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

+ O.M.P. (COMM) 322/2018 & I.A. Nos. 9945-9946/2018

NATIONAL HIGHWAYS AUTHORITY OF INDIA..... Petitioner

Through: Mr. Rajiv Kapoor with Mr. Srikant
Sharma and Mr. Rashid Azam, Advs

versus

IRCON INTERNATIONAL LIMITED

..... Respondent

Through: None.

CORAM:

HON'BLE MR. JUSTICE RAJIV SHAKDHER

ORDER

% **30.07.2018**

1. Learned counsel for the petitioner says that the issue pertaining to the claims made by the respondent being barred by limitation was raised before the arbitral tribunal qua which the ruling was delivered by the arbitral tribunal on 16.02.2018 along with reasons.
2. Learned counsel points out that a similar issue was taken up by the arbitral tribunal *vis-a-vis* the counter claim raised by the petitioner.
3. For this purpose, my attention has been drawn to the proceedings dated 16.02.2018 and 16.03.2018 recorded by the arbitral tribunal.
4. According to the learned counsel for the petitioner, since reasons were not furnished, an application under Section 33 of Arbitration and Conciliation Act, 1996 ('Act') was filed on 05.04.2018 which was disposed of on 16.04.2018.
5. Mr. Kapoor, based on the judgment of the Supreme Court dated 23.01.2018, passed in Civil Appeal No. 824/2018, titled: *M/s Indian Farmers Fertilizer Co-operative limited Vs M/s Bhadra Products*, says

that the decision on the issue of limitation resulted in an interim award being passed and therefore, the petitioner was entitled to approach to this court under Section 34 of the Act.

6. In my view, one cannot but agree with the proposition that the decision on limitation rendered by the arbitral tribunal would amount to an interim award, the difficult aspect in so far as the petitioner is concerned, is as to when the limitation would commence for the purpose of the petition preferred under Section 34 of the Act.

7. Clearly, the petitioner was made aware of the order dated 16.02.2018 via email dated 17.02.2018 by the learned arbitral tribunal.

8. Section 33 of the Act on a plain reading is indicative of the fact that it is not meant to seek reasons from the arbitral tribunal, and therefore, disposal of the application under Section 33 of the Act on 16.04.2018 cannot extend limitation in favour of the petitioner.

9. Mr. Kapoor also says that since the arbitral tribunal entertained an application under Section 33, the limitation would stand extended.

10. According to me, limitation cannot be extended as per Section 33(4) merely on account of the reason that the arbitral tribunal entertained the petition.

11. In these circumstances, clearly, limitation has expired, in so far as challenge to the interim award is concerned. Therefore, the captioned petition having been beyond limitation will have to be dismissed. It is ordered accordingly.

RAJIV SHAKDHER, J

JULY 30, 2018/c
O.M.P. (COMM) 322/2018

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