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IN THE HIGH COURT OF DELHI AT NEW DELHI

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OMP (ENF.) (COMM.) 71/2016

NCC-VEE (JV) & ANR.

..... Petitioners

Through: Mr. Krishna Vijay Singh and Mr Manish Dembla, Advocates.

versus

NATIONAL HIGHWAY AUTHORITY OF INDIA Respondent

Through: Ms. Gunjan Sinha Jain with Mr. Mukesh Kumar, Advocates.

CORAM: JUSTICE S. MURALIDHAR

ORDER

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21.02.2017

1. The Award dated 30th September, 2012 of the Arbitral Tribunal ('AT'), the enforcement of which has been sought in these proceedings, directs in the operative portion as under:

"1) That the Respondent shall interpret the Sub-Clause 70.3 (xi) of the Contract in the same manner it has been interpreting the sub-clause while paying IPC 1 to IPC 18 to the Claimant. No recovery of the payment already made shall be affected.

2) That the Respondent shall continue to interpret Sub-Clause 70.3 (xi) in the same manner it has been interpreting the sub-clause while paying IPC 1 to IPC 18 from IPC 19 onwards till completion of the Work and pay the Claimant accordingly.

3) The Respondent shall return the Bank Guarantees of Rs. 25.46 crore to the Claimant immediately.

4) The costs of Arbitration over and above the costs covered under Sub-Clause 67.3 (vii) of COPA shall be shared equally

by the Parties.

5) All other claims and requests are rejected.”

2. Ms. Gunjan Sinha Jain, learned counsel for the Respondent makes a categorical statement that the amount that was to be paid to the Petitioners in terms of the Award has in fact been paid in full. However, Mr. Krishna Vijay Singh, learned counsel for the Petitioners refers to two circulars dated 29th May, 2012 and 15th February, 2013 issued by the Respondent pertaining to price adjustment due to change in base year of wholesale price index from 1993-94 to 2004-05. His plea is that the amount payable had to be calculated by giving effect to the above circulars.

3. The Court finds that impugned Award is silent about the applicability of the circular dated 29th May, 2012. In any event, it could not have referred to the circular dated 15th February, 2013 which was issued after the Award was made.

4. In these proceedings, the Court cannot go beyond what the Award has mandated. In other words, inasmuch as the Award makes no reference to the above circulars, the Court cannot re-write the Award to give the Petitioners the benefit of such circulars. It will be open, however, to the Petitioners to seek other appropriate remedies as may be available in law if according to the Petitioners, any further amount is due to them.

5. The petition is disposed of in the above terms.

S. MURALIDHAR, J

FEBRUARY 21, 2017/dn