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

+ O.M.P. 6/2020

M/S NANGIA CONSTRUCTION (I) PVT. LTD.Petitioner

Through: Mr. Raman Kapur, Sr. Advocate
with Mr. Varun Kapur, Advocate.

versus

NATIONAL BUILDINGS CONSTRUCTION
CORPORATION LTD. & ANR.Respondents

Through: Mr. Abir Phukan and Ms. Rishika
Radhakrishnan, Advocates.

CORAM:

HON'BLE MR. JUSTICE PRATEEK JALAN

ORDER

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07.08.2024

1. By way of this petition, under Sections 8 and 20 of the Arbitration Act, 1940, the petitioner seeks the appointment of an arbitrator to adjudicate claim No.5(B) raised by it in arbitral proceedings, and counterclaim No.1 raised by the respondent.

2. The disputes between the parties arose out of an agreement dated 26.10.1987. Arbitral proceedings initiated by the petitioner culminated in an award dated 18.10.2012, which was challenged before this Court in CS(OS) 3299/2012. The challenge succeeded and, by judgement dated 28.05.2020, the petitioner was granted liberty to re-agitate its claims in fresh proceedings, pursuant to which the present petition was filed. The judgment of this Court dated 28.05.2020 was challenged by the respondent in FAO(OS) 50/2020, which has been disposed of by a

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judgment dated 16.04.2024. The operative portion of the judgment of the Division Bench is as follows:

*“72. In view of the above, the impugned award to the extent that the Arbitral Tribunal has awarded interest on the balance mobilization advance for the period prior to the date of repayment of the mobilization advance in the year 2001 by NBCC to the Principal Employer to 2001, is set aside. The impugned award except to the extent as set out above is upheld. **The directions relegating the parties to arbitration afresh is also set aside.***

73. The Registry of this Court is directed to release the amount lying deposited pursuant to the order of the Division Bench dated 03.08.2012 in FAO(OS) No.276/2012 along with interest accrued thereon to NBCC.”¹

[Emphasis supplied]

3. In the meanwhile, the petitioner had filed this petition pursuant to the judgment dated 28.05.2020 in CS(OS) 3299/201. Having regard to the fact that the direction relegating the parties to a fresh arbitration has been set aside by the Division Bench, this petition no longer survives and is disposed of.

4. Mr. Raman Kapur, learned Senior Counsel for the petitioner, submits that the petitioner intends to challenge the judgment of the Division Bench before the Supreme Court. Needless to say, the petitioner will be at liberty to file an application for revival of this petition, if necessary.

PRATEEK JALAN, J

AUGUST 7, 2024

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¹ By order dated 07.05.2024 in FAO (OS) 50/2022, it was noted that the date in paragraph 73 of the judgment is inadvertently mentioned as 03.08.2012 in FAO (OS) 276/2012, and the same should instead be read as 08.08.2012.