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

+ **O.M.P. (COMM) 387/2016 & IA No. 10125/2016**

NATIONAL HIGHWAYS AUTHORITY OF INDIA ... Petitioner

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

versus

PNC INFRATECH LTD

... Respondent

Through: Mr Ajay Kumar Jha, Advocate.

CORAM:

HON'BLE MR. JUSTICE VIBHU BAKHRU

ORDER

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17.05.2018

1. The petitioner (NHAI) has filed the present petition under Section 34 of the Arbitration and Conciliation Act, 1996 (hereafter 'the Act'), *inter alia*, impugning the arbitral award dated 28.04.2016 (hereafter 'the impugned award') delivered by the Arbitral Tribunal comprising of three arbitrators, namely, Sh R.K. Jain (Presiding), Sh H.P. Jamdar and Sh K.B. Bansal (hereafter 'the Arbitral Tribunal').
2. The impugned award was rendered in the context of disputes that had arisen between the parties pursuant to the bids submitted by the respondent against the invitation of NHAI for completing the balance work left unfinished for "*Strengthening and Four Laning of the Existing Two Lane Section between km 307.500 to km 321.100 of Etawah Bypass on National Highway-2 (NH-2) in UP*" (hereafter 'the Project'). On 13.02.2006, the parties entered into an agreement (hereafter 'the Agreement').
3. By the impugned award, the Arbitral Tribunal has awarded an

aggregate amount of ₹29,58,12,085.29/- in favour of the respondent by allowing the claims of the respondent and rejecting the counter claim of NHAI.

4. The learned counsel appearing for the parties state that the disputes relating to the claims awarded in favour of the respondent have been settled between the parties. NHAI is pursuing the present petition only in regard to the counter claim, which was rejected by the Arbitral Tribunal.

5. The sole counter claim preferred by NHAI related to the payment on account of Workers Welfare Cess. NHAI had claimed a sum of ₹1.80 crores as cess payable under the Building and Other Constructions Workers Welfare Cess Act, 1996. The said Act had come into force in the year 1996; however, the UP BOCW Rules, 2009 – which were notified on 04.02.2009 – came into effect after the contract had been awarded to the respondent.

6. The learned counsel appearing for the parties state that the Arbitral Tribunal (by majority) has accepted the contention that the cess imposed would be on account of a subsequent legislation since machinery to collect the said cess had been put in place subsequent to the contract being awarded to the respondent. Accordingly, the Arbitral Tribunal has rejected NHAI's counter claim

7. The learned counsel for the parties state that the aforesaid conclusion of the Arbitral Tribunal is supported by the decision of the Supreme Court in **Dewan Chand Builders & Contractors v. Union of India and Ors.**: (2012)

1 SCC 101, wherein the Supreme Court had held as under:-

“18. Although both the statutes were enacted in 1996, the Central Government in exercise of its powers under Section 62 of the BOCW Act notified the Delhi Building and Other Construction Workers’ (Regulation of Employment and

Conditions of Service) Rules, 2002 (for short “the Delhi Rules”) vide Notification No.DLC/CLA/BCW/01/19 dated 10.01.2002. Accordingly, the Government of NCT of Delhi constituted the Delhi Building and Other Construction Workers’ Welfare Board vide Notification No.DLC/CLA/BCW/02/596 dated .9.2002. Thus, the Cess Act and the Cess Rules are operative in the whole of NCT of Delhi w.e.f. January, 2002.”

8. However, the learned counsel for the petitioner states that the decision of the Supreme Court, in the case of *Dewan Chand Builders & Contractors (supra)* is under reconsideration before the Supreme Court of India. Be that as it may, the said decision has been followed by the Division Bench of this Court in *M/s National Highways Authority of India v. M/s Gammon-Atlanta (JV): FAO(OS) 366/2013, decided on 14.08.2013* and in other decisions rendered thereafter. In the circumstances, the said decision is binding on this Court. Accordingly, no interference with the impugned award is warranted.

9. The petition is, accordingly, dismissed. The pending application is also disposed of.

VIBHU BAKHRU, J

MAY 17, 2018

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