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

+ O.M.P. (T) (COMM.) 128/2018

NATIONAL HIGHWAY AUTHORITY OF INDIA Petitioner

Through Ms.Nivedita Nair and Ms.Asha
Gopalan Nair, Advs.

versus

CONTINENTAL ENGINEERING CORPORATION (CEC)

..... Respondent

Through Mr.Anil K.Kher, Sr. Adv. with
Mr.D.R.Bhatia and Ms.Vasundhara
Nayyar, Advs.

CORAM:

HON'BLE MR. JUSTICE NAVIN CHAWLA

ORDER

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12.12.2018

CAV.1159/2018

As the counsel for the respondent appears on advance notice, Caveat stands discharged.

I.A. No.17039/2018 (Exemption)

Allowed, subject to all just exceptions.

O.M.P. (T) (COMM.) 128/2018 & I.A.No.17038/2018

1. This petition under Section 14 of the Arbitration and Conciliation Act, 1996 (hereinafter referred to as the 'Act') has been filed by the petitioner praying for termination of the mandate of the Arbitral Tribunal that has been constituted for adjudicating the disputes that have arisen between the parties in relation to the work of Rehabilitation and Upgradation of existing 2-lane road to 4-lane divided carriageway configuration from Km 293.400 to km

336.000: Hyderabad Bangalore Section of NH-7 in the State of Andhra Pradesh on North-South Corridor, Project-Package-ADB-II/C-12.

2. It is the case of the petitioner that while appointing its nominee Arbitrator vide letter dated 28.03.2018, the petitioner had set a condition that fee payable to the Arbitral Tribunal will be in accordance with the Policy Circular of the petitioner dated 01.06.2017. The earlier nominee Arbitrator of the respondent did not agree with the said condition and tendered his resignation. However, the new nominee Arbitrator of the respondent and the Presiding Arbitrator appointed have refused to adhere to the Policy Circular and have, vide orders dated 30.05.2018 and 03.08.2018 held that the Arbitral Tribunal will be paid fee in accordance with Fourth Schedule to the Act.

3. I have considered the submission made by the learned counsel for the petitioner and find no merit in the same. Admittedly, in the present case, there is no agreement between the parties on fee payable to the Arbitral Tribunal. The Arbitral Tribunal was therefore free to fix its own fee and one of the parties cannot insist on a particular fee to be charged by the Arbitral Tribunal. The fee demanded by the Arbitral Tribunal is in accordance with the Fourth Schedule to the Act and therefore, cannot even be said to be unreasonable. Merely because the earlier Arbitrator nominated by the respondent had thought it fit to tender his resignation due to the condition of fee put by the petitioner, cannot support the contention of the petitioner that the Arbitral Tribunal can demand fee only as per the Policy Circular issued by the petitioner. In fact, the circular relied upon by the petitioner itself states that NHAI should enter into a specific agreement with the contractors taking their consent to adhere by the Policy Circular in matters of fee payable to the Arbitral Tribunal. In the present case, there is no contract

entered into between the parties in regard to the fee.

4. The Arbitral Tribunal has also recorded that it is not the case of the petitioner that in all arbitration proceedings it pays the fee only in accordance with its Policy Circular. On a question being asked, this position is confirmed by the counsel for the petitioner.

5. In view of the above, I find no merit in the present petition and same is dismissed alongwith pending application. There shall be no order as to cost.

NAVIN CHAWLA, J

DECEMBER 12, 2018/Arya