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**IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH**

(240)

CR-2462-2020

Date of decision:- 11.09.2024

National Hydro Power Corporation Ltd.

... Petitioner

Versus

M/s Patel – SEW (JV) and others

... Respondents

CORAM: HON'BLE MR. JUSTICE SUVIR SEHGAL

Present:- Mr. Chetan Mittal, Senior Advocate with
Mr. Udit Garg, Advocate
for the petitioner.

Mr. Adarsh Jain, Advocate
for the respondent No.1.

SUVIR SEHGAL, J. (ORAL)

1. By way of instant civil revision filed under Article 227 of the Constitution of India, petitioner has approached this Court for setting aside of impugned order No. 23 dated 14.09.2020 and order No. 26 dated 13.10.2020, Annexures P-5 and P-7, passed by the learned Arbitral Tribunal.

2. Learned senior counsel submits that a contract agreement was entered into between the petitioner and respondent No.1 for Civil and Hydro Mechanical works for Diversion Dam and Part HRD (LOT-PB.1) for Parvati Project Stage 2 and Clause 37 of the General Conditions of Contract (GCC) provides for resolution of dispute through the medium of arbitration. He submits that during the execution of the work, some differences arose



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between the parties and an Arbitral Tribunal, comprising of three members, respondents No.2 to 4, was appointed. By referring to the orders, Annexures P-1 and P-4, passed by the learned Arbitral Tribunal, learned senior counsel submits that the parties were directed to deposit the arbitral fee and by impugned order, Annexure P-5, the learned Arbitral Tribunal determined the total fee payable to each member at Rs.49,87,500/-, which was beyond the overall ceiling provided under the Fourth Schedule of the Arbitration and Conciliation Act, 1996 (for short “the Act”). He submits that in these circumstances, petitioner filed an application dated 21.09.2020, Annexure P-6, for review and recall of the order, Annexure P-5, which has been dismissed by the learned Arbitral Tribunal by its order, Annexure P-7. He contends that the order, Annexure P-7, has been passed after noticing the interpretation of the Fourth Schedule by the High Court of Delhi in ***Rail Vikas Nigam Ltd. Versus Simplex Infrastructure Ltd., 2020 SCC OnLine 2101***. It is his assertion that the judgment of the High Court of Delhi has been reversed by the Supreme Court in ***Oil and Natural Gas Corporation Ltd. Versus Afcons Gunanusa JV, 2022 SCC OnLine SC 1122***.

3. Counsel for respondent No.1 does not dispute this development and has submitted that this aspect requires re-determination by the learned Arbitral Tribunal.

4. Having heard the matter and keeping in view the fact that both the counsel representing the petitioner and respondent No.1 concede that the matter is covered by the judgment of the Supreme Court in ***Oil and***



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Natural Gas Corporation Ltd.'s case (supra), impugned orders, Annexures P-5 and P-7, passed by the learned Arbitral Tribunal are set aside. Matter is remitted to the learned Arbitral Tribunal to redraw the fee payable to the Arbitrators in terms of the judgment passed by the Supreme Court in *Oil and Natural Gas Corporation Ltd.*'s case (supra). In case, it is found that an additional amount is payable by any of the parties, the same would be deposited within the time to be fixed by the learned Arbitral Tribunal and in case, any amount is to be refunded, the learned Arbitral Tribunal shall take appropriate steps.

5. Petition is disposed of.

(SUVIR SEHGAL)
JUDGE

11.09.2024
Kamal

Whether Speaking/Reasoned	Yes/No
Whether Reportable	Yes/No