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

+ O.M.P. (COMM) 357/2016 & IA No.9151/2016

NATIONAL HIGHWAYS AUTHORITY OF
INDIA

..... Petitioner

Through: Mr Keshav Mohan, Mr Rishi K.
Awasthi and Mr Piyush Choudhary,
Advocates.

versus

BSCPL INFRASTRUCTURE LIMITED

..... Respondent

Through: Mr Ajay Kumar Jha, Advocate.

CORAM:

HON'BLE MR. JUSTICE VIBHU BAKHRU

ORDER

% **20.10.2016**

1. The petitioner has filed the present petition under Section 34 of the Arbitration and Conciliation Act, 1996 (hereafter the 'Act') impugning the arbitral award (hereafter 'the impugned award') dated 20.04.2016. The impugned Award was rendered in favour of the respondent in respect of five claims made by the respondent and the petitioner being aggrieved by the same has preferred the present petition. It is stated that after the present petition was filed, the parties settled their disputes in relation to four claims (all claims except claim no.3). Thus, the learned counsel for the petitioner states that the present petition survives only in relation to the impugned award rendered in respect of claim no.3.

2. Claim no.3 relates to additional cost incurred by the respondent on account of change in the legislation in respect of labour cess imposed by the

Uttar Pradesh Government w.e.f. 04.02.2009. The learned counsel for the parties fairly states that the finding of the arbitral tribunal is duly supported by the decision of the Supreme Court in **Dewan Chand Builders & Contractors v. Union of India and Ors.**: (2012) 1 SCC 101 wherein the Supreme Court had held as under:-

“18. Although both the statutes were enacted in 1996, the Central Government in exercise of its powers under Section 62 of the BOCW Act notified the Delhi Building and Other Construction Workers’ (Regulation of Employment and Conditions of Service) Rules, 2002 (for short “the Delhi Rules”) vide Notification No.DLC/CLA/BCW/01/19 dated 10.01.2002. Accordingly, the Government of NCT of Delhi constituted the Delhi Building and Other Construction Workers’ Welfare Board vide Notification No.DLC/CLA/BCW/02/596 dated .9.2002. Thus, the Cess Act and the Cess Rules are operative in the whole of NCT of Delhi w.e.f. January, 2002.”

3. On the analogy of the aforesaid finding the Arbitral Tribunal concluded that the said Act became operative in the State of UP on 04.02.2009 when UP BOCW Rules, 2009 were notified.

4. The learned counsel for the petitioner states that the decision of the Supreme Court in the case of ***Dewan Chand Builders & Contractors*** (*supra*) is under reconsideration before the Supreme Court of India. Be that as it may, the said decision has been followed by the Division Bench of this Court in **M/s National Highways Authority of India v. M/s Gammon-Atlanta (JV)**: FAO(OS) 366/2013, decided on 14.08.2013 and in other decisions, thereafter. In the circumstances, the said decision is binding as on date and, accordingly, this Court has no reason to interfere with the arbitral award.

5. The petitioner is directed to make the payment as awarded by the arbitral tribunal within a period of four weeks.
6. The petition is, accordingly, dismissed.

OCTOBER 20, 2016
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VIBHU BAKHRU, J