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IN THE HIGH COURT OF DELHI AT NEW DELHI

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O.M.P. 350/2015

NATIONAL HIGHWAYS AUTHORITY OF INDIA..... Petitioner
Through:Mr. Rajiv Kapoor, Mr. Srikant Sharma,
Advocates.

versus

BBEL-MIPL (JV) Respondent
Through : Ms. Kiran Suri, Senior Advocate with
Mr. Guatam Kumar, Advocate. Mr. Pravesh
Bhutan, Advocates.

CORAM: JUSTICE S.MURALIDHAR

ORDER

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23.11.2016

1. The challenge in this petition by National Highways Authority of India ('NHAI') is to an Award dated 27th February 2015 passed by the Arbitral Tribunal ('AT') in the disputes between the parties arising out of the contract dated 11th November 2008 for execution of the balance work of widening to 4/6 lanes and strengthening of existing 2 lane carriageway of NH-5 from Km 136 to KM 199.141 (Bhadrak-Baleshwar) in the state of Orissa construction package-OR-III.

2. The challenge is confined to the issue whether the price adjustment in the contract would apply to permanent works under Bill of Quantity ('BOQ') items. In the impugned Award the AT has allowed the claim of the Respondent in relation to non-payment of price adjustment on permanent works under the BOQ items.

3. An identical issue arose in a dispute between NHAI on the one hand and KMC-RK-SD(JV) on the other. The AT in that case came to an identical conclusion allowing the claim for price adjustment on permanent works under the BOQ items. Challenging that Award the NHAI filed OMP No. 1043 of 2013 which was dismissed by the learned Single judge by order dated 22nd October 2013. The appeal filed against the said order being FAO(OS) No. 139 of 2014 was dismissed by the Division Bench ('DB') of this Court by order dated 1st April 2014. The appeal thereto being SLP (C) No. 21055 of 2014 filed by the NHAI against the order of the DB was dismissed by the Supreme Court by an order dated 17th November 2015.

4. In view of the judgment of both the learned Single Judge as well as DB of this Court having been affirmed by the Supreme Court by dismissal of the aforementioned SLP, the present petition on the same issue is dismissed.

S.MURALIDHAR, J

NOVEMBER 23, 2016
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