



\$~56.

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

%

Date of decision: 21.02.2024

+ **FAO(OS) (COMM) 71/2022 and C.M. No. 14371/2022**

NATIONAL HIGHWAYS AUTHORITY OF INDIA..... Appellant

Through: Mr Arun Kumar Varma, Senior Advocate with Mr Yamandeep Kumar and Ms Sabah Iqbal Siddiqui, Advocates.

versus

KMC CONSTRUCTION LTD

..... Respondent

Through: Ms Kiran Suri, Senior Advocate with Mr Hitendra R. Nath and Ms Vidushi Garg, Advocates.

CORAM:

HON'BLE MR. JUSTICE RAJIV SHAKDHER

HON'BLE MR. JUSTICE AMIT BANSAL

[Physical Hearing/Hybrid Hearing (as per request)]

RAJIV SHAKDHER, J. (ORAL)

1. This appeal is directed against the judgment dated 23.12.2021 passed by the learned Single Judge in O.M.P. (COMM.) 458/2020.
2. *Via* the impugned judgment, the learned Single Judge has set aside the arbitral award dated 24.09.2019 concerning Claim No. 22 and in effect, left the disputants to their own devices, and if deemed necessary, to re-agitate their respective contentions.
3. Insofar as the appellant/NHAI is concerned, it had broadly put forth two contentions with regard to the aforementioned claim, which was



recorded in the order dated 19.02.2024. For convenience, the order dated 19.02.2024 is extracted hereafter:

“According to Mr Arun Kr. Varma, learned senior counsel who appears on behalf of the appellant, there are two aspects which arise for consideration.

1.1. First, as to whether or not the respondent should be paid interest in terms of Clause 60.8 of the Conditions of Particular Applications [in short, “COPA”].

1.2. Second, whether the respondent should be paid interest for the period when settlement talks were going on between the parties.

2. Learned Single Judge via impugned judgment dated 23.12.2021 has ruled against the appellant on both counts. According to the learned Single Judge, the Arbitral Tribunal has erred in granting simple interest at the rate of 16% per annum, as against the rate prescribed in Clause 60.8 of the COPA.

3. Furthermore, the learned Single Judge has also disagreed with the Arbitral Tribunal insofar as it has ruled that interest should not run for the period when settlement talks were continuing.

3.1 This period spans between 24.10.2013 to 23.06.2015.

4. Counsel for the respondents says that he will return with instructions.

5. List the matter on 21.02.2024.”

4. Although we have asked Ms Kiran Suri, learned senior counsel, who appears on behalf of the respondent whether there was a possibility of settlement, she says that she has instructions to the contrary.

4.1 It is Ms Suri’s contention that the respondent would like to reagitate the issue concerning Claim No. 22.

5. Mr Arun Kumar Varma, learned senior counsel, who appears on behalf of the appellant/NHAI says that while the appellant/ NHAI cannot come in the way of an issue being reagitated, *albeit*, in accordance with the law by the respondent, the apprehension that the appellant/NHAI has is that



the observations made in the impugned judgment should not burden the Arbitral Tribunal, if the cause is taken up once again by the respondent.

6. Ms Suri says that she can have no objection if this Court were to observe that the Arbitral Tribunal, if so constituted, would decide the *lis* between the disputants uninfluenced by the observations made in the impugned judgment.

6.1 We are in agreement with Ms Suri's stand.

7. Accordingly, the appeal is disposed of with a direction that if the issue concerning Claim No. 22 is reagitated by the respondent, the Arbitral Tribunal, if so constituted, will delve into the issue uninfluenced by the observations made by the learned Single Judge *via* the impugned judgment.

8. Pending application shall also stand closed.

9. Parties will act based on the digitally signed copy of the order.

RAJIV SHAKDHER
(JUDGE)

AMIT BANSAL
(JUDGE)

FEBRUARY 21, 2024

kd

