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

+ O.M.P. (COMM) 503/2016

NATIONAL HIGHWAYS AUTHORITY OF
INDIA

..... Petitioner

Through: Mr S. Nanda Kumar, Mr Parivesh
Singh and Mr M. S. Saran Kumar,
Advocates.

versus

BAHRAMPORE-FARAKKA HIGHWAYS
LTD.

..... Respondent

Through: Mr Dayan Krishnan, Senior Advocate
with Mr Rishi Agrawala and Ms
Nadia Rafiq, Advocates.

CORAM:
HON'BLE MR. JUSTICE VIBHU BAKHRU

ORDER
22.11.2016

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CAV. No.990/2016

1. The learned counsel for the caveator/respondent has entered appearance.
2. The caveat stands discharged.

O.M.P. (COMM) 503/2016 & IA Nos.14394-14395/2016

3. The petitioner (hereafter the 'NHAI') has filed the present petition under Section 34 of the Arbitration and Conciliation Act, 1996 (hereafter 'the Act'), *inter alia*, impugning an order dated 11.08.2016 passed by the arbitral tribunal rejecting the petitioner's challenge to appointment of the

Arbitral Tribunal under Section 12 of the Act. The present petition is misconceived as the order dated 11.08.2016 is not an arbitral award and, therefore, a petition for setting aside the same under Section 34 of the Act, does not lie.

4. Secondly, the provisions of Section 13(4) of the Act expressly provide that if the challenge to an Arbitral Tribunal under any procedure under Section 13(2) is not successful, the arbitral tribunal shall continue the arbitral proceedings and make an arbitral award. Section 13(2) refers to a challenge to an Arbitral Tribunal under Section 12 of the Act.

5. Section 13(2), 13(4) and 13(5) of the Act are set out below:

“13(2) Failing any agreement referred to in sub-section (1), a party who intends to challenge an arbitrator shall, within fifteen days after becoming aware of the constitution of the arbitral tribunal or after becoming aware of any circumstances referred to in sub-section (3) of section 12, send a written statement of the reasons for the challenge to the arbitral tribunal.”

13(4) If a challenge under any procedure agreed upon by the parties or under the procedure under sub-section (2) is not successful, the arbitral tribunal shall continue the arbitral proceedings and make an arbitral award.

13(5) Where an arbitral award is made under sub-section (4), the party challenging the arbitrator may make an application for setting aside such an arbitral award in accordance with section 34.”

6. In view of the fact that the petitioner’s challenge to the Arbitral

Tribunal under Section 12 has been rejected, the arbitral tribunal is required to proceed to adjudicate and pass an award. It will be open for the NHAI to challenge the same in accordance with law once the arbitral award is passed including on the grounds specified under Section 12(3) of the Act. At this stage, the present proceedings cannot be entertained. This is also the mandate of Section 5 of the Act.

7. In view of the conclusion that the present petition is plainly misconceived, the petition is dismissed with costs of ₹10,000/-. The costs will be deposited with the Delhi High Court Legal Services Committee within a period of three weeks from today.

VIBHU BAKHRU, J

NOVEMBER 22, 2016
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