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

+ **FAO(OS) 218/2017 & CM Nos.26464-65/2017**

M/S COMMERCIAL LINKERS

..... Appellant

Through : Mr Ranjay Kumar Dubey, Advocate.

versus

UNITECH LTD

..... Respondent

Through : Mr S.K.Maniktala and Mr Tushar
Chawla, Advocates.

CORAM:

HON'BLE MR. JUSTICE S. RAVINDRA BHAT

HON'BLE MR. JUSTICE A. K. CHAWLA

ORDER

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05.07.2018

The Appellant's grievance is that the impugned judgment sets aside only part of the Award that so far as it relates to counter-claim Nos.2 & 5 as well as the cost awarded.

The facts of the Appeal are that the parties had entered into an Agreement for the execution of a Sub-contract relating to construction of 4 lanes and strengthening of segment of National High Way for transportation of crushed stones materials.

Respondent/claimant was the main Contractor; the Appellant was its Sub-contractor for the purposes of its transportation.

Disputes arose with respect to the amounts payable to the Sub-Contractor by the Contractor on the one hand and certain claims of the Contractor on the other hand.

The parties referred disputes to an Arbitral Tribunal, in accordance with the Agreement entered into by them.

On 09.04.2008, the Tribunal made its Award. The claimant succeeded to the extent of an Award in favour of Sub-Contractor - Rs. 1.66 lakhs. Counter- Claims were granted in respect of five heads. This became a primary subject-matter of challenge before the learned Single Judge under Section 34 of the Arbitration & Conciliation Act, 1996 (hereinafter referred to as '*the Act*').

By the impugned judgment, the Single Judge accepted the claimant's contentions and set aside the Award so far it relates to counter-claim Nos.2 & 5 on the ground that no evidence was led by the Sub-Contractor to justify this. That apart, the Award of Rs.3 lakhs granted to the Sub-contractor too was set aside as unjustified.

The Appellant-Sub-Contractor urges that the claimant could not have challenged a part of the Award but rather Section 34 of the Act mandated that the entire Award had to be the subject matter of the objections. This argument, in the opinion of the Court, is plainly fallacious. There is nothing in law which compels a party, who is willing to accept the determination of the Court, to challenge the complete Award where only a part of the Award is not acceptable to the party. In fact no authority for this proposition is required.

In any event, *J.G. Engineers Private Limited versus Union of India*, (2011) 5 SCC 758 expressly states that a part of the Award can

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be the subject matter of the challenge under Section 34 of the Act.

As far as the merits of the impugned judgment goes, this Court notices that in respect of the counter-claim Nos. 2 & 5, the yardstick applied by the Single Judge was identical, i.e. absence of evidence.

It is now well established that though the jurisdiction of this Court under Section 34 of the Act is extremely narrowed and it does include the setting aside the Award to the extent it is not based on any evidence or material.

Having regard to these facts, the Court sees no infirmity in the approach and conclusions of the learned Single Judge.

The Appeal is, therefore, without merit and consequently dismissed. Pending applications also stand disposed of accordingly.

S. RAVINDRA BHAT, J

A. K. CHAWLA, J

JULY 05, 2018

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