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

+ **FAO(OS) (COMM) 88/2019**

**NATIONAL HIGHWAY AUTHORITY OF INDIA (MINISTRY OF
ROAD TRANSPORT & HIGHWAYS)** Appellant

Through: Mr.Kanwarjeet Singh with
Mr.Shekhar Kumar & Ms.Vandana
Rani, Advocates.

versus

M/S PATEL KNR (JV)

..... Respondent

Through: Mr.Swaroop George with Mr.George
Thomas, Advocates.

CORAM:

JUSTICE S.MURALIDHAR

JUSTICE I.S.MEHTA

ORDER

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22.04.2019

CM.APPL.18358/2019 (exemption)

1. Exemptions allowed, subject to all just exceptions.

CM.APPL.18359/2019 (delay)

2. For the reasons explained in the application, the delay in re-filing the appeal is condoned and the application is allowed.

FAO(OS) (COMM) 88/2019 & CM.APPL.18357/2019

3. This is an appeal preferred against the judgment dated 19th December 2018 passed by the learned Single Judge dismissing the Appellant's OMP (COMM) 462 of 2018 under Section 34 of Arbitration and Conciliation Act, 1996 ('Act') challenging the unanimous Award dated 7th June 2018 passed

by the Arbitral Tribunal ('AT') adjudicating the disputes between the Appellant and the Respondent arising out of a contract dated 27th January 2006 read with the Supplementary Agreement (SA) dated 14th February 2008 in respect of the work of widening and strengthening of National Highway from 2 lane to 4 lane from Km. 40.000 to Km. 22.000 of Lunding to Lanka section including Lanka Bypass of NH-54 in Assam.

4. The learned Single Judge has discussed the main point urged by the Appellant viz., whether the claim of the Respondent for additional costs on account of the delay in completion of the project was maintainable against the Appellant. The learned Single Judge noted that although the date for completion of work was 30 months from the commencement of the work, which in terms of the SA was 15th March 2008, it was actually completed on 28th December 2011. However, the Project Engineer of NHAI by a letter dated 14th July 2011 had recommended extension of time till 22nd January 2012. Admittedly, the work was completed within the extended time.

5. The claim of the Respondent for price escalation was for the extended period. According to the Respondent it was the Appellant who was responsible for the delay and accordingly the Respondent claimed overhead and additional expenses incurred during the period of extension.

6. The question as to which of the parties was actually responsible for the delay and whether the Respondent was entitled to recover the overhead and additional costs was a question of fact for which evidence was led by the parties. The AT on an appreciation of the evidence unanimously accepted

the claim of the Respondent. The learned Single Judge has relied on the decision of the Supreme Court in *Associate Builders v. DDA (2015) 3 SCC 49* and found no ground to interfere with the impugned Award.

7. Before us learned Counsel for the Appellant urged that the learned Single Judge had overlooked the clauses of the SA which precluded the Respondent from laying any claim against the Appellant on account of failure on the part of NHAI “including but not limited on account of delay in issuing the notice under clause 41.1 of COPA during the original stipulated period of 90 days.”

8. The above submission overlooks the fact that after the execution of the SA which stipulated the time for completion as 30 months from the revised date of commencement i.e. 15th March 2008, the Engineer of the Appellant recommended extension of time for completion till 22nd January 2012. It is further not disputed that the work was completed within the extended period. In the circumstances, the question of the Appellant being precluded from laying a claim for overheads and additional costs incurred during the extended period did not arise.

9. It is further pointed out by counsel for the Respondent that the Respondent’s claim was for the period subsequent to the execution of the SA which itself was necessitated on account of the delay in NHAI handing over the site to the Respondent beyond the time stipulated in the original agreement.

10. The Court finds no reason to interfere with the impugned judgment of

the learned Single Judge which in turn has affirmed the Award of the AT.

11. The appeal is dismissed. The pending application is also dismissed.

S.MURALIDHAR, J.

I.S.MEHTA, J.

APRIL 22, 2019

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