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

+ **FAO(OS) (COMM) 302/2018**

UNION OF INDIA

..... Appellant

Through Mr. Ripu Daman Bhadwaj, CGSC with
Mr. T.P. Singh, Advocates.

versus

M/S ANS CONSTRUCTION LTD

..... Respondent

Through Mr. Kapil Kher, Mr. Sushil Aggarwal &
Ms. Vasundhara Nayyar, Advocate.

CORAM:

HON'BLE MR. JUSTICE G.S.SISTANI

HON'BLE MS. JUSTICE JYOTI SINGH

ORDER

% **17.12.2018**

Challenge in this appeal is to the order dated 19.09.2018 passed by learned Single Judge by which the objections to the award filed by the appellant herein have been dismissed.

The necessary facts for disposal of this appeal are that the respondent/contractor had agreed to execute i.e. work relating to the QM Store, Magazine, SO's Mess & Quarter Guard including internal electrical installation at Battalion Hqrs. SSB Balrampur (UP). The contract was awarded on 09.06.2011. Claiming unjustified withholding of amounts due as well as price escalation on account of the extension of the period of the contract, the Arbitration Clause was invoked by the contractor. The appellant contended that under Clause 2 of the General Conditions of Contract (GCC) it had right to withhold amounts, which it finally appropriated on account of delay by determining those sums to liquidated damages. The amounts so withheld was Rs.12,46,906/-. It was also contended that the contract did not contain any escalation clause and that the contractor could not therefore claim any amounts. The Arbitrator negated both these contentions and held that the appellant was responsible for an initial delay of 155 days and later for 705 days in the execution of the contract and consequently the escalation claimed was justified.

Learned counsel for the appellant very fairly submits that an award dated 28.02.2018 arising out of a separate agreement but for identical works and raising identical disputes has been a subject matter before the learned Single Judge and thereafter an appeal being FAO (OS) (COMM) 239/2018 was preferred against the order so passed by learned Single Judge. He further submits that the Division Bench by an order dated 16.10.2018 has dismissed the appeal and the present appeal would be covered in fact in law by the aforesaid order so passed.

We have heard learned counsel for the parties.

In view of the fact that the present appeal raises identical questions of facts and law, we see no reason to take a different view than the view expressed by the Division Bench. Resultantly, the appeal and CM APPLs 52859-61/2018 stand dismissed.

G.S.SISTANI, J

JYOTI SINGH, J

DECEMBER 17, 2018/ck/

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