

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

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Judgment delivered on: 09.01.2015

**+ FAO(OS) 5/2015**

**NATIONAL HIGHWAYS AUTHORITY OF INDIA ... Appellant**

versus

**M/S PCL SUNCON (JV)**

... Respondent

**Advocates who appeared in this case:**

For the Appellant : Ms Meenakshi Sood

For the Respondent : Mr Amit George

**CORAM:-**

**HON'BLE MR JUSTICE BADAR DURREZ AHMED**

**HON'BLE MR JUSTICE SANJEEV SACHDEVA**

**JUDGMENT**

**BADAR DURREZ AHMED, J (ORAL)**

**CAV 12/2015**

The learned counsel for the respondent /caveator is present.

The caveat stands discharged.

**CM 309/2015**

Allowed subject to all just exceptions.

**FAO(OS) 5/2015 & CM 308/2015**

1. This is an appeal against the judgment dated 14.10.2014 delivered by a learned Single Judge of this Court in OMP 48/2013, which was a petition under Section 34 of the Arbitration and Conciliation Act, 1996, challenging the Award dated 08.05.2012 made by the Arbitral Tribunal.

2. The only issue which was raised before the learned Single Judge and considered by him was whether [notwithstanding the fact that the contract obtaining between the parties did not provide for the source from which Crushed Rubber Modified Bitumen (CRMB) had to, be obtained to execute the work entrusted to the respondent], the petitioner could insist that CRMB had to be sourced from a refinery? The work involved was “four laning and strengthening of the existing two-lane highway section from km 320.00 to km 398.75 on NH-2 (Construction Package V-C). The work had to be executed in the State of Jharkhand.

3. Without getting into the details, which have been elaborated in the impugned judgment, the fact of the matter is that the contract was admittedly silent as to the source of the CRMB. In other words, it was open to the respondent to have the CRMB blended at site or to obtain it from a refinery or refineries. The respondent had indicated that it would blend the CRMB at site. However, the petitioner insisted that it should be procured from a refinery. The result being that the respondent was compelled to procure the CRMB from a refinery. This was so, although there was no such stipulation in the contract.

4. The learned counsel for the appellant, however, urged that technical specification 117 provided that the material used in the execution of the work would require the approval of the engineer. It was contended that the engineer was within his right under the contract to direct procurement of the CRMB from a refinery for the purposes of the said work. The fact of the matter is that the engineer, in the first instance, had indicated that the CRMB could be prepared at site. At the insistence of the appellant, subsequently, the engineer changed his opinion and stated that the same should be procured from a refinery.

5. We have examined the impugned judgment in detail and we have also heard the learned counsel for the parties. It is evident that the learned Single Judge has examined the core issue, which has been pointed out above, in great detail and has looked at all the arguments advanced by the learned counsel for the parties. Apart from the fact that no interference is called for at this stage in this appeal inasmuch as we do not find any perversity in the reasoning adopted by the learned Single Judge or by the Arbitral Tribunal in awarding the claim of the respondent to the extent of the extra costs which the respondent had to bear on account of the insistence of the appellant that the CRMB should be procured from a refinery and not be blended at site, it is clear that the contract

did not stipulate that the CRMB had to be procured from a refinery. It was open to the respondent to either procure it from a refinery or blend it at site. The choice of the respondent was to blend it at site. However, since the appellant insisted that it should be procured from a refinery, the burden would have to be borne by the appellant. This is exactly what the Arbitral Tribunal has awarded and this is what has been confirmed by the learned Single Judge.

6. Consequently, we see no reason to interfere with the impugned judgment. The appeal is dismissed.

**BADAR DURREZ AHMED, J**

**JANUARY 09, 2015  
SR**

**SANJEEV SACHDEVA, J**