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* IN THE HIGH COURT OF DELHI AT NEW DELHI

% Judgment delivered on: 16.10.2017

+ **ARB. A. (COMM.) 41/2017**

KMP EXPRESSWAYS LIMITED ..... Appellant

versus

IDBI BANK LIMITED & ANR. ..... Respondents

And

+ **O.M.P. (COMM) 367/2017**

KMP EXPRESSWAYS LIMITED ..... Petitioner

Versus

IDBI BANK LIMITED & ANR. ..... Respondents

Advocates who appeared in the matters

For the Appellant/Petitioner : Mr Sandeep Sethi, Senior Advocate with Mr Saket Sikri, Mr Kishore Kumar and Mr Vikalp Mudgal.

For the Respondents : Mr Aman Vivek, AAG with Mr A.P.Singh and Mr Deepak Tyagi and Mr Aman Aggarwal, Advocates for HSIIDC.

Mr Rajiv Nayyar, Senior Advocate with Mr Raunak Dhillon, Mr George Verghese Ms Ananya Choudhury and Mr Cyril Amarchand Mangaldas, Advocates for R-1.

CORAM:-
HON'BLE MR JUSTICE SANJEEV SACHDEVA

JUDGMENT
16.10.2017

SANJEEV SACHDEVA, J. (ORAL)

Cav.889/2017 in O.M.P(COMM) 367/2017

Since learned counsel for the respondent/caveator enters appearance, the caveat stands discharged.

IA Nos.11887-88/2017 (exemption) in OMP(COMM) 367/2017

Allowed, subject to all just exceptions.

ARB. A. (COMM.) 41/2017 & IA No.11560/2017(stay)
O.M.P. (COMM) 367/2017 & IA No.11886/2017(stay)

1. The Appellant/Petitioner – KMP Expressways Limited (hereinafter referred to as 'the Concessionaire') has filed the above-referred Appeal (ARB. A. (COMM.) 41/2017) under Section 37(2)(b) as well as the above-referred Petition (O.M.P. (COMM) 367/2017) under Section 34 of the Arbitration & Conciliation Act, 1996 (hereinafter referred to as 'the Act') impugning the order dated 03.09.2017 passed by the Arbitral Tribunal, whereby the Arbitral Tribunal has rejected the prayer of the Appellant for taking on record the Counter Claims.

2. Respondent No.2 – Haryana State Industrial & Infrastructure Development Corporation Limited (hereinafter referred to as 'the HSIIDC', for the sake of convenience), invited bids by a Tender dated 16.12.2004 for construction of a 135.65 kilometre long, 4/6 lane access controlled KMP Expressway/Western Peripheral Highway on a

Build-Operate-Transfer basis.

3. The bid of the Concessionaire was accepted. Pursuant thereto, a Concession Agreement dated 31.01.2006 was entered into between the Concessionaire and HSIIDC. The period of concession agreed to was 23 years and 9 months after expiry of the initial preparatory period of 180 days of the signing of the Concession Agreement.

4. For the execution of the Contract, the Concessionaire required funding over and above the equity input of the Concessionaire.

5. The Concessionaire thereafter approached a Consortium of Banks for making available the funds for execution of the project. The lead Banker being respondent No.1 – IDBI Bank Limited (hereinafter referred to as the 'Senior Lender').

6. A Common Rupee Term Loan Agreement was entered into between the Concessionaire and the Lending Banks. Similarly, on 08.01.2007, a Tripartite Substitution Agreement was entered into between the Concessionaire, the Senior Lender and HSIIDC.

7. The Tripartite Substitution Agreement provided an option to the Senior Lender to substitute the Concessionaire on the occurrence of the events specified in the Substitution Agreement.

8. As per the Concessionaire, the work on the Project commenced, however, there were certain supervening factors, because of which the execution of the Project was delayed.

9. The Contract was subsequently terminated by the HSIIDC. It is not relevant for the purposes of the present proceedings to go into the reasons of the termination or the default, which lead to the termination of the said Concession Agreement.

10. Since there were certain environmental issues connected with the execution of the Project, the issue of the subject Project came up for consideration before the Supreme Court in Writ Petition (Civil) No.13029/1985 titled ***M.C.Mehta versus Union of India & Others.***

11. Because of the disputes between the Concessionaire and the HSIIDC, the Concessionaire invoked Arbitration. The arbitration proceedings between the Concessionaire and HSIIDC, *vis-a-vis* the Concession Agreement and its subsequent termination are pending before a different Arbitral Tribunal.

12. The contention of the Senior Lenders, *inter alia,* was that under the Substitution Agreement, they have the right to substitute the Concessionaire, in case HSIIDC terminated the Concession Agreement. It is contended that neither did HSIIDC permit the Senior Lenders to substitute the Concessionaire under the Substitution Agreement nor did they make the termination payment comprising of the entire amount lent by them to the Concessionaire.

13. The Supreme Court in IA Nos.363-364 and other connected applications in Writ Petition (Civil) No.13029/1985 titled ***M.C.Mehta versus Union of India & Others***, by judgment dated 13.05.2016

directed as under:-

> *"(i) All disputes between the lender –Banks, the HSIIDC and the outgoing Concessionaire – KMP Expressways Limited arising out of or in relation to the Tripartite Agreement dated 08.01.2017 executed between the parties shall stand referred to the Arbitral Tribunal headed by Justice N.K.Sodhi.*
>
> *(ii) The parties namely, the lender banks, HSIIDC and the outgoing Concessionaire shall file their claims, and counter-claims before the Arbitral Tribunal, who shall then adjudicate upon and decide the same in accordance with the law giving to each one of them an opportunity of being heard in the matter.*
>
> *(iii) Pending adjudicate of the claims as aforesaid, we direct deposit of eighty percent of the amount collected towards toll for use of Manesar-Palwal Section (Manesar RD 83,320 km to Palwal RD 135.650 Km) in an escrow account to be opened in IDBI-the lead bank. The said amount shall then be available to the Arbitral Tribunal for disbursement to the lender banks by way of an interim arrangement or otherwise as it may consider appropriate after hearing the parties.*
>
> *(iv) This order of reference to arbitration or the pendency of the proceedings before the Arbitral Tribunal shall not be considered as an impediment for the new Concessionaire to commence its work of widening 4/6 lane work pertaining to Kundli-Manesar (0.00 km-83.320 km) in terms of the contract allotted to it, HSIIDC shall appoint a Committee of Engineers/Experts for measurement of the work done on (i) Kundli-Maneesar-0.00 km-83.320 km and (ii) Manesar-palwal-83.320 km-135.650 km by the outgoing Concessionaire. The report shall be filed before the Arbitrators within four weeks*

from the date of this Order. The outgoing Concessionaire, the lender banks and the new Concessionaire shall associate with the process of measurement of the work.

(v) Needful shall be done expeditiously to avoid any delay in commencement of the work by ESSEL."

14. It is in these Arbitration proceedings that the impugned order has passed leading to the Concessionaire filing the above-referred Appeal under Section 37 of the Act and the above-referred Petition under Section 34 of the Act.

15. The Supreme Court, by judgment dated 13.05.2016, directed that the parties, i.e. the Lender Banks, HSIIDC and the Concessionaire shall file their claims and counter-claims before the Arbitral Tribunal, which shall then adjudicate and decide the same in accordance with law.

16. On 14.06.2016, the Arbitral Tribunal, by its Procedural Order No.-1 noted the submission of the Senior Lenders that they would require three weeks' time to file Statement of Claim and that of the HSIIDC that they would require four weeks' time, from the date of receipt of the Statement of Claim, to file their Statement of Defence and Counter-Claim, if any.

17. The Arbitral Tribunal directed that the Statement of Claim be filed by 05.07.2016 and Statement of Defence and Counter-Claim by 02.08.2016. It directed that the said Schedule of Dates would also

operate for the Concessionaire.

18. The Senior Lenders filed their Statement of Claim on 05.07.2016. The Statement of Defence was not filed by the HSIIDC in terms of Procedural Order No.1, however, the same were filed on 03.09.2016, subject to terms.

19. In the reply/Statement of defence filed by the Concessionaire, on 02.09.2016, it was stated that no counter claim was being filed, however it reserved its right to file a Counter-Claim in the Arbitral Proceedings as and when deemed necessary by the said respondent.

20. By a Procedural Order No.5 dated 18.11.2016, additional counter-claims filed by the HSIIDC were taken on record.

21. It may be noticed that no claim was filed by the Senior Lenders against the Concessionaire. Statement was recorded in the Procedural Order No.5 on 18.11.2016, of Counsel for the HSIIDC that no claim was being made by them against the Concessionaire.

22. On 29.11.2016, issues were framed on the Claim Petition as well as the Counter-Claims filed by the HSIIDC. No counter-claim was filed by the Concessionaire.

23. On 06.05.2017, when evidence of the parties was being recorded, the Concessionaire filed an application seeking permission of the Arbitral Tribunal to withdraw from the proceedings and made a prayer for deletion of its name from the array of parties.

24. Though the application dated 06.05.2017 has not been filed by the Concessionaire on record, a copy of the same was produced by the learned counsel appearing for the Lead Bankers to point out that in paragraph 15 of the said application, it is specifically submitted on behalf of the Concessionaire as under:-

> *"(a) From a reading of the pleadings of the Claimant as well as those of Respondent No.1, it is evident that the same do not disclose any claim and cause of action against the Applicant – Respondent No.2 herein.*
>
> *(b) The <u>final outcome</u> of these arbitral proceedings, <u>in the form of an Award</u> from this Hon'ble Tribunal, <u>shall neither prejudice, nor inure to the benefit of</u>, <u>the Applicant</u>-Respondent No.2 herein.*
>
> *(c) Since no reliefs, in any form whatsoever, have been prayed for either by the Claimant or Respondent No.1, there is no cause of action which subsists against the Applicant – Respondent No.2 in the present proceedings and <u>no right of the Applicant is sought to be prejudiced/violated</u>.*
>
> *(d) This Hon'ble Tribunal has vide its decisions/proceedings, including its orders dated 03.09.2016 (rejecting merger) and 18.11.2016 (framing issues) (supra), after completion of pleadings, has further confirmed the above."*
>
> *(emphasis supplied)*

25. By order dated 11.07.2017, the application filed by the Concessionaire for deletion from the array of parties was dismissed.

26. Evidence of the Senior Lenders as well as the HSIIDC

concluded on 29.07.2017.

27. Thereafter, the case was fixed for arguments on 26.08.2017, 28.08.2017 and again from 31.08.2017 to 04.09.2017. The case could not be taken up on 26.08.2017 on account of certain circumstances.

28. On 26.09.2017, the subject counter-claim was submitted by the Concessionaire, which has been declined to be taken on record by the impugned order dated 03.09.2017.

29. The Arbitral Tribunal has refused to entertain the Counter Claim on two grounds; (i) counter claims are sought to be filed by the Concessionaire at a highly belated stage and taking the same on record at this stage would derail the entire proceedings and (ii) the Counter Claims do not arise out of or relate to the Tripartite Agreement.

30. Learned senior counsel appearing for the Concessionaire has contended that the Counter Claims arise out of and relate to the Tripartite Agreement between the parties.

31. It is contended that the Substitution Agreement cannot be read in isolation and *de hors* the Concession Agreement as well as the Financing Agreement. It is contended that one of the claims of the Senior Lenders against the HSIIDC is recovery of Termination Payment and in case the Senior Lenders succeed in recovering the Termination Payment, the Concessionaire would be entitled to 40% of

the amount recovered from the HSIIDC based on the debt related liabilities of the Concessionaire.

32. It is contended that the said claim, of the Concessionaire, arises out of the Common Rupee Term Loan Agreement, which is to be read in conjunction with the Substitution Agreement and thus the said claim arises out of and is connected to the Substitution Agreement.

33. It is further contended that in case the Senior Lenders succeeds in their claim that they were entitled to substitute the Concessionaire and/or are entitled to receive Termination Payment, the obligations of the Concessionaire under the Finance Agreement would come to an end. It is contended that the same came to an end when the Contract was terminated by the HSIIDC.

34. It is contended that the Arbitral Tribunal erred in returning a finding that the claims did not arise out of or were not connected to the Tripartite Substitution Agreement.

35. Further, it is contended that the finding of the Tribunal that the Counter Claim was filed at a highly belated stage is erroneous as there is no time limit or sanction for not filing Counter Claim within the period stipulated.

36. It is contended, that a conjoint reading of Section 23 and Section 25-A of the Act shows that there is no automatic deprivation of the right of the counter-claimant to file a counter-claim merely by

lapse of time.

37. Learned senior counsel for the petitioner further contends that in case this Court were to return a finding that the claims are connected or related to the Tripartite Substitution Agreement, then mere delay would not be ground to oust the petitioner as the same would then lead to multiplicity of proceedings.

38. It is contended that Section 25-A, which stipulates that if Statement of Claim is not filed within time, the Arbitral Tribunal shall terminate the proceedings, is not applicable in respect of a Counter Claim in view of Section 2(9) of the Act.

39. It is contended that Section 25-A is not applicable to the counter-claim inasmuch as Section 2(9) of the Act specifically states that for clauses other than Clause 25-A, reference to a Claim shall also apply to a Counter-Claim.

40. It is contended that the petitioner is willing to be, subjected to terms to compensate the Respondents for the delay in filing Counter Claims.

41. Learned Additional Advocate General appearing for the HSIIDC submits that HSIIDC does not oppose the petition and contend that the stand of the HSIIDC is that the counter-claim be taken on record as they arise from the claims made by the Senior Lenders.

42. Learned counsel appearing for the Senior Lenders, has vehemently opposed the petition.

43. It is contended that in case the counter-claims were permitted to be taken on record, at this juncture, the entire proceedings would be said to “naught” and the parties would be relegated to the stage of completion of pleadings.

44. It is contended that the evidence of the parties has also been concluded and the matter is fixed for final hearing. It is further contended that the Concessionaire had themselves waived their rights to file a counter-claim.

45. It is submitted that when the Concessionaire filed their Statement of Defence, they specifically chose not to file a Counter Claims and as such, are now precluded from filing the same.

46. It is further contended that the disputes before the Arbitral Tribunal pertain to the Tripartite Substitution Agreement. It is contended that what is an issue is the right of the Senior Lenders to substitute the Concessionaire and/or receive the termination payment. It is contended that the Counter Claims, sought to be raised, do not relate to the right of the Senior Lenders of substitution and/or recovery of terminal payment.

47. Learned senior counsel, without prejudice submits that even if the counter-claims were not entertained by the Tribunal solely on the

ground of delay, it would not preclude the Concessionaire to raise the counter-claims in accordance with law before an appropriate Forum in separate proceedings.

48. Learned counsel submits that there is no final adjudication on the Claims of the Senior Lenders and it is open to them to initiate appropriate proceedings in accordance with law.

49. It is contended that no Appeal would lie under Section 37 of the Act as the impugned order is not an order under Section 16 but is an order under Section 23 of the Act.

50. Further, it is contended that reading of the Substitution Agreement shows that none of the claims made by the petitioner arise out of or relate to any of the Clauses of the Substitution Agreement.

51. It is contended that there is no claim of the Concessionaire against the Senior Lenders and there is further no allegation that any action of the Senior Lenders has given rise to any cause of action to the Concessionaire to file counter-claims against the Senior Lenders.

52. For the purposes of determination, whether the subject Counter Claims arise out of or relate to the Tripartite Agreement; we need to look at the issues that have been framed by the Arbitral Tribunal.

53. The issues framed are as under:-

1. Whether respondent No.1 has committed a breach *of the Tripartite Substitution Agreement dated January 8, 2007? OPC.*

2. *If issue No.1 is decided in favour of the claimant, whether respondent No.1 is liable to pay damages and, if so, to what extent? OPC.*

3. *In case issue No.2 is decided in favour of the Claimant, whether it is entitled to claim interest and, if so, at what rate and from which date? OPC.*

4. *Whether the termination payment of Rs.1300 crores under the Tripartite Substitution Agreement dated January 8, 2007 amounts to admission of liability on the part of respondent No.1 and, if so, to what effect? OPC.*

5. *Whether the statement of claim is maintainable in view of Clause 3.5(ii) and other provisions of the Tripartite Substitution Agreement dated January 8, 2007?OPR-1.*

6. *Whether the Claim Petition is not maintainable in view of the Claimant having filed a petition for the recovery of its dues from respondent No.2 before the Debt Recovery Tribunal? OPR-1.*

7. *Whether respondent No.1 is entitled to the counter-claims made by it and, if so, to what extent and whether it is entitled to any interest on the amounts claimed? OPR-1.*

8. *Relief."*

54. Perusal of the issues show that the entire claim of the Senior Lenders is with regard to the alleged breach of the obligation by the HSIIDC of the Tripartite Substitution Agreement in not permitting the

Senior Lenders to exercise their rights of substitution of the Concessionaire. On the other hand HSIIDC has filed a counter-claim against the Senior Lenders for allegedly having committed a breach of their obligation to substitute the Concessionaire.

55. Perusal of the Claim Petition shows that there is no claim by the Senior Lenders or the HSIIDC against the Concessionaire in these proceedings. The proceedings primarily pertain to the obligation inter-se the Senior Lenders and HSIIDC with regard to the substitution of the Concessionaire.

56. The counter-claims now sought to be raised by the Concessionaire, are divided under three heads:

> ***Claim No.1*** *– Claim of 40% of the amount recovered from the respondent No.1 based on the Debt Related Liabilities of the Respondent No.2.*
>
> ***Claim No.2*** *– Loss of Profit of Rs.500 crores because of the termination of the Contract due to defaults of the claimant and respondent No.1.*
>
> ***Claim No.3*** *- A declaration that the liability of the Respondent No.2 under the Financing Agreements came to an end on 14th May, 2014.*

57. Under Claim No.1, the Concessionaire seeks recovery of 40% of the amount to be recovered by the Senior Lenders from the HSIIDC. The claim of 40% is based on the debt related liabilities of HSIIDC.

58. The Arbitral Tribunal is yet to adjudicate the claims of Senior Lenders. The alleged debt related liabilities of HSIIDC *vis-a-vis* the Concessionaire do not arise out of or relate to any of the clauses of the Tripartite Substitution Agreement.

59. It may be noticed that the Concessionaire, in its application for deletion, had specifically stated that the final outcome of the arbitral proceedings in the form of Award shall neither prejudice nor enure to the benefit of the Concessionaire. It was also case of the Concessionaire that no right of the Concessionaire was sought to be prejudiced or violated.

60. The very understanding of the Concessionaire was that the rights of the Concessionaire are not going to be affected by the outcome of the proceedings one way or the other.

61. This application, as noticed above, was filed after the pleadings of both the Senior Lenders as well as the HSIIDC were on record and substantial evidence had already been led by the said parties. Counter-claims were sought to be filed after the said application for deletion was rejected.

62. The proposed counter claim of the Concessionaire, seeking a share out of the amount that may be ultimately determined by the Arbitral Tribunal, is premature and does not arise out of the Tripartite Substitution Agreement.

63. The liability of the HSIIDC to pay any amount to the Senior Lenders is yet to be determined. It is an admitted position that the Senior Lenders are yet to recover any amount from the HSIIDC.

64. It is not the case of the Concessionaire that it would be entitled to the claimed amount, from the Senior Lenders, irrespective of the fact whether they recover the same from the HSIIDC or not.

65. The said claim clearly does not arise out of the Tripartite Substitution Agreement, which is restricted to the right of the Senior Lenders to substitute the Concessionaire and/or receive the termination payment.

66. The recital of the Substitution Agreement notes the reason for execution of the Substitution Agreement as under:-

> *"(B) With a view to help facilitate obtaining of financing for the said Project by the Concessionaire so as to enable the Concessionaire to build, operate and transfer the same pursuant to and in accordance with the Concession Agreement, the parties have agreed subject to the terms and conditions of the Concession Agreement and the Financing Documents, that <u>the Senior Lenders shall have the right to substitute the Concessionaire by a Selectee for the residual period of the Concession</u> on the terms, conditions and covenants mentioned herein below.*
>
> *(C) <u>As a condition to making any disbursement pursuant to the Financing Documents</u>, the Senior Lenders have required and it is deemed necessary and expedient to record the terms, conditions and covenants of the above agreement between the parties."*
>
> *(emphasis supplied)*

67. Reading of the Substitution Agreement shows that the same relates to the right of the Senior Lenders to substitute the Concessionaire by a Selectee for the residual period of the Concessionaire.

68. As noticed by the Arbitral Tribunal, the Concessionaire has not been able to point out to any clause of the Substitution Agreement to substantiate its submission that the Claim No.1 arises out of or relates to Substitution Agreement. Learned senior Counsel for the Concessionaire has sought to base the claim not on the Substitution Agreement but on exchange of correspondence, i.e. letter dated 10.11.2014 between the Concessionaire and the Senior Lenders. Learned Counsel for Senior Lenders has denied that the said letter amounts to a concluded contract.

69. Without expressing any opinion on effect of the letter dated 10.11.2014, the Tribunal has not committed any error in holding that the counter-claim does not arise out of or is not connected to the Tripartite Substitution Agreement executed between the parties.

70. The Tribunal has rightly held that the Concessionaire is unable to point out any provision in the Tripartite Substitution Agreement, which entitles it to Claim 40% or any part of the amount that the Senior Lenders are claiming from HSIIDC.

71. Counter-Claim No.2 raised by the Concessionaire pertains to alleged loss of profit of Rs.500 crores because of termination of the

Contract due to defaults of the Senior Lenders and the HSIIDC.

72. The claim raised by the Concessionaire is with regard to alleged wrongful termination of the Contract due to alleged defaults of Senior Lenders and/or HSIIDC.

73. As noticed above, the Substitution Agreement pertains to the rights of the Senior Lenders to substitute the Concessionaire in case of his default. The Claims of Senior Lenders and the Counter Claims of HSIIDC are not against the Concessionaire but inter-se them. Even the stand of the Concessionaire is that the Concessionaire is that the final outcome of these arbitral proceedings, in the form of an Award, shall neither prejudice, nor inure to the benefit of the Concessionaire and further that no right of the Concessionaire is sought to be prejudiced/violated.

74. Counter-Claim No.3 is a declaration that liability of the Respondent No.2 under the Financing Agreements came to an end on 14^{th} May, 2014.

75. It is a declaration sought under the Financing Agreement. Admittedly, the present proceedings do not arise out of the Financing Agreement (Common Rupee Term Loan Agreement). The Common Rupee Term Loan Agreement is a bipartite agreement between Senior Lenders and the Concessionaire. HSIIDC is not a party to the same. Further, whether the liability of Concessionaire stood terminated under the Finance Agreement on the happening of a particular event is

not a claim, which arises out of the Substitution Agreement.

76. Thus, the finding of the Arbitral Tribunal that the Counter Claims sought to be raised do not arise out of or relate to the Substitution Agreement cannot be faulted.

77. Further, opportunity to file counter-claim was not availed of by the Concessionaire. Rather, the stand of the Concessionaire was that it does not wish to file the Counter Claim but reserves its rights to file counter-claim, as and when it sought necessary.

78. When a party that has been given an option to file Counter Claims, chooses not to do so and allegedly reserves it right to file the same at a later point in time, it runs the risk of the same being denied to be entertained at a later stage on the ground of delay. Parties on their own cannot dictate as to how the Arbitral Tribunal and the other parties are to proceed.

79. Opportunity was given to the Concessionaire to file the Counter Claim, it chose not to. It took a calculated risk.

80. The Arbitral Tribunal is right in its finding that if, at this juncture, counter-claim is permitted to be brought on record, the same would derail the entire proceedings.

81. The very purpose of the Act is to expedite the processes of adjudication of disputes. If Respondents were permitted to file counter-claim at any point of time, it would give a tool to the

respondents to delay the disposal of the arbitration proceeding, which would be contrary to the very purpose of the Act and would defeat the very object of the enactment of Act.

82. In view of the above, I find no infirmity in the view taken by the Arbitral Tribunal that none of the counter-claims sought to be raised arise out of the Tripartite Substitution Agreement executed between the parties and are beyond the scope of the present arbitration proceedings.

83. The other ground for rejection of the counter-claim is that the same are highly belated. The dates, as noticed above and as recorded in the Procedural Orders passed by the Arbitral Tribunal from time to time show that the sufficient opportunity was granted to the Concessionaire to file a counter-claim but not availed of.

84. Since I am of the view that the Arbitral Tribunal has not committed any error in holding that the counter-claims do not arise out of or relate to the Substitution Agreement and that the Concessionaire is ousted also on the ground of delay, the preliminary objection raised by learned counsel for the Senior Lenders, that no Appeal would lie under Section 37 of the Act as the impugned order is not an order under Section 16 but is an order under Section 23 of the Act, is left open.

85. In view of the above, I find no merit in the Appeal (ARB. A. (COMM.) 41/2017) as well as the Petition (O.M.P. (COMM)

367/2017) and the same are accordingly dismissed.

86. It is clarified that this Court has neither examined nor commented on the merits of the proposed counter claims of the Concessionaire or the existing Claims of the Senior Lenders against the HSIIDC and the Counter-Claim of HSIIDC against the Senior Lenders.

87. It is further clarified that this order will not come in the way of the Concessionaire raising its claim before an appropriate Forum, in accordance with law, if permissible.

88. The Parties are left to bear their own costs.

89. *Dasti* under signatures of the Court Master.

OCTOBER 16, 2017 **SANJEEV SACHDEVA, J**

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HIGH COURT OF DELHI
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