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

\+ **<u>OMP (ENF.) (COMM.) 141/2017</u>**

HINDUSTAN CONSTRUCTION COMPANY LTD. ..... Petitioner

Through Mr Dayan Krishnan, Senior Advocate with Mr Anirudh Bhat, Ms Malavika Lal, Advocates.

versus

NATIONAL HIGHWAYS AUTHORITY OF INDIA ..... Respondent

Through Mr Rajiv Kapoor, Mr Srikant Sharma, Mr Rashid Azam, Advocates.

CORAM:
HON'BLE MR. JUSTICE VIBHU BAKHRU

<u>O R D E R</u>

% **21.05.2018**

1. The controversy that remains to be addressed relates to the difference in the calculation sheets submitted by the petitioner (HCC) and the respondent (NHAI) in support of their contentions as to the balance amount due to HCC in terms of the arbitral award. This Court has examined the two calculation sheets and it is apparent that the calculation sheet submitted by NHAI is erroneous inasmuch as it has not appropriated the part payments made towards interest prior to adjusting the same against the principal.

2. The admitted position is that the awarded amount was ₹69,98,36,300/- plus arbitration costs quantified at ₹3,30,000/-.

3. The Arbitral Tribunal had also awarded *pendent elite* interest computed at ₹44,50,95,800/-. In addition, the Arbitral Tribunal has also

awarded future interest on the principal amount of ₹69,98,36,300/- plus costs of ₹3,30,000/-.

4. NHAI made a part payment of ₹62,30,43,024/- on 24.11.2015. It is also admitted that as on that date, the future interests accrued as per the arbitral award amounted to ₹12,39,58,209/-. Thus, the interim payment was required to be adjusted towards the interest so computed, prior to being adjusted against the principal. Although, the respondent has adjusted the said payment towards future interest of ₹12,39,58,209/-, no amount has been appropriated towards *pendente lite* interest awarded by the Arbitral Tribunal. The interim payment was also to be adjusted towards the said interest. Thus, the only amount available for adjusting against the principal would be a sum of ₹5,39,89,015/- after appropriation of the amount paid towards interest (*pendente lite* and future). With the aforesaid adjustment, the principal amount that remained to be paid amounted to ₹64,61,77,285.

5. The second interim payment of ₹43,34,00,000/- was made on 17.07.2017 as on that date, the future interest of a sum of ₹19,15,16,325/- had accrued and, therefore, the said payment was to be adjusted against the said interest in the first instance. Accordingly, only a balance sum of ₹24,18,83,675/- could be adjusted from the principal. Thus, as on 18.07.2017, the outstanding principal stood at ₹40,42,93,610/- after adjustment of the aforesaid amount.

6. The third tranche of payment was received by the petitioner on 20.12.2017. As on that date, further future interest of ₹3,11,02,916/- had accrued and the interim payment of ₹33,00,02,388/- was required to be first

adjusted towards the said future interest and the balance of ₹29,88,99,474/- was to be adjusted against the outstanding principal as on 20.12.2017. Thus, the remaining outstanding principal as on that date was ₹10,53,94,136/-. This amount has not been paid by NHAI.

7. Accordingly, NHAI is directed to pay the aforesaid amount along with accrued interest at the rate of 18% per annum within a period of one week from today.

8. In addition, NHAI shall also provide TDS certificates for the amount of TDS deducted by NHAI.

9. It is also pointed out that NHAI has not released the bank guarantees in favour of the petitioner. It is, accordingly, directed that the respondent will take a decision in this regard within a period of two weeks from today. In the event the bank guarantees are not released, the petitioner would be at liberty to raise an appropriate claim to be referred to arbitration.

10. List for compliance on 31.08.2018.

11. Order *dasti* under the Signature of Court Master.

VIBHU BAKHRU, J

MAY 21, 2018
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