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IN THE HIGH COURT OF DELHI AT NEW DELHI

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O.M.P. (COMM) 585/2016

**TEHRI HYDRO DEVELOPMENT CORPORATION
LTD**

..... Petitioner

Through: Mr. Puneet Taneja with Ms. Shaheen,
Advocates.

versus

JAI PRAKASH ASSOCIATES LTD

..... Respondent

Through: Mr. Lovkesh Sawhney, Advocate.

CORAM: JUSTICE S.MURALIDHAR

ORDER

23.02.2017

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1. The only issue raised by the Petitioner in the present petition under Section 34 of the Arbitration and Conciliation Act, 1996 ('Act') concerns the grant of *pendente lite* interest and pre-claim interest from the date of invocation of the arbitration clause till the date of the Award on the ground that Clauses 50 and 51 of the General Conditions of Contract ('GCC') does not permit the said grant of interest.

2. Mr. Puneet Taneja, learned counsel for the Petitioner placed reliance on the decision dated 15th November, 2011 passed by the Single Judge of this Court in OMP No. 738 of 2010 (***THDC India Limited v. Jaiprakash Associates Limited***) which was upheld by the Division Bench (DB) by its order dated 14th December, 2012 in FAO (OS) No. 596 of 2011 (***Jaiprakash Associates Limited v. THDC India Limited***).

3. Mr. Lovkesh Sawhney, learned counsel for the Respondent first submitted that the point concerning the interest was never urged by the Petitioner before the Arbitral Tribunal ('AT') and it is only after the passing of the Award that an application was filed before the AT by the Petitioner under Section 33 of the Arbitration and Conciliation Act, 1996 ('Act') which application was dismissed by the correction Award dated 30th August, 2008 on two grounds. One was that the said point was "neither brought out nor argued by the Respondents at any stage during the course of the hearings prior to the pronouncement of the award". Secondly, it was held that the clause in question does "not impose any restriction on award of interest by the AT as a result of arbitration proceedings."

4. As far as the above objection is concerned, it is seen that the Petitioner did raise the objection in its application under Section 33 of the Act. If indeed the clause in question does not permit grant of pre-claim and *pendente lite* interest, then the said objection cannot be brushed aside by the Court. Moreover, in ***THDC India Limited v. Jaiprakash Associates Limited*** (*supra*) involving an identical clause in another contract between the same parties, the Court has upheld the contention of the Petitioner. Although in the said decision, the Court was concerned with the grant of *pendente lite* interest by the AT, the bar would apply to even grant of pre-claim interest or interest from the date of invocation of the arbitration clause.

5. Mr Sawhney then states that the above decision of the DB in FAO (OS) No. 596 of 2011 has been challenged by the Respondent before the Supreme

Court of India by way of Special Leave Petition (Civil) No. 13551 of 2013 in which on 3rd July 2013 after hearing the parties, the following order was passed:

“Since both sides have placed considerable reliance on two three Judges’ Bench decisions, it will be appropriate to place this matter before a Bench headed by three Judges.

The Registry is, accordingly, directed to place the matter before the Hon’ble the Chief Justice of India, at an early date, for constitution of a three Judges’ Bench to hear this matter.”

6. Mr. Sawhney accordingly submits that the Court should await the decision of the Larger Bench of the Supreme Court in the aforementioned case before proceeding with the present petition.

7. The Court notices that the Supreme Court has not, by the above order, stayed the operation of the decision of the DB. The Court is, therefore, bound by the said decision of the DB.

8. The Court accordingly sets aside the impugned Award to the extent it grants interest to the Respondent for the period from the date of invocation of the arbitration clause by the Respondent till the date of the Award.

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

S.MURALIDHAR, J

FEBRUARY 23, 2017

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