

\$~46

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

% *Date of Order: 28th May, 2018*

+ **FAO(OS) (COMM) 117/2018, CM APPL 22948/2018**
KRR INFRA PROJECTS PVT LTD Appellant

Through Dr. Amit George, Mr. Rajeev Kumar,
Ms. Prachee Satija, Mr. Rishabh
Dheer & Mr. K. Dileep, Advocates.

versus

UNION OF INDIA Respondent

Through Mr. Ruchir Mishra with Mr. Mukesh
Kumar Tiwari, Advocates.

CORAM:

HON'BLE MR. JUSTICE G.S.SISTANI

HON'BLE MS. JUSTICE SANGITA DHINGRA SEHGAL

G.S.SISTANI, J. (ORAL)

CM APPL 22949/2018

1. Exemption allowed, subject to all just exceptions.
2. The application stands disposed of.

FAO(OS) (COMM) 117/2018 & CM APPL 22948/2018

3. The present appeal filed under Section 37 of the Arbitration and Conciliation Act, 1996 (hereinafter referred to as the 'Act, 1996') read with Section 13(1) of Commercial Courts, Commercial Division & Commercial Appellate Division of the High Courts Act, 2015, is directed against the order dated 12.03.2018 passed by the learned Single Judge by which the objections to the award stand dismissed barring claim no.1(j).

4. Mr. Amit George, learned counsel for the appellant submits that in this case, disputes were referred to the Arbitrator by the respondent herein on 24.10.2014. The respondent appointed its own serving officer as an Arbitrator in terms of the contract entered into between the parties. It is also submitted that the said Arbitrator resigned on 29.02.2016. Following his resignation, the present Arbitrator, who has rendered the award, subject matter of this appeal, was appointed on 27.05.2016. The learned counsel for the appellant submits that by the time, the second Arbitrator was appointed, Section 12 of the Act, 1996 was amended to incorporate VII Schedule, as per which, an employee cannot be appointed as an Arbitrator. It is submitted that while in the present case, the learned Single Judge has taken a view that since the Arbitration proceedings had commenced prior to the amendment, the amendment would not be applicable. A different view has been taken in the case of ***Omaxe Infrastructure and Construction Ltd. Vs. Union of India***; OMP (T)(Comm).9/2018 decided on 04.05.2018. It is contended that while deciding the aforesaid OMP, the learned Single Judge has extensively dealt with the issue and also quoted from the report of the law commission.
5. After some hearing in the matter, counsel for the appellant seeks leave to file a review petition. We find the request of the appellant to be reasonable. Accordingly, we grant liberty to the appellant to seek review of the order dated 12.03.2018. In case, review petition is filed within one week of the opening of the Court, the plea of limitation will not be raised against the appellant as agreed and in case the review petition is dismissed, the appellant would be entitled to file an appeal

within a period of 60 days as provided in the law and would be entitled to raise all grounds available as per law, including grounds raised in the present appeal.

6. With the above agreed directions, the appeal as well as application being CM APPL 22948/2018 stands disposed of.

7. *Dasti.*

G.S.SISTANI, J.

SANGITA DHINGRA SEHGAL, J.

MAY 28, 2018

ck