

\$~16

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **ARB. A. (COMM.) 31/2019**
NATIONAL HIGHWAYS & INFRASTRUCTURE DEVELOPMENT
CORPORATION

..... Appellant
Through: Mr. Rajiv Bansal, Sr. Adv. with Ms.
Saloni Aggarwal, Ms. Parul Panthi,
Mr. Anant Nigam and Mr. Kabir,
Advs.

versus

KMC CONSTRUCTION LIMITED

..... Respondent
Through: Dr. Amit George, Mr. Priyabrat
Tripathy, Ms. Surabhi Pandey, Mr.
Rishabh Dheer, Mr. Amol Acharya,
Mr. Rayadurgam and Mr. Piyo
Harold, Advs.

CORAM:

HON'BLE MR. JUSTICE V. KAMESWAR RAO

ORDER

%

02.12.2019

1. The present appeal has been filed by the appellant under Section 37 (2)(b) of the Arbitration and Conciliation Act, 1996 (for short, 'Act'), challenging the order dated October 01, 2019 passed by the Arbitral Tribunal (for short, 'Tribunal') dismissing the application for approval and thereby allowing the production of one Mr. Vikram Reddy as a witness before the Tribunal.
2. Even though, the application was filed under Section 27 read with Section 17 of the Act but in substance the appellant was seeking assistance of the Tribunal for summoning the witness.
3. An objection has been taken by Dr. Amit George, learned counsel

appearing for the respondent that in view of Section 37 of the Act this appeal against an order passed by the Tribunal under Section 27, which is in substance an application filed for summoning of the witness, is not maintainable.

4. Mr. Rajiv Bansal, learned Senior Counsel appearing for the appellant states that if such an interpretation is given, the appellant shall be remediless in challenging the order of the Tribunal for not summoning the witness.

5. I am not in agreement with the submission made by Mr. Rajiv Bansal for the reason that Section 37 of the Act does not stipulate an appeal can be filed against the order passed by the Tribunal under Section 27 read with Section 17 of the Act, when the application was for summoning of a witness.

6. The only order that can be passed is liberty shall be with the appellant to challenge the non-summoning of the witness by the Arbitral Tribunal if and when occasion arises for the appellant to challenge the award in terms of Section 34 of the Act.

7. Appeal stands disposed of.

8. *Dasti* under the signature of the Court Master.

V. KAMESWAR RAO, J

DECEMBER 02, 2019/aky