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

% Judgment delivered on: 27.03.2015

+ **FAO (OS) 146/2015**

UNION OF INDIA

.... Appellant

versus

M/S NCC LTD

..... Respondent

Advocates who appeared in this case:

For the Petitioners : Mr Ruchir Mishra, Advocates.

For the Respondents : Mr Rohit Gandhi and Ms Tanya Rawat, Advocates

CORAM:-

HON'BLE MR JUSTICE BADAR DURREZ AHMED

HON'BLE MR JUSTICE SANJEEV SACHDEVA

JUDGMENT

BADAR DURREZ AHMED, J (ORAL)

Cav301/2015

The learned counsel for the caveator/respondent is present. The caveat stands discharged.

CM No.5682/2015 (for condonation of delay)

The delay in filing the appeal is condoned.

CM No.5681/2015 (for exemption)

The exemption is allowed, subject to all just exceptions.

FAO (OS) 146/2015 and CM No.5680/2015

1. This appeal is directed against the order dated 28.11.2014 passed

by a learned Single Judge of this Court in OMP No. 1510/2014 which was a petition filed by the appellant under Section 34 of the Arbitration & Conciliation Act, 1996 challenging the award dated 16.6.2014.

2. The only controversy which was there before the learned Single Judge was whether Clause 19 of the Contract would be applicable or another Clause 19A which, according to the appellant, had replaced Clause 19, would be applicable. Clause 19 permitted the lodgement of claim for escalation even in respect of contracts which had a tenure of 24 months. Clause 19A which is sought to be invoked by the appellant prescribes such a claim for escalation in respect of contracts having a tenure of more than 24 months.

3. According to the learned counsel for the appellant, the appellant had taken a policy decision that no escalation can be claimed in respect of contracts having a tenure of 24 months or less than 24 months and that the Clause was generally included in all contracts. He submits that inadvertently the said clause 19A has not been included in the contract in question.

4. The learned Single Judge has examined this aspect of the matter and, in our view, correctly observed as under:

“According to me, the learned arbitrator has proceeded in accordance with the terms of the contract. As a matter of fact, if the learned arbitrator had taken into account clause 19A, which the petitioner relies upon, he would have stepped outside the periphery of the contract and would have committed a patent error. In these circumstances, this submission of the petitioner

has to be rejected. It is ordered accordingly.”

5. Consequently, we are also of the view that it is the clause in the contract which would have to be followed and not some other clause which may have been left out inadvertently. No fault can be found with the learned Arbitrator in proceeding with the arbitration in terms of specific conditions and clauses of the contract and in particular clause 19 thereof. There is no infirmity in the order passed by the learned Single Judge. Even as regards that question of interest, we are not inclined to take a different view from that taken by the learned Arbitrator and the learned Single Judge.

6. The appeal is, therefore, dismissed.

BADAR DURREZ AHMED, J

MARCH 27, 2015
SV

SANJEEV SACHDEVA, J