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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **EFA(OS) (COMM) 1/2024**
MEP HYDERABAD BANGALORE TOLL ROAD PVT LTD

..... Appellant

Through: Mr.Gaurav Pachnanda and Mr.Tapesh
Kumar Singh, Senior Advocates with
Mr.Sukant Vikram, Mr.Aditya Pratap
singh and Ms.Shreya Bansal,
Advocates.

versus

NATIONAL HIGHWAYS AUTHORITY OF INDIA & ORS.

..... Respondent

Through: Mr.Manish K Bishnoi, Mr.Hites
Lodwal and Ms.Pallavii Singh,
Advocates for NHAI.

CORAM:

HON'BLE MR. JUSTICE VIBHU BAKHRU

HON'BLE MS. JUSTICE TARA VITASTA GANJU

ORDER

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23.01.2024

CM APPL. 4229/2024 CM APPL. 4230/2024

1. Exemptions are allowed, subject to just exceptions.
2. The application(s) stand disposed of.

EFA(OS) (COMM) 1/2024 CM APPL. 4231/2024 CM APPL. 4232/2024

3. The appellant has filed present appeal impugning an order dated 07.11.2023 passed by the learned Single Judge in OMP (ENF.) (COMM.) 183/2023 captioned *National Highway Authority of India v. MEP Hyderabad Bangalore Toll Road Pvt. Ltd. & Ors* (hereafter '**the impugned order**').
4. In terms of the impugned order, the appellant was called upon to file



the affidavit of assets under Order XXI Rule 41 of the Code of Civil Procedure, 1908.

5. The aforesaid petition [OMP (ENF.) (COMM.) 183/2023] was filed by respondent no.1 (hereafter ‘**NHAI**’) under Section 36 of the Arbitration and Conciliation Act, 1996 (hereafter ‘**the A&C Act**’) for enforcing an Arbitral Award dated 14.10.2022 (hereafter ‘**the Arbitral Award**’).

6. Mr. Pachnanda, learned senior counsel appearing for appellant submits that the impugned order is *ex facie* erroneous as it was passed without issuance of notice in the aforesaid petition.

7. Mr. Tapes Kumar Singh, learned senior counsel also appearing for the appellant assailed the impugned order essentially on two counts. First, he submitted that the Arbitral Award, which is sought to be enforced, was corrected pursuant to an application under Section 33 of the A&C Act. However, the order correcting the Arbitral Award was signed by a single member of the Arbitral Tribunal and is, therefore, unenforceable. Second, he submitted that there are serious errors in the constitution of the Arbitral Tribunal, as one of the members was also the erstwhile chairman of the NHAI and the said fact was not disclosed. In addition, he submitted appellant has also filed an application seeking stay of the Arbitral Award, which is pending.

8. Both the parties have assailed the Arbitral Award by filing an application under Section 34 of the A & C Act. However, admittedly, the Arbitral Award has not been stayed. Thus, it is clear that the Arbitral Award is required to be enforced. The impugned order has been passed in furtherance of the enforcement proceedings.

9. The contention that no notice was issued to the appellant is



insubstantial as the impugned order indicates that the impugned order was passed in presence of counsels for both the parties. The contention that the Arbitral Award cannot be enforced because the order passed by the learned Arbitral Tribunal under Section 33 A& C Act is impugned in another proceeding, is also bereft of any merit. The appellant had also challenged the constitution of the Arbitral Tribunal under Section 13(2) of the A&C Act. However, the court in enforcement proceedings is not required to go behind the Arbitral Award, which is required to be enforced as a decree.

10. In view of above, the appeal stands dismissed. Pending applications also stand disposed of.

VIBHU BAKHRU, J

TARA VITASTA GANJU, J

JANUARY 23, 2024

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Click here to check corrigendum, if any