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

+ **FAO(OS) (COMM) 159/2017**

DOCTOR MOREPEN LTD AND ANR Appellants

Through **Mr. Yash Verma, Advocate**

versus

POYSHA POWER GENERATION P LTD AND ANR

..... Respondents

Through **Mr. Simran Mehta, Advocate for
Respondent no.1
Mr. Harish Malhotra, Sr. Adv with
Mr. Anil Upadhyay and Mr. Rohit
Ranjan, Advocates for Respondent
No.2**

CORAM:

HON'BLE MR. JUSTICE SANJIV KHANNA

HON'BLE MR. JUSTICE NAVIN CHAWLA

ORDER

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11.08.2017

Caveat 713/2017

As respondents have entered appearance, the caveat stands discharged.

C.M. No.28749/2017

Exemption allowed, subject to all just exceptions.

FAO(OS) (COMM) 159/2017 & CM No.28750/2017 (stay)

The present intra-court appeal would not be maintainable in view of Section 13(1) of the Commercial Courts, Commercial Division

and Commercial Appellate Division of High Courts Act, 2015.

2. The impugned order is not appealable under Order XLIII of the Code of Civil Procedure, 1908 (hereinafter referred to as 'the Code'). Rule 1A of Order XLIII of the Code permits a party to challenge any non-appealable order once judgment is pronounced against such party and a decree is drawn up.

3. The Division Bench of this Court in **HPL (I) (L) & Ors. vs. ORG Enterprises & Anr.** FAO(OS) Com.12/2017 decided on 14.02.2017 has held that in view of provisions of Commercial Courts Act, appeal would not be maintainable against non-appealable orders under Order XLIII of the Code.

4. The impugned order notices that witness of respondent no.2, Suresh Goyal has been under cross examination since 05.09.2016 and has been cross examined on five different dates. One full day's time has been given to the appellant to complete the said cross examination before the Local Commissioner.

5. In view the aforesaid position, we are not inclined to interfere with the impugned order.

5. Appeal is dismissed as not maintainable.

SANJIV KHANNA, J

NAVIN CHAWLA, J

AUGUST 11, 2017

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