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

+ **FAO(OS) (COMM) 112/2018**

M/S NATIONAL HIGHWAYS & INFRASTRUCTURE

DEVELOPMENT CORPORATION LTD Appellant

Through: Mr. Debal Kumar Banerjee, Sr.
Advocate with Mr. Anirudh Singh, Advocate.

versus

M/S KMC CONSTRUCTIONS LTD Respondent

Through: Nemo.

CORAM:

HON'BLE MR. JUSTICE SANJIV KHANNA

HON'BLE MR. JUSTICE CHANDER SHEKHAR

ORDER

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22.05.2018

Learned senior counsel appearing for the appellant submits that they are concerned about the observations and findings in paragraphs 34 and 35 of the impugned order on the question of “liquidated damages” and proof thereof.

We find that the award dated 26th September, 2017 has referred to several factual aspects on the question of damages of Rs.7,56,45,000/- claimed by the appellant in terms of Clause 7.1.3 of the Engineering Procurement and Construction agreement, including the fact that the tripartite agreement was signed on 3rd July, 2015 and the appointed date for performance of the contract by the respondent as mutually agreed was 15th September, 2015. Performance guarantee was furnished by the respondent

earlier on 6th May, 2015. In these circumstances, learned Arbitrator had accepted the claim and submission of the respondent.

The claim on account of Rs.7,56,45,000/- was made by the Ministry of Road Transport and Highways by communication dated 15th May, 2015 to National Highway and Infrastructure Development Corporation Limited, the present appellant. The present appellant had then raised the claim on the respondent by way of communication dated 30th September, 2015, which is after the tripartite agreement dated 3rd July, 2015.

We have narrated the aforesaid factual background to show that the award can be sustained on the aforesaid facts. In fact, no submissions challenging the aforesaid factual position as recorded in the award have been made.

In view of the aforesaid position, we are not inclined to issue notice in the appeal, but clarify that the question of law with regard to “liquidated damages” is left open.

With the aforesaid observation and caveat, the appeal is dismissed without any order as to costs.

SANJIV KHANNA, J.

CHANDER SHEKHAR, J.

MAY 22, 2018
MR