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

+ **FAO(OS) 169/2015 and CM No. 6356/2015**

M/S NATIONAL HIGHWAYS AUTHORITY OF INDIA Appellant
Through: Ms Ayushi Kiran

versus

M/S AFCONS INFRASTRUCTURE LTD Respondent
Through: Mr Sandeep Sethi, Sr Advocate with Mr Manu
Seshadri and Ms Ekta Bansal

CORAM:

HON'BLE MR. JUSTICE BADAR DURREZ AHMED

HON'BLE MR. JUSTICE SANJEEV SACHDEVA

ORDER
07.08.2015

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We have heard the learned counsel for the parties. This is an appeal against the judgement dated 28.01.2015 delivered by a learned Single Judge of this court in OMP No. 206/2013 which was a petition under Section 34 of the Arbitration and Conciliation Act, 1996 filed by the appellant herein challenging the arbitral award dated 31.10.2012 and the subsequent order under Section 33 dated 16.12.2012.

The learned Single Judge upheld that the decision of the Arbitral Tribunal to allow the claim of the respondent for reimbursement of enhanced royalty charges for the period between the stipulated date of completion and the actual date of completion of work. The learned counsel for the appellant submitted that at different points of the impugned judgment, the learned Single Judge has held that the reasoning of the Arbitral Tribunal has been found to be erroneous to come to the conclusion that for increase in royalty charges upto the stipulated date of completion, there was no question of reimbursement. After having gone through the entire impugned judgment and having considered the arguments advanced by the learned counsel for the parties, we are absolutely clear that

the learned Single Judge was of the view, based on other decisions of this court which have been referred to in the impugned judgment, that any change in legislation resulting in enhanced royalties beyond the bid dates would be to the account of the employer and not of the contractor. The view of the learned Single Judge was that the respondent was, on this count, even entitled to reimbursement for the contract period but since the respondent had not raised any grievance with regard to the non-grant of reimbursement for this period, the learned Single Judge did not disturb the finding of the Arbitral Tribunal. The learned Single Judge, however, upheld the conclusion of the Arbitral Tribunal for the period beyond the contract date upto the actual date of completion of the work on the basis of decisions of this court referred to in the impugned judgment itself without relying on the reasoning of the Arbitral Tribunal.

The appeal is dismissed, however, we waive the costs of Rs 10,000/- which had been imposed by the learned Single Judge.

CM No. 10197/2015

The amount awarded by the Arbitral Tribunal and confirmed by the learned Single Judge which was deposited by the appellant before the Registrar in this court and which has been kept in a fixed deposit may be released to the respondent along with the interest accrued thereon within two weeks.

The application is allowed.

BADAR DURREZ AHMED, J

AUGUST 07, 2015
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SANJEEV SACHDEVA, J