

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

Date of decision: 05th August, 2021

+ ARB. A. (COMM.) 2/2021

M/S. DELHI BUILDTECH PVT. LTD. Petitioner

Through: Mr. Parveen Kumar Aggarwal, Mr. Abhishek Grover and Mr. Pareekshit Bishnoi, Advocates.

versus

M/S. SATYA DEVELOPERS PVT. LTD Respondent

Through: Mr. Sumit Singh Gehlot, Advocate.

CORAM:

HON'BLE MR. JUSTICE SANJEEV NARULA

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JUDGMENT

SANJEEV NARULA, J. (Oral)

[VIA VIDEO CONFERENCING]

I.A. 974/2021 (application under Section 151 of the Code of Civil Procedure, 1908 for condonation of delay in re-filing)

1. For the grounds and reasons stated in the application, the same is allowed and delay of 68 days in re-filing the appeal is condoned.

2. Accordingly, the application is disposed of.

I.A. 9567/2021 (application under Section 151 of the Code of Civil Procedure, 1908 for substitution of Authorised Representative of the appellant company)

3. The Appellant was being represented by its Authorized Representative ['AR'] Shri. Ajay Kumar Mishra, who unfortunately passed away on 25th April, 2021. This application has been filed to substitute the AR. The Board

Resolution dated 28th June, 2021, whereby Mr. Nirbhay Kumar has been authorised to represent the Appellant is enclosed.

4. The application is allowed. The certified copy of the Board Resolution annexed therewith is taken on record and Mr. Nirbhay Kumar is substituted as the AR of the Appellant.

5. Accordingly, the application is disposed of.

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6. The present appeal impugns the order dated 23rd December 2019, under Section 17 of the Arbitration and Conciliation Act, 1996 (in short 'the Act') passed by the Sole Arbitrator, unilaterally appointed by the Respondent- M/s. Satya Developers Pvt. Ltd., whereby the Sole Arbitrator has given directions to the Appellant to settle accounts of undisclosed 'sub-contractors and labourers' who are strangers to the arbitration proceedings.

7. Briefly stated, the parties are in arbitration for adjudication of disputes relating to Work Orders issued by the Respondent to the Appellant for completion and execution of structural and finishing works of residential and commercial buildings at "The Hermitage" being developed by the Respondent at Sector 103 in Gurugram, Haryana. The Respondent has filed claims for *inter-alia* refund of excess payment, damages etc. Along with the claim petition, the Respondent also filed an application under Section 17 of the Act for ad-interim reliefs as follows: -

- “(i) Pass an ad-interim order thereby directing the respondents to resolve the internal dispute with their sub-contractors and labours relating to nonpayment of dues/arrears and*
- (ii) Settle the accounts of all their sub-contractors and labours relating to nonpayment of dues/arrears pending by paying their dues, during pendency of the above mentioned claim petition;*

(iii) *Pass any further order(s) as this Hon'ble Tribunal may deem fit and proper in the facts and circumstances as above mentioned.*"

8. The Sole Arbitrator, has allowed the application on 23rd December, 2019, by placing reliance upon certain clauses of the Work Orders which are extracted in the impugned order, and has directed the Appellant to settle accounts of its sub-contractors and labourers by making payment to them. The reasoning given in the impugned order is extracted hereinbelow: -

"On the aforesaid facts and submissions, the main question which calls for determination is whether on the face of the Contract between the Claimant and the Respondents, the Respondent Company is liable to pay the dues/ arrears of the sub-contractors/ labourers. Counsel for the Claimant has drawn my attention to the following conditions in the work Orders awarded by the Claimant to the Respondent. The relevant part of the Work Orders dated 30.11.2012 and 04.02.2014 state as below:

"You shall abide by all labour laws in respect of all the labour/manpower engaged for this work. In the event of any liability on M/s. Satya Developers Pvt. Ltd. by virtue of its being the Principal Employer, due to your failure to comply with all required statutory compliances, you will indemnify and reimburse the amount payable by M/s. Satya Developers Pvt. Ltd. on this account."

"12.2 Payment of Wages:

The Contractor shall pay to labour employed by him either directly or indirectly or through Sub Contractors wages not less than fair wages as defined in the relevant Central Labour (Regulation and Abolition) Act 1970 and the Contract Labour Regulation and Abolition of Central Rules 1971, wherever applicable..... "

The relevant parts of the Work Order dated 19.03.2016 are produced as below:

10. SUBCONTRACTORS

It is hereby agreed that no sub-contractor / supplier / petty contractor shall approach the Owner for any outstanding payments and / or there shall be any privity of contract between the Owner and / or any such sub-contractor. It is agreed the Owner shall have no co-relation with such sub-contractors."

"24. STATUTORY REQUIREMENTS

a) All statutory requirements as applicable in the Central/ State/other Govt. Authorities related to all matters including labour, workmen, staff, employees etc. used at the site and/ or the present contract shall be complied by the Contractor.

It shall be liability of the Contractor to pay the wages and other statutory benefits/ entitlements to all the persons engaged by him including Labour Contract (R&A), 1970 and Industrial Dispute Act. All staff, workmen, employees, etc. engaged by the Contractor are solely related to the Contractor and shall have no co-relation to the Owner at any point in

time under any circumstances whatsoever. The Contractor shall indemnify the Owner and/or their respective directors, employees, etc. on this account at all times during this contract and/or even thereafter if in relation to anything undertaken during this contract and/or arising out of and/or connected to this contract."

"28. OTHER MISCELLANEOUS CONDITIONS

h. The Contractor will ensure that no supplier / sub-contractor will ever contact to the Owner/ Principal Management, Senior Staff and no supplier / sub-contractor will contact Owner / Principal's office for any pending payment of whatsoever nature."

A bare reading of all the above stated terms of the Work Orders awarded to the Respondent Company by the Claimant would undisputedly show that the terms at hand did require the Contractor i.e. the Respondent, solely and wholly, to make payment to the subcontractors, labourers, suppliers and all other persons engaged by the Respondent Company and these persons have no relation with the Owner i.e. the Contractor at any point in time whatsoever.

In the aforesaid view of the matter, the contention of the Counsel for the Respondent Company does not really survive for consideration as the decision of this tribunal cannot travel beyond the contract and further, the Respondents have failed to place on record sufficient evidence to show the liability of the Claimant Company to pay the labourers/ sub-contractors. Moreover, any such proposition as contrary to the aforesaid Work Orders will mock at the terms agreed upon. Parties cannot be allowed to depart from what they had agreed. Of course, if something flows as a necessary concomitant to what was agreed upon, the tribunal can assume that too as a part of the contract between the parties. However, it is not so in the present case. On this fact situation, I hold that the Respondent Company had expressly agreed to be responsible for making the payment to the labourers/sub-contractors.

(...) Thus, the Tribunal has the power to issue or direct other interim measures of protection as may appear to the court to be just and convenient. On that basis also, it is not possible to keep out the concept of balance of convenience, prima facie case, irreparable injury and the concept of just and convenient while passing interim measures under Section 17.

This being legal and factual position, I am of the opinion that the Claimant has shown strong prima facie case for grant of interim measures of protection. Balance of convenience is in favour of the Sub-contractors/Labourers/Suppliers and the Claimant and against the Respondents. As noticed hereinabove, in case the interim measure is not granted, irreparable loss and injury is likely to be caused to the Claimant and to the Subcontractors/Labourers/Suppliers.

It is clarified that payment of dues/arrears has to be made to the Sub-contractors/ Labourers/ Suppliers and inter se dispute between the Claimant and the Respondent cannot affect the right of the Subcontractors/ Labourers/Suppliers to receive payment for their work. There is admittedly no dispute with the Subcontractors/ Labourers/Suppliers. The poor labourers cannot be made to suffer for no fault on their part. Rather, they have a genuine and rightful claim towards the arrears/dues from the Respondent as it is their hard-earned money and it is the duty as well as a contractual obligation of the Respondents to fulfil the same. More so, the Claimant is also entitled to be protected from further intimidation, injury and losses suffered by it on account of said dispute between the

Respondent and the Labour, Sub-contractors etc. and the demands raised by the latter against the Claimant.

I, accordingly, direct that the Respondents will settle the accounts of all their sub-contractors and labourers by making due payment of all their pending dues/arrears within 4 weeks from today.

Balance of convenience as well as the interest of justice demand that the Respondent complies with the direction of this Tribunal till the claims of both the Parties are adjudicated by this Tribunal in order to avoid inconvenience to the Parties.”

9. Mr. Sumit Singh Gehlot, learned counsel for the Respondent defends the impugned order and argues that there is no infirmity therein. The Sole Arbitrator has rightly held that on a perusal of the Work Orders, the Appellant is liable to pay dues/arrears of sub-contractors/labourers. He further argues that as per the Work Orders, the Appellant is liable to make payment to subcontractors/labourers/suppliers. Despite that, the sub-contractors/labourers sent notices through the Labour Union (Building Ninnan Mazdoor Union) dated 23rd January, 2019 and 22nd February, 2019 to the Respondent and threatened to hold agitation at the Respondent's corporate office and at the residences of its directors. As per the Work Orders, Appellant is solely responsible to comply with the provisions under labour laws and regulations. Further, the labourers have approached police and other authorities and filed false complaints to harass the Respondent, for acts for which the Appellant is responsible. Therefore, the Respondent had to file an application under Section 17 of the Act, seeking an interim order.

10. The Court does not find any merit in the contention of the Respondent. The impugned order is not only vague, but entirely misconceived and suffers from legal infirmity. The terms of the Work Orders relied upon by the Sole Arbitrator to issue the impugned directions do not confer any right upon the

Respondent to enforce payment obligations of the sub-contractors/ labourers/ suppliers of the Appellant. Such terms can only protect the Respondent or indemnify them in the event any obligation would fall upon them. The said clauses cannot be interpreted to mean that the Respondent, while seeking adjudication of its disputes with the Appellant, can insist that the Appellant must make payments to its sub-contractors, who are strangers to the arbitration proceedings.

11. The Sole Arbitrator is not seized with any dispute between the Appellant and its sub-contractors and thus, directions issued are beyond the scope of reference. The impugned order would also not aid in adjudication of the money claims raised before him. Moreover, the directions issued are in the nature of mandatory injunction that could not have been issued as an interim measure, having regard to the facts of the case. It would cause grave injustice to the Appellant because they would have to make payments without adjudication of liability. The Appellant may have genuine disputes with its sub-contractors/ labourers etc. and its right to agitate the same cannot be foreclosed.

12. The perceived injury to the Respondent on account of its allegations of labour protests also does not justify the impugned directions. If any damages, result from such protests, the Respondent can always seek compensation in monetary terms from the Appellant or take action against the protesters.

13. Strangely the impugned order does not identify as to which sub-contractors/ labourers the payment is to be made to, and thus, it is a blanket order which, as worded, is applicable to all sub-contractors, labourers and suppliers who may not even be connected with the execution of the Work

Orders. The Sole Arbitrator has completely misinterpreted the terms of the Work Orders and lost sight of the fact that the sub-contractors, labourers, suppliers of the Appellant are not parties before him. The observations made by the Sole Arbitrator to the effect that “*there is admittedly no dispute with the sub-contractors/ labourers/ suppliers*”, or that “*the poor labourers cannot be made to suffer for on fault on their part*” are completely mis-founded, based on a misconceived justification that is *ex-facie* beyond the terms of the Work Orders.

14. In view of the above, the Court has no hesitation in allowing the present appeal and accordingly, the impugned order is set aside. The appeal is allowed in the above terms. The pending applications are also disposed of.

SANJEEV NARULA, J

AUGUST 5, 2021/v

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