$~24

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

\+ O.M.P. (COMM) 352/2024 & I.A. 36484/2024

KUNAL FOOD PRODUCTS PVT. LTD. .....Petitioner
Through: Mr. Ajay Kumar, Advocate.

versus

DELHI DEVELOPMENT AUTHORITY .....Respondent
Through: Mr. Gaganmeet Singh Sachdeva, Advocate.

CORAM:
HON'BLE MR. JUSTICE PRATEEK JALAN

O R D E R

% **14.08.2024**

1. This petition under Section 34 of the Arbitration and Conciliation Act, 1996 ["the Act"], is directed against an arbitral award dated 31.05.2024 passed by a learned sole arbitrator. The disputes between the parties arose under an Agreement for sale of a hotel plot by the respondent-Delhi Development Authority ["DDA"] to the petitioner. The plot was tendered by DDA and allotted to the petitioner by an allotment-cum-demand letter dated 01.06.2007.

2. The project was admittedly delayed, for which the petitioner and the DDA blamed each other. The petitioner finally completed the project in August, 2010, instead of the originally stipulated completion date of 31.05.2009.

3. The petitioner consequently raised three claims before the learned

This is a digitally signed order.
The authenticity of the order can be re-verified from Delhi High Court Order Portal by scanning the QR code shown above.
The Order is downloaded from the DHC Server on 19/08/2024 at 23:42:41

arbitrator:

a. Claim No. 1 for ₹5.45 crores towards business losses suffered by the petitioner due to delay in completion of the project.
b. Refund of amount of ₹70,01,000/- recovered by DDA by invocation of a performance bank guarantee furnished by the petitioner.
c. Claim No. 3 of ₹5,30,649/- by way of refund of charges recovered by DDA from the petitioner for commencement of construction prior to sanction.

The learned arbitrator has rejected claim No. 1, and allowed claim No. 2, alongwith post-award interest at the rate of 12% per annum. Claim No. 3 was withdrawn by the petitioner.

4. Mr. Ajay Kumar, learned counsel for the petitioner, presses the challenge with respect to two aspects of the award. The first relates to denial of pre-reference and *pendente lite* interest on claim No. 2, and the second relates to denial of costs. The challenge to rejection of claim No. 1 is not pressed.

5. In the impugned award, the learned arbitrator has first analysed the reasons for delay in completion of the project and come to the conclusion that delay was attributable to both the petitioner and DDA. The conclusion of the learned Arbitrator is based upon consideration of the terms of the agreement and the documentary evidence placed by the parties. The petitioner has not raised any ground of challenge to this finding, so it is unnecessary to discuss this in detail. Suffice it to say that the learned arbitrator has found both parties to have contributed to the delay, in addition to other statutory agencies whose approval was

This is a digitally signed order.
The authenticity of the order can be re-verified from Delhi High Court Order Portal by scanning the QR code shown above.
The Order is downloaded from the DHC Server on 19/08/2024 at 23:42:41

required. The learned arbitrator has also held that delay could not be apportioned to each of the parties in percentage terms. He noted, importantly, that the hotel was completed in physical terms in August, 2010 before the start of the Commonwealth Games, which was the objective of the project in question.

6. Although the challenge to denial of the petitioner's claim for loss of profits is not pressed, it may be noted that the claim was rejected on a finding that the delay in operationalisation of the hotels were partly attributable to the petitioner, and that the petitioner had failed to adduce reliable evidence of business losses.

7. As far as claim No. 2 is concerned, the learned arbitrator found that the invocation of the performance bank guarantee by DDA was unjustified. He declined to adjudicate the question of whether the clause providing for invocation of the bank guarantee on account of delay incorporated a genuine pre-estimate of the loss, as he had already recorded a finding that delay in completion of the hotel was attributable to both parties. The learned arbitrator found that the hotel was, in fact, operationalised with the permission of DDA, in time for the Commonwealth Games, and that neither DDA nor the public at large suffered any loss or damage, which would entitle the DDA to invocation of the bank guarantee. However, the grievances raised by the petitioner is that, while awarding claim No. 2 in favour of the petitioner, the learned arbitrator awarded only post award interest, on the following reasoning:

> *"144. In view of the aforesaid discussion an award in the sum of Rs. 70,01,0001/- is passed in favour of the claimant and against the respondent.* ***Since claimant was also partly responsible for the delay, request for pre-suit interest and pendente-lite interest are denied but claimant shall be entitled to interest at the rate of 12%***

This is a digitally signed order.
The authenticity of the order can be re-verified from Delhi High Court Order Portal by scanning the QR code shown above.
The Order is downloaded from the DHC Server on 19/08/2024 at 23:42:42

> ***<u>from the date of the award till realisation</u>*** *of the said amount from the respondent."*
>
> [Emphasis supplied.]

8. Mr. Kumar submits that this finding of the learned arbitrator, denying pre-reference interest and *pendente lite* interest, is inconsistent with the finding that DDA had not suffered any loss or damage. He relies upon Section 73 and 74 of the Indian Contract Act, 1872, and the judgment in *Kailash Nath Associates v. DDA* [(2015) 4 SCC 136], in this connection.

9. I am unable to accept this contention. The learned arbitrator has stated his reason for denial of pre-reference and *pendente lite* interest, which is that the petitioner itself was partly responsible for the delay in completion of the project. The Supreme Court has held, in several judgements, that interpretation of a contract and consequent determination of the claims on the basis thereof is the domain of the arbitral tribunal. The Court is entitled to interfere with an award, only if it is entirely devoid of reasoning, or the reasons are perverse or arbitrary, in the sense that no reasonable tribunal could have arrived at the same conclusion[1]. The fact that the Court might have reached a conclusion different from that of the learned arbitrator, or even that, in the opinion of the Court, the learned arbitrator has committed a mistake of law and/or fact, which is short of the standard of arbitrariness and perversity as outlined above, is insufficient to warrant interference under Section 34 of the Act. The learned arbitrator's finding that both parties were partially

---

[1] *Ssangyong Engineering & Construction Co. Ltd. v. NHAI*, (2019) 15 SCC 131; *Dyna Technologies (P) Ltd. v. Crompton Greaves Ltd.*, (2019) 20 SCC 1; *UHL Power Co. Ltd. v. State of H.P.*, (2022) 4 SCC 116; and *Reliance Infrastructure Ltd. v. State of Goa*, (2024) 1 SCC 479.

This is a digitally signed order.
The authenticity of the order can be re-verified from Delhi High Court Order Portal by scanning the QR code shown above.
The Order is downloaded from the DHC Server on 19/08/2024 at 23:42:42

responsible for the delay in completion of the project is a plausible reason for declining interest until the date of the award. I find no ground to interfere with the same.

10. As far as costs are concerned, Mr. Kumar submits that a partial award has been made in favour of the petitioner-claimant and it ought to be granted the costs of a long-drawn arbitration. However, the fact is that the major claim of the petitioner was on account of business losses, which was rejected, and that rejection is accepted by the petitioner. The petitioner has succeeded only in respect of its claim for refund of bank guarantee of ₹70,01,000/-. The learned arbitrator was, therefore, well within jurisdiction to refrain from making an order of costs in favour of the petitioner.

11. For the aforesaid reasons, I do not find any merit in the present case.

12. The petition, alongwith the pending application, is dismissed.

PRATEEK JALAN, J

AUGUST 14, 2024
'pv'/

This is a digitally signed order.
The authenticity of the order can be re-verified from Delhi High Court Order Portal by scanning the QR code shown above.
The Order is downloaded from the DHC Server on 19/08/2024 at 23:42:42