount by the arbitral tribunal.

- (k) **Claim No. 12:** To cost payment of damages suffered due to loss of goodwill, market credibility, business and social reputation caused

mental torture, agony and inconvenience. (Amount of claim: Rs. 10,00,000/-).

Respondent was awarded **nil** amount by the arbitral tribunal.

- (1) **Claim No. 13(a):** Interest @ 24% per annum compounded quarterly at prevailing market rate of private financier companies charged on borrowed money from the builders engaged in construction industry, due to wrongful denial by the respondent GE for payments of work done by the claimant for more than 33 months rightful due amounts of work done not paid. (Amount of claim: Rs. 11,64,838.86/-);

Claim No. 13(b): Interest @ 18% (simple interest) on the amounts rightfully become due from the respondents i.e., (Rs. 13,27,500/- + 11,64,838.86 + 6,00,000/- final bill)= Rs. 30,92,333.00 due from respondents upto 18.03.2011 and

Claim No. 13(C): Interest @ 18% (simple interest) on the amounts rightfully become due from the respondents.

With respect to the aforesaid claims, the arbitral tribunal granted the following reliefs:

- (a) **Past and Pendente lite interest is awarded on amount awarded against claim No. 1 (a), 6,9 and 10. The interest shall be simple interest at the rate of 6% per annum and shall be calculated from 16 Jan 2010 to date of award.**
- (b) **Further interest: A period of three months from the date of award is allowed to the respondent for making payments in terms of this award. If the payment is not made by this date, then the awarded amount shall carry simple interest @ 12% per annum from 25 Mar 2014 to date of actual payment. There shall be no future interest on the amount of past and pendente lite interest calculated as per (a) above.**

- (m) **Claim No. 14:** Cost of arbitration, technical engineer, consultant's fee, arbitration consultant-cum-pleading, assistant's fees engaged by the claimant and to defend arbitration case, misc expenses related with the arbitration case and self participation. (Amount of claim: Rs. 1,50,000/-).

For this claim, the arbitrator came to grant award of Rs. 25,000/-.

4. The claim of the petitioners for cost of reference was negated.
5. The arbitrator is said to have awarded a total claim for amount of **Rs. 18,80,974.14/-** with interest as against claimed amount of **Rs. 1,60,87,892.73/-**.
6. In terms of an order dated **14.12.2022**, this Court called upon the petitioners to come forward with deposit of the entire awarded amount which was then to be kept in a fixed deposit.
7. In terms of order dated **25.09.2023**, this Court came to observe that deposit of an amount of **Rs. 41,91,691/-** though online mode has come to take place thereby resulting in its fixed deposit.
8. Upon deposit of said award amount, the respondent came forward with an application **CM No. 6550/2023** thereby seeking release of the deposited awarded amount.

9. Objections to the aforesaid application came to be submitted by the petitioners registering their apprehension that if the amount is released, it would be impossible to recover the said amount in the event of the challenge made in the petition getting successful in favour of the petitioners.
10. Keeping in view the equities of the case, this Court cannot lose sight of the fact that the plea being raised by the petitioners to disallow the application of the respondent for release of the deposited awarded amount has a flip side in the sense that in the event of the petitioners being successful if recovery of the released amount is risk then simultaneously in the event of the petitioners losing its challenge under Section 34 then till that time the respondent being kept deprived of the use of the awarded money can be equally causing an irreparable injury to the financial interest of the respondent who at the end of the day is a contractorship concern for running of which the money flow is an oxygen supply.
11. The apprehension of the petitioners can be safely attended to by this court by getting an undertaking from the respondent for securing the return and which undertaking the respondent can breach only at its own risk and costs besides suffering penal consequences.

- 12.** Accordingly, this Court allows application CM No. 6550/2023 by directing the release of the deposited awarded amount along with interest accrued thereupon subject to furnishing of an undertaking by the respondent through its proprietor Sh. Som Nath Khajuria before the Registrar Judicial, Jammu that in the event of the final decision of the present petition being in favour of the petitioners being in entirely or partially then the respondent shall be bound to return the entire amount or part as the case may be, otherwise being received in terms of this order along with prevalent interest rate accruable thereupon till its return deposit with this Court.
- 13.** The release of the amount is directed to take place through bank account transfer in favour of the respondent. The release of the awarded amount shall be without prejudice to the right of the petitioners in their challenge to the impugned award.
- 14.** CM No. 6550/2014 is disposed of accordingly.
- 15.** List the main case in due course for hearing.

(RAHUL BHARTI)
JUDGE

JAMMU
03.06.2024
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