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

+ **FAO(OS) (COMM) 97/2019**

M/S BKFC & COMPANY ENGINEER & CONTRACTOR Appellant

Through: Mr.Sandeep Sharma with Mr.Ashish
Chauhan & Mr.Kushagra Bansal,
Advocates.

versus

M/S COMMERCIAL ENGINEERS & BODY BUILDERS CO.
LTD. Respondent

Through: None.

CORAM:
JUSTICE S.MURALIDHAR
JUSTICE I.S.MEHTA

ORDER
% **30.04.2019**

CM APPL.20197/2019 (exemption)

1. Allowed, subject to all just exceptions.

CM APPL.20196/2019 (delay)

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

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3. The present appeal is directed against an order dated 4th February 2019 passed by the learned Single Judge dismissing the Appellant's petition OMP(COMM) 53 of 2019 under Section 34 of the Arbitration and

Conciliation Act, 1996 challenging an Award dated 21st August 2018.

4. The limited scope of the challenge was to the finding of the learned Arbitrator that Claims 1 and 3 raised by the Appellant against the Respondent, arising out of work orders issued by the Respondent to the Appellant, were barred by limitation. Claim No.1 was for Rs.53,28,862/- on account of work done in respect of tender and BOQ items. The case of the Appellant was that it had submitted a final bill for Rs.9,72,55,787/- but the Respondent actually paid only Rs.8,82,18,016/-. As regards Claim No.3 it was for a sum of Rs.26,73,665/- on account of work done by way of road repairs. The case here was that no payment was made by the Respondent against an extra bill raised by the Appellant on 1st July 2011. It was noted by the learned Single Judge that the bills were submitted by the Appellant in the form of 12 running account bills as mentioned in the notice dated 25th March 2016.

5. The case of the Appellant is that there was an acknowledgment by the Respondent of the amounts owed by it to the Appellant in the correspondence exchanged between the parties. This was, however, negated by the learned Arbitrator after examining the minutes of the meeting between the parties held on 10th June 2013; the letters dated 13th November 2013 and 20th December 2013 and a letter dated 19th November 2016 written by the Respondent to the Appellant. The Arbitrator was unable to find in any of these documents any acknowledgment by the Respondent *qua* the aforementioned two specific claims i.e. Claims 1 and 3.

6. The learned Single Judge has declined to interfere with the impugned Award on the ground that the finding that Claims 1 and 3 were time barred was rendered on an appreciation of the evidence placed before the learned Arbitrator.

7. Mr.Sandeep Sharma, learned counsel for the Appellant, has again taken this Court to the aforementioned documents and has also placed reliance on the judgment of this Court in *State Bank of India v. Kanahiya Lal* 2016 (157) DRJ 403.

8. Having examined the documents in the light of the findings of the learned Arbitrator and in the light of the decision cited by the learned counsel, the Court is not persuaded to interfere with the impugned judgment of the learned Single Judge or factual findings of the learned Arbitrator. The appeal is accordingly dismissed.

S.MURALIDHAR, J.

I.S.MEHTA, J.

APRIL 30, 2019

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