

\$~15

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

%

Judgment delivered on: 03.07.2015

+ **FAO (OS) 321/2015 & CM No.11285/2015 (stay)**

M/S NATIONAL HIGHWAYS AUHTORITY OF INDIA Appellants

versus

M/S. KNR-PATEL (JV)

..... Respondent

Advocates who appeared in this case:

For the Appellants : Mr Trans Juris with Mr Rajiv Kapoor
and Mr Rahul Ranjan, Advocates.

For the Respondents : Mr Amit George, Advocate.

CORAM:-

HON'BLE MR JUSTICE BADAR DURREZ AHMED

HON'BLE MR JUSTICE SANJEEV SACHDEVA

JUDGMENT

BADAR DURREZ AHMED, J (ORAL)

CAV. 629/2015

The learned counsel for the respondent/Caveator is present

The caveat stands discharged.

CM No.11286/2015 (exemption)

Exemption is allowed subject to all just exceptions.

FAO (OS) 321/2015 & CM No.11285/2015 (stay)

1. This appeal is directed against the judgment dated 27.04.2015

delivered by a learned Single Judge of this Court in OMP 51/2014 which was a petition under Section 34 of the Arbitration & Conciliation Act, 1996 (hereinafter referred to as the 'the said Act') whereby the majority award passed by the arbitral tribunal was challenged. We may point out that the dissent was only in respect of claim Nos.5 & 6 and in respect of rest of the claims, the award was unanimous.

2. The details of the contract between the NHAI and the respondent are set out in the impugned judgment which we are reproducing herein below:-

“2. The contract entered into between the NHAI and the Respondent, M/s. KNR-Patel (JV) was regarding the rehabilitation and upgradation of existing 2 lane road to 4/6 lane divided carriageway configuration of NH-5 in the State of Andhra Pradesh from km 178 to km. 220 (Nellore to Kavali). The contract being a unit rate contract, the bidding documents contained a detailed document "Bill of Quantities ('BOQ')". The parties adopted the terms and conditions of contract as contained in the General Conditions of Contract ('GCC') and Special Conditions of Contract modifying / amending the GCC clauses. The date of commencement for the work was 17th May 2001 and the intended date of completion for the first

milestone from km 189.5 to km. 198 was 22 months from the date of commencement; for second milestone from km. 178.2 to km. 189.5 was 27 months; and the third milestone from km 198 to km 222 was 33 months from the start date. The overall intended date for completion of the project was 16th February 2004. The work was finally concluded on 31st May 2005, i.e., after a delay of about 15.5 months. The extension of time was granted for the said period without imposition of any liquidated damages on the Respondent. On the completion of the work, the Engineer issued the taking over certificate on 31st May 2005 and the defect liability period ended on 31st May 2006.”

3. It is evident on going through the impugned judgment and upon hearing counsel for the parties that disputes had arisen and were referred to the arbitral tribunal. These claims had been preferred by the respondents. The argument raised before us by the learned counsel for the appellant is that this was a case of no evidence. One of the main points urged by him was that the idling with regard to machinery was considered by the arbitral tribunal for a period which extended beyond the original period. He submitted that there was no evidence provided on record in respect of the extended period.

4. We have examined the impugned judgment as also the award and find that there is ample evidence on this aspect of the matter. It is not so much a case of no evidence but, as subsequently admitted by the learned counsel for the appellant, a case of mis-appreciation of evidence. We note that the learned single Judge, in paragraph 7, has rightly commented that the learned counsel for NHAI invited the Court to re-appreciate the evidence which has already been examined by the arbitral tribunal. The learned Single Judge was right in observing that the Court is unable to undertake such an exercise given the limited scope of the issue under Section 34 of the said Act. Appreciation of evidence is within the domain of the arbitral tribunal and the Court in exercise of its power under Section 34 of the Act cannot embark upon re-appreciation of evidence. It is, of course, a different matter if there was no evidence at all or if the finding was so outlandish and could not at all be supported by the evidence on record. This is not the case here. We also note that the learned Single Judge had placed reliance on an earlier decision involving the National Highway Authority of India itself in the case of **National Highways Authority of India v. Oriental Structural Engineers Pvt. Ltd.** – **Gammon India Limited:** (2013) 2 Arb LR 264 (Del) (DB) which,

according to the learned Single Judge, in similar circumstances had declined to interfere with the award of the arbitral tribunal.

5. The other claims also and, particularly, the claim No.5 with regard to the refund of excise duty paid by the respondent has also been examined in detail by the learned Single Judge. That aspect of the matter was also covered by an earlier decision of the learned Single Judge in **National Highways Authority of India v. ITD Cementation India Limited: 197 (2013) DLT 650.** A Division Bench upheld the same by its order dated 06.03.2013 in FAO(OS) 137/2013. Therefore, the conclusions on claim No.5 also do not warrant any interference. In other respects also, no interference is called for inasmuch as we do not find any perversity in the award. The learned Single Judge has correctly appreciated the law and has applied the same to the facts of the case.

6. The appeal is dismissed. There shall be no order as to costs.

BADAR DURREZ AHMED, J

SANJEEV SACHDEVA, J

JULY 03, 2015

st