IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NOS. 3872-3874 OF 2007

ATLANTA INFRASTRUCTURE LTD. ... Appellant(s)

VERSUS

MUNICIPAL CORPORATION OF GREATER MUMBAI & ORS. ... Respondent(s)

O R D E R

In the present case, the parties went to arbitration after completion of the awarded work. The contractor had five claims against the Municipal Corporation, and by Awards dated 06.08.1992, a total Rs.66.56 lakhs was awarded together with pendente lite interest of 18% and future interest of 12%. A counter claim amounting to Rs.35,000/- was also awarded. In the arbitration petition filed by the Municipal Corporation, the Single Judge found the Award to be in order and thus, dismissed the challenge to these claims. The Division Bench of the High Court, by the impugned judgment dated 16.12.2005, however, went into each claim and substituted its own figures for claim Nos. 2 and 3 by reducing what was granted by the Arbitrator. Claim No. 4, in its entirety, was rejected by the Division Bench, and it finally scaled down the pendente lite interest from 18% to 12% and future interest from 12% to 8%.

Ms. Minakshi Arora, learned senior counsel appearing for the appellant, has argued that the Division Bench ought

not have substituted its own view for that of the Arbitrator and acted as if it were in appellate Court. She pointed out that substantial reasons were given for the Awards in each of the claims, the Arbitrator having applied his mind and having awarded amounts less than what was claimed. According to her, the award was unexceptionable and should not have been interfered with. Shri Atul Chitale, learned senior counsel appearing on behalf of the Corporation, has argued before us that the Division Bench ultimately construed various clauses of the agreement in order to arrive at the substituted figures and also stated that so far as Claim No.3 was concerned, the Arbitrator could not have awarded more than what was actually claimed, in the view taken by the Arbitrator that only amounts that were claimed within the stipulated time, and not for the extended time, was permissible. According to him, therefore, the Division Bench has given a reasoned judgment within the bounds of challenges to arbitration Awards under the 1940 Act.

We have heard learned senior counsel appearing for both the parties.

So far as claim No. 2 is concerned, the learned Arbitrator awarded as compensation for loss suffered on account of wrongful omission of an item of work, a sum of Rs.4,56,000/-. The learned Arbitrator found that after the claimant had made arrangements for executing the work by fabricating certain shuttering and other items special to the requirements of this particular work, and after deployment of

machinery and equipment for executing the same, the respondents excluded the said item and got it executed from another agency. That being so, according to the learned Arbitrator, the claimants should be put back in the same position as if they had done the modified work and, therefore, arrived at a figure of Rs.4,56,000/-, out of the claim of Rs.5,98,000/-. The Division Bench found that this figure could not have been given and only Rs.1.54 lakhs could have been given in view of a reading of certain clauses of the agreement.

In our opinion this is not the correct approach. The Arbitrator has given good reasons stating that what has been awarded is by way of direct expenses, loss of productivity of machinery and equipment, and by way of loss of overheads and profits. We find nothing in any of the clauses mentioned in the agreement which would bar reasonable compensation for this amount. We, therefore, find that the Division Bench exceeded its jurisdiction in substituting the figure of Rs.1.54 lakhs for the figure of Rs.4,56,000/-.

So far as claim No. 3 is concerned which is compensation for loss on account of overheads and profit, the learned Arbitrator awarded a sum of Rs.21.20 lakhs out of the claim of Rs.27,79,436.42/-. The Arbitrator was clear in stating that whatever was claimed during the stipulated period would be liable to be paid, and the ends of justice will be met by allowing overheads for the entire period, i.e., stipulated period as well as extended period, which are

out of pocket expenses incurred, but not the expected profit during the extended period. The Division Bench while interfering with claim No. 3 found, in the chart that was submitted to the Arbitrator, that the total claim that was made for the stipulated period was only Rs.11.30 lakhs and, therefore, a sum of Rs.21.20 lakhs would be more than what the claimant itself had claimed and the award would have to be set aside on this score. This again is a misreading of the Award. The Award had made it clear that overheads which are actually out of pocket expenses incurred by the claimant will be awarded for the entire period and not only for the stipulated period. This being so, it is clear that the Division went wrong in arriving at the figure of 11.30 lakhs which did not include overheads for the extended period.

Also on claim No. 4, the Division Bench found that this claim which was granted by the Arbitrator for rise in price of material and labour to the extent of 79% and which was allowed only to the extent of 35% of value of work done during the extended period was nothing but a duplication of claim No. 3. We are of the view that the claims being separate and distinct is a possible view on the facts, and that the Division Bench was entirely wrong on this score as well.

Further, with reference to clause 74 of the Agreement, the Division Bench found that these escalated amounts could not have been granted. On a perusal of clause 74 and on a perusal of the Award, we find nothing perverse in the

Arbitrator awarding these amounts and nothing contrary, on a possible construction of clause 74 of the Agreement, to the said clause.

We are, therefore, of the view that the Division Bench exceeded its bounds in interfering with the well reasoned Award of the Arbitrator.

However, when it comes to pendente lite and future interest, we find that the interest rates have been continuously dropping, and, in the interest of justice, we feel that both pendente lite interest as well as the future interest should be at a median rate of interest of 12%.

With these observations, the appeals are allowed and the judgment of the Division Bench is set aside.

......, J.
[ROHINTON FALI NARIMAN]

......, J.
[SANJAY KISHAN KAUL]

New Delhi;
November 02, 2017.

ITEM NO.107 COURT NO.12 SECTION IX

S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS

Civil Appeal Nos. 3872-3874/2007

ATLANTA INFRASTRUCTURE LTD. Appellant(s)

VERSUS

MUNICIPAL CORPORATION OF GREATER MUMBAI & ORS. Respondent(s)

(With IA No.76818/2017-PERMISSION TO FILE ADDITIONAL DOCUMENTS and IA No.80693/2017-PERMISSION TO FILE ADDITIONAL DOCUMENTS)

Date : 02-11-2017 These appeals were called on for hearing today.

CORAM :
HON'BLE MR. JUSTICE ROHINTON FALI NARIMAN
HON'BLE MR. JUSTICE SANJAY KISHAN KAUL

For Appellant(s)
Ms. Meenakshi Arora, Sr. Adv.
Mr. Chirag M. Shroff, AOR
Ms. Neha Sangwan, Adv.

For Respondent(s)
Mr. Atul Yeshwant Chitale, Sr. Adv.
Ms. Suchitra Atul Chitale, AOR
Mr. Gurjyot Sethi, Adv.

UPON hearing the counsel the Court made the following
O R D E R

The appeals are allowed in terms of the signed order.

(NIDHI AHUJA) (SAROJ KUMARI GAUR)
COURT MASTER COURT MASTER

[Signed order is placed on the file.]