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IN THE HIGH COURT OF DELHI AT NEW DELHI

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FAO(OS) (COMM) 92/2016 & CM No.38348/2016

PRASAR BHARATI

..... Appellant

Through Mr.Virag Gupta and Mr.Gaurav
Pathak, Advs.

versus

M/S EISA LIFTS PVT LTD

..... Respondent

Through Mr.S.K.Chandwani, Adv.

CORAM:

HON'BLE MR. JUSTICE S. RAVINDRA BHAT

HON'BLE MR. JUSTICE YOGESH KHANNA

ORDER

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04.05.2017

The appellant's grievance is that the limited notice issued by the Court in Section 34 under the Arbitration and Conciliation Act, 1966 was a mis-appreciation of the submission made by the counsel at the time of admission/hearing; who also relies upon subsequent reply and synopsis (filed before the Single Judge after the passing of the impugned order) that the plea taken was that in case the respondent was willing to accept the award upon the counter claim to the tune of Rs.1.15 crores the appellant was willing to satisfy the award to the extent of Rs.35 lakhs.

Counsel for the respondent Mr.Chandwani urge that the appellant's contentions are unmerited and that given the tenor of the impugned order merely resulted in limited notice confined to the rejection of counter claim. This in turn meant that as far as the findings in the award with reference to the contract/claim for Rs.34.16 lakhs and its acceptance is concerned the matter attained

finality. Thus the respondent/decreed holder could execute the decree arising out of the award. There is some merit in the respondent plea with respect to the executability of the award so far as decree crystallised in respect of claims i.e. Rs.34.16 lakhs on the strength of the decision of the Full Bench of this Court in *National Highway Authority of India v. Oriental Structure Engineers Ltd.-Gammon India Ltd. (JV)* AIR 2013 Del 67.

At the same time this Court is of the opinion that the appellant's grievance with respect to the recording of limited notice was not properly articulated though affidavit was filed before the learned Single Judge. Learned counsel submitted that he be granted liberty to approach Single Judge with a review on this aspect. Having regard to the overall interest of justice the appellant's request is reasonable. It is open to the appellant to file review petition limited to the contention with respect to award in favour of the claimant so warranted in the facts and circumstances, and if in fact the appellant had authorised its counsel to do so. However the appellant shall file review petition in this regard within two weeks; upon doing so the learned Single Judge may consider it on the merits rather than rejecting on the ground of delay. The appeal is disposed of in above terms.

S. RAVINDRA BHAT, J

YOGESH KHANNA, J

MAY 04, 2017/VLD