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

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Date of decision: 21.01.2020

+ O.M.P. (COMM) 439/2018

DEDICATED FREIGHT CORRIDOR CORPORATION OF
INDIA LTD Petitioner

Through Mr. S. Ravi Shankar, Advocate
with Ms. Yamunah Nachiar and Ms. Meghna
Mukherjee, Advs.

versus

BSC-C&C JOINT VENTURE Respondent

Through Mr. Navin Kumar, Advocate with
Ms. Rashmeet Kaur, Ms. Arpana Majumdar and
Ms. Priya Goyal, Advs.

**CORAM:
HON'BLE MS. JUSTICE JYOTI SINGH**

JYOTI SINGH, J. (ORAL)

1. This is a petition filed under Section 34 of the Arbitration and Conciliation Act, 1996 challenging the Award dated 18.06.2018.
2. Learned counsel for the petitioner at the outset submits that while in the petition he has filed objections with respect to three claims, however, he restricts his arguments only to objecting to the award with respect to Bill No.1.

3. Learned counsel for the petitioner draws the attention of this Court to the part of the Award, where the Arbitral Tribunal has dealt with the claim with respect to Bill No.1. Claimant had sought the rate of Rs.6,000/- per Km, on the basis of an earlier award, as no rate was available in SOR. The claimant's quantity and cost worked out to:

“(i) For Old Detour section Quantity is 39.387 and cost is Rs.236,322/-

(ii) For New Parallel Section Quantity is 35.147 and Cost is Rs.210,882/-”

4. The contention of the petitioner/non-claimant before the Arbitrator was that the contention of the respondent herein was not correct to the extent that the instant preparation of Design & Drawings constituted all the elements of survey, investigation of soil, HFL etc. with respect to IR and its services. It was submitted that the list of Codes and specification were given in the Contract Agreement.

5. The respondent herein/the claimant before the Tribunal had stated that the rate taken by the respondent, as per the Cost Centre, was for stage Payment purposes only and hence did not represent the actual cost.

6. The Tribunal came to a finding that the rate of Rs. 6,000/ per km quoted from a previous Award by the claimant was not correct as that rate was derived under different parameters and did not include all the activities enumerated by the petitioner herein. The Tribunal although agreed with the claimant that the rate derived from the Cost Centre did

not represent the real cost of work but then observed that the claimant ought to have given a proper analysis of rate on the basis of scope of work instead of merely relying on an earlier Award which rate was under a much reduced scope of work. The Tribunal was of the opinion that the onus of proving was on the claimant. The claimant in support of this had furnished a copy of the Agreement entered into by the claimant with one M/S Aarvee for design and drawings and details of some of the payments made to it for the work and a document CD-9 was also produced. The Arbitrator was, however, of the view that these documents were submitted by the claimant during the rejoinder arguments i.e. on the last date of hearing, and it was difficult for the Tribunal to analyse the finer details of the Agreement and rely on the said documents at such a late stage. Finally, the Tribunal came to a finding that under the circumstances, the rate derived from Cost Centre was a better parameter to accept and hence the Tribunal accepted the approach of the respondent i.e. petitioner herein to work out the cost on the basis of Cost Centre amount and proportionate length of 2 sections. Accordingly, the Award was given with the cost adjustment, as mentioned hereunder:

Old Detour Section	New Parallel Section	Cost Adjustment
Rs. 7,47,70,331/- (length 39.387 kms)	Rs.6,67, 71 ,325/- (length 35.147 kms)	(-)Rs. 80,49,006/-

7. Learned counsel for the petitioner herein seeks to contend that while the Arbitral Tribunal has accepted the contention of the petitioner but there were better documents and evidences available with the Arbitrator in the form of CD-9 which should have formed the basis of the Award. This Court completely fails to understand the grievance of the petitioner, once the Arbitrator has adopted the parameter of Cost Centre as per the stand of the petitioner before the Arbitrator. In any case under Section 34 of the Act, in a judicial review, it is not open for this Court to enter into the findings of fact or the formula adopted by the Tribunal to work out the costs.

8. Recently, in ***Hindustan Construction Company Limited & Anr. Vs. Union of India & Ors.***, 2019 SCC OnLine SC 1520, the Apex Court has held as under:-

“55. Further, this Court has repeatedly held that an application under Section 34 of the Arbitration Act, 1996 is a summary proceeding not in the nature of a regular suit - see Canara Nidhi Ltd. v. M. Shashikala 2019 SCC OnLine SC 1244 at paragraph 20. As a result, a court reviewing an arbitral award under Section 34 does not sit in appeal over the award, and if the view taken by the arbitrator is possible, no interference is called for - see Associated Construction v. Pawanhans Helicopters Ltd. (2008) 16 SCC 128 at paragraph 17.

56. Also, as has been held in the recent decision Ssangyong Engineering & Construction Co. Ltd. v. NHAI 2019 SCC OnLine SC 677, after the 2015 Amendment Act, this Court cannot interfere with an arbitral award on merits.”

9. The petition has no merit and is hereby dismissed.

10. No order as to costs.

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In view of the decision passed above, the application is dismissed and stay granted vide order dated 16.10.2018 is vacated.

JYOTI SINGH, J

JANUARY 21 , 2020

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