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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ CS(COMM) 70/2016
NHPC LTD. Plaintiff

Through Mr Puneet Taneja, Adv

versus

KARAM CHAND THAPAR & BROS.
(CS) LTD. Defendant

Through None.

CORAM:
HON'BLE MR. JUSTICE VIBHU BAKHRU

ORDER
% **12.07.2016**

1. Pursuant to the order dated 01.02.2016, the arbitral record in case *Karam Chand Thapar & Bros (CS) Ltd and NHPC* was called for. The said record has since been received which also includes the original award dated 18.12.2015 passed by Justice Jaspal Singh (Retired).

2. The notice of the present proceedings was also served upon the defendant on 25.04.2016 as is indicated in the order dated 13.05.2016 passed by the Joint Registrar. No objection to the said award has been preferred by the defendant. The aforesaid award was made pursuant to a reference made under the Arbitration Act, 1940.

3. The plaintiff (hereafter 'NHPC') had vide a letter by an award dated 11.01.1990 awarded work of 'Construction of Tail Race Tunnel - II - Outlet Package for Salal Hydro Project Stage - II, J&K' to the defendant (hereafter 'KCT'). The agreement between the said parties was executed on

07.03.1990. Various disputes arose between the parties and KCT filed a petition (numbered as Suit No.1526(A) of 1995) under Section 20 of Arbitration Act, 1940 before this Court for appointment of an Arbitrator. This Court by an order dated 10.04.2001 referred seven claims as indicated in Suit No. 1526(A) of 1995 to the Sole Arbitration of Justice Hari Swaroop, Retired Judge of Hon'ble High Court of Allahabad. By an interim award dated 22.11.2002, the Sole Arbitrator held that three claims out of seven claims (namely claim No. 2, 4 and 5) were not arbitrable as being ~~to~~ excepted matters. Justice Hari Swaroop expired before making the final award and consequently, Justice Jaspal Singh (Retired) was appointed as the Sole Arbitrator in place of Late Justice Hari Swaroop. There are four claims that have been adjudicated by the Sole Arbitrator.

4. The first claim related to the excess weight of structural steel. It was the grievance of KCT that despite excess weight of steel having been used, no payment with regard to the excess weight had been made. Its other grievance was that payment was made to it on length basis instead of weight basis. The Arbitrator came to the conclusion that while making payment to KCT at Rs.21,500 per M.T., department would be entitled to deduct from it Rs.17,500 per M.T. as its price. Taking into consideration, the rebate given by KCT, the Arbitrator allowed the claim to the extent of Rs.1,47,000/-. However, he noted that NHPC had already paid a sum of Rs.1,70,934/- and therefore, no further amount was payable.

5. The second claim was qua payment for overbreak in excavation and concrete re-filling work. From a reading of the contractual provisions, the Arbitrator observed that every ~~to~~ outbreak ~~is~~ is not to be taken as ~~to~~ approved

outbreak and the parties were conscious of the same. Further, the Arbitrator held that it is the Engineer-In-Charge who has the authority to decide if all the conditions which make the outbreak an approved outbreak have been satisfied or not and his decision as to the same was final and binding. In this case, the Engineer-In-Charge had rejected the claim of KCT by a letter dated 28.06.1993.

5.1 With regard to the claim for concrete re-filling work, the Arbitrator held that the parties knowingly accepted the terms of the contract as to the different scales of payment in respect of backfill concrete. In view of this finding, the Arbitrator dismissed the second claim of KCT.

6. Further, with regard to the third claim qua interest, the same was disallowed by the Arbitrator.

7. Similarly, the last claim qua costs of the proceedings was also rejected by the Arbitrator.

8. I find no reason to remit or set aside the award. Accordingly, it is made rule of the Court. The Decree Sheet be drawn up accordingly.

VIBHU BAKHRU, J

JULY 12, 2016

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