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IN THE HIGH COURT OF DELHI AT NEW DELHI

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O.M.P. (COMM) 383/2016

NATIONAL HIGHWAYS AUTHORITY OF INDIA Petitioner
Through: Mr. Arun Kumar Varma, Senior
Advocate with Mr. Shambhu Sharan, Mr. Ashish
Joshi and Mr. Himanshu Pal, Advocates.

versus

PATNA-BUXAR HIGHWAYS LTD Respondent
Through: Mr. Akhil Sibal with Mr. Saurabh S.
Sinha and Ms. Jahnvi Mitra, Advocates.

CORAM: JUSTICE S.MURALIDHAR

ORDER

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02.03.2017

1. Mr. Akhil Sibal, learned counsel for the Respondent raises a preliminary objection as to maintainability of the present petition under Section 34 of the Arbitration and Conciliation Act, 1996 ('Act') seeking to challenge the impugned order dated 31st May, 2016 passed by the Arbitral Tribunal ('AT') by a majority of 2:1 rejecting the application filed by the Petitioner, National Highways Authority of India ('NHAI') seeking to amend the counter-claims filed by it before the AT.

2. Mr. Sibal referred to the decision of the learned Single Judge of this Court in *Shyam Telecom Limited v. Icomm Limited 2010 (116) DRJ 456* where it has been held that an interim order passed by the AT rejecting an application

for amendment (in that case to the claim) will not tantamount to an interim Award and therefore, cannot be challenged under Section 34 of the Act. The said judgment, however, clarifies that it would be open to the party aggrieved by such an interim order to challenge it at the time of challenge to the final Award.

3. Mr. Arun Kumar Varma, learned Senior counsel appearing for the Petitioner, NHAI, submits that the Petitioner's grounds of challenge in the present petition to the interim order dated 31st May, 2016 should be kept open to be raised by NHAI, if so warranted after the final Award passed by the AT. There is no objection by Mr Sibal to this submission of Mr. Varma.

4. Accordingly, while holding the present petition is not maintainable in view of the decision of this Court in ***Shyam Telecom Limited v. Icomm Limited*** (*supra*), the Court reserves the right of NHAI to urge the grounds in the present petition challenging the interim order dated 31st May, 2016 of the AT at the time of challenge, if any, to the final Award.

5. The petition is disposed of in the above terms. Order be given *dasti*.

S.MURALIDHAR, J

MARCH 02, 2017

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