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

+ **O.M.P. (COMM) 441/2017 & IA No.14631-32/2017**

NATIONAL HIGHWAYS AUTHORITY OF
INDIA

..... Petitioner

Through Mr S. Nanda Kumar, Mr Ashok C.
Prakash Malhotra, Ms Tanu Priya Gupta,
Ms Deepika Nanda Kumar, Mr M. S. Saran
Kumar, Mr Sugam Kumar Jha, Advocates.

versus

PROGRESSIVE CONSTRUCTION LTD

..... Respondent

Through Dr Amit George, Mr Rishabh Dheer,
Advocates.

CORAM:

HON'BLE MR. JUSTICE VIBHU BAKHRU

ORDER

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19.03.2018

1. The petitioner (hereafter 'NHAI') has filed the present petition impugning an arbitral award dated 07.06.2017 (hereafter 'the impugned award'). The disputes involved between the parties relate to a claim made by the respondent for price adjustment in terms of Sub-Clause 70.3 of the Conditions of Particular Application (COPA), which is a part of the Contract Agreement dated 20.10.2005 entered into by the parties.

2. The Arbitral Tribunal had followed the decision of a Division Bench of this Court in *NHAI v. M/s NCC-VEE (JV) : FAO (OS) 93/2015* decided on **10.03.2015** and the decision of a Single Judge of this Court in *NHAI v. M/s ProgressiveMVR (JV) : OMP 100/2013* decided on **17.06.2016**, whereby the award of a similar claim in favour of the respondent was upheld.

Mr S. Nandakumar, the learned counsel appearing for the petitioner points out that in a recent decision delivered by the Supreme Court in ***NHAI v. M/s Progressive MVR (JV) : Civil Appeal No. 458/2018 decided on 23.02.2016***, the Supreme Court has set aside the judgments upholding the interpretation of price adjustment as canvassed by the respondent.

3. Dr Amit George, the learned counsel appearing on behalf of the respondent also concedes that the present case is squarely covered by the Supreme Court's decision in ***NHAI v. M/s Progressive MVR (JV)*** (*supra*).

4. In view of the above, the petition is allowed. The impugned award is set aside. The pending applications also stand disposed. The parties are left to bear their own costs.

VIBHU BAKHRU, J

MARCH 19, 2018
pkv