

\$~36

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

+ **OMP (ENF.) (COMM.) 230/2018**

NATIONAL HIGHWAYS AUTHORITY OF INDIA

..... Decree Holder

Through Mr.S.Nanda Kumar, Ms.Tanu Priya
Gupta, Mr.M.S. Saran Kumar and
Ms.Deepika Nanda Kumar, Advs.

versus

PROGRESSIVE CONSTRUCTION LTD Judgment Debtor
Through Mr.Rishabh Dheer, Adv.

CORAM:

HON'BLE MR. JUSTICE NAVIN CHAWLA

ORDER

% **03.10.2018**

I.A. No.13591/2018 (Exemption)

Allowed, subject to all just exceptions.

OMP (ENF.) (COMM.) 230/2018

1. This Enforcement Petition has been filed claiming inter alia a sum of Rs.7,05,36,137/- along with interest from the respondent on the basis of the judgment dated 19.03.2018 passed by this Court in OMP(COMM) 441/2017.
2. The Award dated 07.06.2017 passed by the Arbitral Tribunal adjudicating the disputes that had arisen between the parties in relation to the work of four laning from Km 360.915 to Km 402.000 of Gorakhpur to Gopalganj Section of NH-28 in Bihar, Contract Package WB-9, had rejected the counter claim raised by the respondent on a premise which was

eventually held to be incorrect by the Supreme Court in its judgment dated 23.02.2018 passed in Civil Appeal No.458/2018 ***National Highways Authority of India v. Progressive Construction Ltd.***

3. Relying upon this judgment, this Court vide its order dated 19.03.2018 passed in OMP(COMM) 441/2017 set aside the said Award. The said order was affirmed by the Division Bench of this Court vide order dated 30.05.2018 passed in FAO(OS)(COMM) 119/2018 ***Progressive construction Ltd v. National Highways Authority of India*** and has become final.

4. In my view, the above facts would still not make the present Enforcement Petition maintainable. It may be correct that the petitioner had raised a counter claim before the Arbitral Tribunal, however, the same was summarily dismissed by the Arbitral Tribunal without going into the justification of the amount claimed by the petitioner. It was a NIL Award passed in favour of the petitioner as far as this counter claim is concerned. The order dated 19.03.2018 merely set aside this Award. There was no direction passed against the respondent to pay any amount, much less Rs.7,05,36,137/-, to the petitioner. Once the Award is set aside, the remedy of the petitioner would be to re-agitate this claim in an appropriate proceeding, however, the Enforcement Petition would not be a proper remedy for that.

5. The petition is therefore dismissed granting liberty to the petitioner to take such other measure which may be available to it in law.

NAVIN CHAWLA, J

OCTOBER 03, 2018/Arya