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

+ **FAO(OS) (COMM) 89/2019**

NATIONAL HIGHWAYS AUTHORITY OF INDIA Appellant

Through: Mr.Ramesh Kumar with Mr.Siddharth
Pandey, Advocates.

versus

M/S BLA PROJEETS PVT LTD

..... Respondent

Through: None.

CORAM:

JUSTICE S.MURALIDHAR

JUSTICE I.S.MEHTA

ORDER

% **22.04.2019**

CM.APPL. 18535/2019 (exemption)

1. Exemptions allowed, subject to all just exceptions.

FAO(OS) (COMM) 89/2019 & CM.APPL. 18536/2019 (stay)

2. The challenge in the present appeal by the NHAI is to an order dated 17th January 2019 passed by the learned Single Judge dismissing the OMP (COMM) 1 of 2019 under Section 34 of the Arbitration and Conciliation Act, 1996 ('Act') challenging an Award dated 31st August 2018 passed by the Arbitral Tribunal ('AT').

3. The said Award was passed on the claims filed by the Respondent against the Appellant arising out of a contract dated 24th December 2012 for construction of a service road on both sides of Belghoria Expressway from

(a) Rabindra Sarani to Adarshanagar (Km 2.835 to Km 4.900) and (b) NH-34 to Bongaon (Km 0.000 to Km 1.750) in the State of West Bengal, for a total length of 7.63 kms.

4. One of the issues raised by the Appellant before the learned Single Judge, which has also been raised before this Court, is whether Respondent failed to seek reference of the dispute in the first instance to the Dispute Review Expert (DSE) under Clause 19.1 invoking the arbitration clause. The learned Single Judge has in the impugned judgment reproduced the findings of the AT in this regard. The summons of which finding was that despite a request by the Respondent made to the Appellant for appointment of the DRE on 26th May 2014, that request was not acceded to till even beyond termination of the contract on 22nd January 2015. This constrained the Respondent to approach the High Court for appointment of the DRE.

5. Learned counsel for the Appellant sought to suggest that there is no obligation on the Appellant to appoint the DRE prior to termination of the contract on 22nd January 2015. This Court is unable to agree with the above such submission. A dispute can arise even during the pendency of the contract. The Appellant having failed to discharge its obligation to appoint the DRE within 14 days of the request of the Respondent, no blame can be attached to the Respondent for not proceeding immediately before the DRE after the termination of the agreement.

6. Counsel for the Appellant then next dwelt on the specific claims which were urged even before the learned Single Judge. The basis of these

submissions was that the Award in respect of these claims was not based on any evidence whatsoever.

7. This being a factual aspect by the learned Single Judge has, after examining the impugned Award in the light of evidence produced by the parties concurred with AT and has declined to interfere. This Court has, has perusing the impugned Award and the impugned judgment of the learned Single Judge not been persuaded to come to a different conclusion. The scope of interference with the reasoned Award under Section 34 of the Act is extremely narrow. The high threshold set by the law for such interference has not been met in this case by the NHAI.

8. The appeal is according dismissed. The pending application is also dismissed.

S.MURALIDHAR, J.

I.S.MEHTA, J.

APRIL 22, 2019

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