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

+ **FAO(OS) (COMM) 81/2016**

NATIONAL HIGHWAY AUTHORITY OF INDIA Appellant

Through: Mr A.S. Nnanda Kumar with Mr
Parivesh Singh and Mr Prateek Gupta,
Advocates

versus

M/S PROGRESSIVE - MVR (JV) Respondent

Through: Dr Amit George with Ms Rajsree Ajay,
Advocates

CORAM:

HON'BLE MR. JUSTICE BADAR DURREZ AHMED

HON'BLE MR. JUSTICE ASHUTOSH KUMAR

ORDER

% **16.09.2016**

CAV No.812/2016

The learned counsel for the respondent/caveator is present.

The caveat stands discharged.

FAO(OS) (COMM) 81/2016 & CM Nos.33783/2016, 33785/2016

The present appeal has been preferred against the order dated 28.03.2016 passed by a learned single Judge of this Court in OMP No.1211/2013 which, in turn, was a petition under Section 34 of the Arbitration & Conciliation Act, 1996 challenging the award dated 07.08.2013. The learned single Judge has rejected the application under Section 34 of the said Act on the ground that the subject matter of challenge was entirely covered by a decision of a learned single Judge on identical issues which was rendered on 17.12.2014 and the appeal against which was also dismissed by a Division Bench of this Court by virtue of the judgment dated 10.03.2015 delivered in FAO (OS) 93/2015. The learned single Judge has also noted that the Special Leave Petition preferred by the appellant (NHAI) being SLP(C) No.19526/2015 was also dismissed by the Supreme Court by virtue of the

order dated 31.08.2015. It is in this backdrop, since the matter was entirely covered by the earlier decision, that the learned Single Judge has rejected the petition under Section 34 of the said Act.

We have heard the learned counsel for the parties. It is evident that the issue decided by this Court in FAO(OS) 93/2015 against which the Special Leave Petition has also been dismissed, is identical to the one sought to be raised in the present appeal. The issue pertains to the interpretation to be placed on sub-para (xi) of sub-clause 70.3 of the conditions of particular application. The controversy relates to the meaning of expression 'cost' of bitumen, cement and steel. According to the appellant, the expression 'cost' denotes the quantity of bitumen, cement and steel used in a particular month multiplied by the base rate (i.e. the rate prevailing 28 days prior to the submission of the bid).

The contention of the respondent is that the said expression 'cost' refers to the quantity of bitumen, cement and steel used during a particular month multiplied by the prevailing rate in that month. This is exactly the same controversy which had arisen in FAO(OS) 93/2015 (NHAI vs. NCC-VEE (JV)). Consequently, we are of the view that the learned single Judge was absolutely correct in observing that the present matter is entirely covered by the decision of the Division Bench in FAO(OS) 93/2015 against which the Special Leave Petition has also been dismissed. Consequently, there is no merit in this appeal, the same is dismissed. There shall be no order as to costs.

BADAR DURREZ AHMED, J

SEPTEMBER 16, 2016/ns

ASHUTOSH KUMAR, J