

16.10.2023
PB (20)

MAT 145 of 2023
With
CAN 1 of 2023

P&R Engineering Services
Vs.
National Hydro Power Corporation Ltd.

Mr. S. K. Mitruka,
Mr. Ayush Mitruka,
Ms. Manisha Gupta.
...for the appellant.
Mr. Bikramiditya Ghosh,
Mr. Supriya Singh.
.....for the respondent NHPC.

Heard learned advocates appearing for the parties.

Considering the facts and circumstances of the case and the issues involved in this appeal, we are inclined to take up and dispose of both the stay application and the appeal.

This appeal has been filed by the appellant against the impugned order of learned Single Judge dated 16th August, 2023, on the ground that the same has been passed by not considering and even not referring the order of the Division Bench of this Court dated 14th June, 2023 in FMAT (ARBAWARD) 1 of 2022 with MAT 46 of 2021 which is in favour of the appellant. In support of his contention, learned advocate representing the appellant has relied particularly on paragraph nos.6, 14 and 15 of the

aforesaid order of Division Bench which are quoted hereunder:-

“Although, we do not find any plausible explanation for not invoking the arbitration clause immediately after 5th May, 2012 by NHPC and to wait till the claimant made a reference on 25th May, 2012 followed by another notice of 26th June, 2012, the fact remains that the period mentioned in Clause 6.1.2 was never adhered to as the adjudicator did not decide the matter within the time frame stipulated in Clause 6.1.2 and the time period prescribed in the said clause was not treated to be mandatory by the parties. In the event we accept the submission of the claimant, then the adjudicator was functus officio on the date the adjudicator determined the claim of the claimant. In fact, both the parties appeared before the adjudicator during adjudication and they have waived their right, if any, in respect of the time frame for adjudication by the adjudicator. However, the fact remains whether the finding of the adjudicator is sacrosanct.

Under such circumstances, we set aside the award only on the ground that the arbitral tribunal did not have the jurisdiction to decide the issues raised by the claimant since the claimant is not the party dissatisfied and NHPC did not pursue its objection raised in the letter dated May 5, 2012 till date. We also record that NHPC Ltd. did not make any reference

within the stipulated period or even before the learned Arbitral Tribunal with regard to the merits of the adjudication made by the adjudicator.

The claimant may take appropriate steps for enforcement of the finding of the adjudicator in accordance with law. The claimant may pray for exclusion of time period since initiation of arbitration proceeding till this date in the event of initiation of appropriate proceeding for enforcement of the decision of the adjudicator before the proper forum is initiated within 8 weeks from date.”

The appellant petitioner further submits that against the aforesaid order of the Hon’ble Division Bench in Appeal between the same parties, the respondent NHPC Ltd. had gone to the Hon’ble Supreme Court by SLP being Special Leave Petition (Civil) Diary No(s). 33010/2023 but the respondent NHPC Ltd. did not press for the said SLP and withdrawn the same.

Considering the facts and circumstances of the case and submission of the parties and taking into consideration the aforesaid judgment of the Division Bench of this Court between the same parties and the stand taken by the respondent NHPC Ltd. before the Hon’ble Supreme Court which appears from the order of the Hon’ble Supreme Court dated 3rd October, 2023, this appeal being MAT 145 of 2023 and the application

being CAN 1 of 2023 are disposed of by setting aside the aforesaid order of the learned Single Judge dated 16th August, 2023 and the matter is remanded back to the learned Single Judge to reconsider and pass a fresh order after exchange of affidavits by the parties and by taking into consideration the aforesaid judgment of the Division Bench.

The respondents shall file affidavit in opposition in the writ petition by 16th November, 2023; petitioner to file reply thereto, if any, by 30th November, 2023.

Learned Judge available in the Circuit Bench is requested to hear the writ petition in the month of December, 2023.

(Md. Nizamuddin, J.)

(Partha Sarathi Chatterjee, J.)`