

\$~21

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

+ **FAO(OS) 193/2017**

**NATIONAL HIGHWAYS AUTHORITY
OF INDIA**

..... Appellant

Through: Ms. Gunjan Sinha Jain, Adv.

versus

**M/S SSANGYONG ENGINEERING &
CONSTRUCTION CO LTD - ORIENTAL**

STRUCTURAL ENGINEERS LTD (JV) Respondent

Through: Mr. Anil Airi, Sr.Adv. with
Ms. Bindiya L. Airi, Ms.
Sadhna Sharma, Mr. Ravi
Kishan, Ms. Sukanya Lal
and Mr. Satyam, Advs.

CORAM:

HON'BLE THE ACTING CHIEF JUSTICE

HON'BLE MR. JUSTICE C.HARI SHANKAR

ORDER

% **10.07.2017**

CM No.23576/2017 (*exemption*)

Allowed, subject to all just exceptions.

The application stands disposed of.

CM No.23575/2017 (*delay of 68 days*)

Notice.

Ms. Sadhna Sharma, Advocate accepts notice for the sole
respondent/non-applicant.

By this application, the appellant prays for condonation of
68 days delay in filing the appeal. We are satisfied with the

explanation of the applicant with regard to circumstances due to which the delay was occasioned and prevented it by sufficient cause from filing the appeal within the statutory period of limitation.

Delay of 68 days in filing the appeal is condoned. CM stands disposed of.

FAO(OS) No.193/2017 & CM No.23574/2017

1. The appellant is praying for setting aside the judgment and order dated 31.01.2017 passed by the learned Single Judge, rejecting the appellant's objection filed under Section 34 of the Arbitration and Conciliation Act, 1996, registered as OMP No.441/2010, assailing the arbitral award dated 19.02.2010.
2. The respondent herein was awarded the work of four-laning and strengthening of the existing two lane sections on National Highway No.2 between KM140 and KM180 in Bihar for contract price of Rs.217,99,39,300/- by a contract agreement dated 12.02.2001.
3. Disputes arose between the parties under the contract resulting in five claims being raised by the respondent herein and reference to arbitration. The same came to be adjudicated by the arbitral award dated 19.02.2010.
4. Aggrieved thereby, the appellant had filed its objections under Section 34 of the Arbitration and Conciliation Act, 1996 challenging the arbitral award with respect to claim Nos.1 to 4.

The challenge of the appellant was rejected by the learned Single Judge by the impugned judgment dated 31.01.2017.

5. Aggrieved by the findings of the learned Single Judge, so far as claim Nos.1 and 3 are concerned, the appellant has filed the present appeal contending with regard to the cost compensation determined by the Arbitral Tribunal and upheld by the learned Single Judge. Reliance has been placed on the pronouncement of the judgment of the Division Bench of this Court dated 24.02.2016 passed in FAO (OS) No.402/2014 and FAO (OS) No.437/2014 titled ***National Highways Authority of India vs. Hindustan Construction Company***. The submission of the appellant is that the judgment dated 24.02.2016 is the subject matter of challenge by the appellant by way of Special Leave Petition (C) No.11545/2016 before the Supreme Court of India. It is an admitted position that even though leave may have been granted, there is no stay granted by the Supreme Court against the judgment dated 24.02.2016, passed by this Court in FAO(OS) No.402/2014, therefore, this Court would remain bound by the principles laid therein.

6. We are further informed by Mr. Anil Airi, learned Senior Counsel appearing for the respondent that so far as the impugned judgment dated 31.01.2017 is concerned, the learned Single Judge has also relied on the judgment dated 31.01.2013 passed by the Division Bench of this Court in FAO(OS) No.461/2012 titled

National Highways Authority of India vs. Oriental Structural Engineers Pvt. Ltd.-Gammon India Ltd. (JV) reported as **2013 (4) R.A.J. 506 (Del)** and Special Leave Petition filed by the National Highways Authority of India against the same stands rejected.

7. The submission on behalf of the respondent is that since that matter has attained finality, the principle laid down therein by the Supreme Court shall clearly bind this case as well.

8. No further ground is raised before us.

9. In view of the above, the present appeal is clearly devoid of legal merit. This appeal is accordingly dismissed.

CM No.23574/2017 (stay)

In view of the dismissal of the appeal, this application does not require any consideration. The same is accordingly dismissed.

ACTING CHIEF JUSTICE

C.HARI SHANKAR, J

JULY 10, 2017/pmc