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

+ **FAO 138/2015 & CM No.7476/2015**

**NATIONAL BUILDINGS CONSTRUCTION
CORPORATION LTD**

..... Appellant

Through: **Mr. Manoj Kumar Das, Adv.**

versus

M/S PRADEEP CHOPRA

..... Respondent

Through: **Mr. Prateek Gupta and Mr. Kanav
Dev Sharm, Adv.**

CORAM:

HON'BLE MR. JUSTICE RAJIV SHAKDHER

ORDER

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21.07.2015

1. This is an appeal directed against the judgment of the trial court dated 28.2.2015. By virtue of the said judgment, the trial court set aside the objections filed by the appellant herein under Section 34 of the Arbitration and Conciliation Act, 1996 (in short the Act).

2. To be noted, the said objections were filed by the appellant against the award dated 31.5.2005. In terms of the award, the learned arbitrator has awarded three claims in favour of the respondent. These claims being: (i) claim No.1, in respect of the RR Masonary, in the sum of Rs.44,000/-; (ii) claim No.4, in respect of back filling work executed by the respondent, in the sum of Rs.2,68,229/-; and (iii) lastly, claim No.7 vis-a-vis the interest at the rate of 10% per annum on the following claims:

(a) Claim No.4 w.e.f. 1.11.2002, and

(b) Claim No.7D, 7E, 7T for a periods spanning 12 months, 13 months and 18 months respectively.

3. I am told that the principal amounts in respect of claim Nos.7D, 7E and 7T have already been released by the appellant in favour of the respondent, Therefore, there is reference in the impugned award to the interest component.

4. It is pertinent to note, at this stage, that this is, in fact, the second round of litigation and the appellant had, in fact, in an earlier round challenged the very same award, i.e. award dated 31.5.2005 by filing a petition under Section 34 of the Act, which was registered as Suit No.182/2005. The said suit was dismissed by the trial court against which the appellant moved this court and the appeal was, according, registered as FAO No.7/2010. This Court, vide judgment dated 8.7.2011, had set aside the order of the trial court dated 9.10.2009 and remanded the matter to the trial court for a fresh decision on the petition filed under Section 34 of the Act.

4.1 It is in these circumstances, that in the second round, the impugned judgment dated 28.2.2015, came to be passed.

5. I may only note that in the petition filed under Section 34 of the Act against the award, the appellant had raised several objections including the objection, to the effect, that on account of a purported settlement between the parties, there was an accord and satisfaction and, therefore, no monies were payable to the respondent herein. Besides this, objections were also raised qua, the claim, for interest.

5.1 In addition to the above, one of the other grievances of the appellant was that its counter claim had been wrongly rejected by the learned arbitrator.

6. A reading of the impugned judgment does not bring to fore the fact that the objections of the appellant have been dealt with by the trial court.

6.1 As a matter of fact, the trial court has rendered a perfunctory decision by simply dismissing the appellants' petition on the ground that the objections raised therein did not fall within the ambit of Section 34 of the Act. There has been no attempt on the part of the trial court to reason out as to why the objections raised were not tenable.

7. Confronted with this situation, counsel for the respondent says that he would have no difficulty if the trial court judgment is set aside and a direction is issued to the trial court to dispose of appellants' objections within a given time frame.

8. Accordingly, the impugned judgment is set aside. The appellants' objections under Section 34 of the Act are resuscitated. The trial court will hear and decide the objections with expedition though, not later than three months from today.

9. It is made clear that the trial court will proceed on the basis of the pleadings and record presently available with it.

9.1 I am told that the written submissions have already been filed by both sides.

10. Accordingly, counsels and their parties will appear before the trial court on 10.8.2015 for directions.

11. Registry will remit the record to the trial court.

RAJIV SHAKDHER, J

JULY 21, 2015

s.pal

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