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

+ **ARB. A. (COMM.) 8/2020, I.A. 2202/2020**

**NATIONAL HIGHWAYS AUTHORITY OF INDIA**

..... Petitioner

Through: Mr. Balendu Shekhar, Mr. Ravi  
Gopal, Mr. Raj Kumar Maurya and  
Mr. Vipul Singh, Advs.

versus

**NORTH BIHAR HIGHWAY LIMITED**

..... Respondent

Through: Mr. Anshuman Pande and  
Ms. Gaurika Mohan, Advs.

**CORAM:**

**HON'BLE MR. JUSTICE V. KAMESWAR RAO**

**ORDER**

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**17.02.2020**

**I.A. 2202/2020 (for exemption)**

Exemption allowed subject to all just exceptions.

Application stands disposed of.

**ARB. A. (COMM.) 8/2020**

1. The present appeal has been filed by the appellant with the following prayers:

*“It is therefore most respectfully prayed that this Hon’ble Court may kindly be pleased to:*

*a) set-aside the order dated 19.12.2019 passed by the Ld. Arbitral Tribunal during the arbitral proceedings;*

*b) hold that orders dated 12.06.2018; 08.08.2018, 26.03.2019, 24.07.2019, 26.08.2019, 23.10.2019 and 10.01.2020 with regard to fixation of arbitrators' fee beyond the agreement*

*between the parties to the lis and the settled law dealing the subject in issue;*

*c) may fix the Ld. Arbitrators' fee as per Article 44.3 of the Concession Agreement dated 03.09.2010 which is in accordance with the Rules of ICADR and subjected to the provisions of the Arbitration Act;*

*d) pass such other and further orders as this Hon'ble Court may deem fit and proper in the facts and circumstances of the case.”*

2. The grievance of the appellant is primarily with regard to the fixation of fee of the learned Arbitrators. Several orders were passed by the learned Arbitral Tribunal with regard to the payment of the fee. The substantive order dated December 19, 2019 has been primarily passed in an application filed by the appellant under Section 16 of the Arbitration and Conciliation Act, 1996.

3. Mr. Anshuman Pande, Advocate, who appears for respondent on advance notice has taken a plea on the maintainability of the appeal on the ground that Section 37 of the Arbitration and Conciliation Act, 1996 does not contemplate filing of an appeal in the eventuality, the plea as raised in the application under Section 16 has been rejected. He has relied upon the following judgments in support of his submission :

- (i) ***Indian Farmers Fertilizer Cooperative Limited v. Bhadra Products, (2018) 2 SCC 534;***
- (ii) ***Jain Studios Limited v. Maitry Exports Pvt. Ltd., 2007 SCC OnLine Del 1898; and***
- (iii) ***National Highways Authority India v. Meco Gea Energy Systems***

***India Ltd., 2013 SCC OnLine Del 1273.***

4. He also states that the appellant shall be at liberty to challenge the fee as charged by the learned Arbitrators in a petition filed under Section 34 of the Arbitration and Conciliation Act, 1996, if so advised.

5. The fact remains that Section 37 of the Arbitration and Conciliation Act, 1996 being very clear, more specifically sub-section 2(a), which contemplates that an appeal shall lie to the Court from an order passed by the Arbitrator / Arbitral Tribunal accepting the plea referred in sub-section 2 or sub-section 3 of Section 16, and admittedly the plea raised by the appellant, has not been accepted, the appeal is not maintainable and as such dismissed.

**V. KAMESWAR RAO, J**

**FEBRUARY 17, 2020/aky**