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

+ O.M.P. (COMM) 396/2020 & I.A. 2889/2020.

BLA - S&P (JV)

..... Petitioner

Through: Mr. M. Dutta, Mr. Pavan Kr.
Chaturvedi, Mr. Aditya Guha, Mr.
Anand, Advocates.

versus

EXECUTIVE ENGINEER, NATIONAL HIGHWAY DIVISION,
ROAD CONSTRUCTION DEPARTMENT,
PURNIA

..... Respondent

Through: Mr. Azmat H. Amanullah, Ms.
Nitya Sharma, Advocates.

CORAM:

HON'BLE MR. JUSTICE PRATEEK JALAN

ORDER

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29.04.2024

1. By way of this petition under Section 34 of the Arbitration and Conciliation Act, 1996 [“the Act”], the petitioner assails an arbitral award dated 01.10.2019 signed by two members of a three-member arbitral tribunal, by which disputes between the parties under a contract dated 27.08.2011 have been adjudicated.

2. The principal ground of challenge is that the third learned arbitrator [Mr. B.D. Joshi] has not signed the award and that the explanation for the same contained in the award is inadequate. It is also contended that Mr. B.D. Joshi has raised a grievance that he was not consulted in the final deliberations leading to the impugned award.



3. At the very outset, Ms. Nitya Sharma, learned counsel for the respondent, submits that the respondent accepts the aforesaid contentions and consents to setting aside of the impugned award. She states that the respondent had also challenged the award by way of O.M.P.(COMM) 116/2021 which was however dismissed by this Court on 16.03.2021 on the ground of delay. Learned counsel states that the respondent's challenge was on the same ground and the factual assertions with regard to Mr. Joshi's exclusion from the decision-making process are not disputed.

4. In the impugned award, the absence of Mr. Joshi's signature is explained as follows:-

"13. This award does not incorporate the consent/dissent of one member Arbitrator Sh. B.D. Joshi, as he is reportedly indisposed and due to his different view in respect of some of the claim items, as conveyed vide his mail dated 29.09.2019 and 30.09.2019. His consent/dissent note has also not been received till 01.10.2019 as expected. The date of pronouncing award was mutually agreed by the Tribunal members as 30.09.2019, which had to be postponed to 01.10.2019 due to reason stated above. As the tenure of Arbitral Tribunal is expiring on 02.10.2019, the Tribunal is pronouncing the majority award on 1st October, 2019."

5. Some correspondence has also been placed on record between the arbitrators [including Mr. Joshi's email dated 30.09.20219 to the other learned arbitrators] which suggests that meetings between two members of the tribunal were held in Mr. Joshi's absence in view of his indisposition. He suggested that the parties may be directed to seek extension of time under Section 29A of the Act so that the arbitral tribunal can issue a unanimous award and/or to enable him to make his own consent/dissenting award. Mr. Joshi also addressed an email dated 30.09.2019 to the parties requesting them to take necessary action in view



of the lapse of the mandate of the arbitral tribunal on 02.10.2019. The impugned award was however issued by the other two member of the arbitral tribunal on 01.10.2019.

6. My attention has also been drawn to a subsequent email addressed by Mr. Joshi to the other members of the arbitral tribunal and copied to the parties in which he has sought copies of the communications notifying the date for internal meetings and stated that meetings were held “*behind his back*”.

7. These factual assertions are not disputed by the respondent. It therefore appears that procedure of the arbitral tribunal was fundamentally irregular to the extent that one member of the arbitral tribunal was left out of the final decision-making process. Learned counsel for both parties seek setting aside of the impugned award.

8. In these circumstances, the impugned award dated 01.10.2019 is set aside.

9. The parties are at liberty to institute fresh proceedings in respect of their disputes under the contract. All rights and contentions of the parties are left open for consideration. This Court has made no observations on the merits of the disputes.

PRATEEK JALAN, J

APRIL 29, 2024

“Bhupi”/