



2024:DHC:3016



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

% **Reserved on : 10th January, 2024**
Pronounced on: 8th April, 2024

+ **O.M.P. (COMM) 256/2021**
SSANGYONG ENGINEERING AND CONSTRUCTION CO.
LTD. Petitioner

Through: **Mr. Navin Kumar, Ms. Rashmeet**
Kaur, Ms. Aarti Mahto and
Ms. Bhagya Ajith, Advocates

versus

NATIONAL HIGHWAY AUTHORITY OF INDIA

..... Respondent

Through: **Mr. Ankur Mittal and Mr. Raushal**
Kumar, Advocates.

CORAM:

HON'BLE MR. JUSTICE CHANDRA DHARI SINGH

J U D G M E N T

CHANDRA DHARI SINGH, J.

1. The petitioner, namely Ssangyong Engineering & Construction Co. Ltd. ('respondent Company' hereinafter), a company registered under the laws of Republic of Korea having head office at Seoul, Korea and operational office at Gurugram, Haryana participated in a bidding process for construction of Sagar By-Pass between 211 kms to 255 kms of National Highway-26 in the State of Madhya Pradesh for a total contract value of Rs.1,88,45,07,303/- as invited by the respondent.

2. The respondent namely National Highway Authority of India ('NHAI' hereinafter) is an undertaking of the Government of India entrusted for construction of National Highways throughout the country.

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3. Pursuant to successful bidding of the said tender, the contract was awarded to the petitioner *vide* letter dated 30th December, 2005.
4. Thereafter, the petitioner underwent the necessary work entrusted by the respondent, however, *inter alia*, a dispute arose between the parties pertaining to a particular contract ADC-II/(C-6) dated 12th April, 2006 ('the Contract' hereinafter) with regard to payment of the dues.
5. In terms of the agreement, the petitioner invoked arbitration for adjudication of the said dispute. After completion of the proceedings, the learned Tribunal passed the award dated 26th June, 2019 ('impugned award' hereinafter) allowing the claim of the petitioner with regards to payment of the due amount, however, the plea regarding interest on the due amount was rejected.
6. Aggrieved with rejection of the interest, the petitioner has preferred the instant petition seeking setting aside of the impugned award to the limited extent of non-grant of the interest of the due amount.

SUBMISSIONS

(on behalf of the petitioner)

7. The learned counsel appearing on behalf of the petitioner submitted that the rejection of the claim of the interest on amount due to the petitioner is against the public policy of India as well as the basic notions of morality and justice.
8. It is submitted that the contract agreed between the parties duly provided for interest @ 10% on account of any delay of payment accrued towards the petitioner, therefore, the said part of the impugned award rejecting such claim, may be set aside.



9. It is submitted that the contract agreement categorically provides for payment of interest if there is a delay in payment of the dues after issuance of the payment certificate, therefore, the said delay would attract the interest amount as agreed by the parties in the contract.

10. It is also submitted that the issuance of written discharge cannot be made a condition necessary for entitlement of the interest, therefore, non-issuance of the same would not hinder the petitioner's right to get interest on the due amount.

11. In view of the foregoing submissions, the learned counsel for the petitioner submitted that the present petition be allowed and reliefs be granted as prayed.

(on behalf of the respondent)

12. *Per contra*, the learned counsel appearing on behalf of the respondent vehemently opposed the present petition submitting to the effect that the non-grant of interest does not warrant interference of this Court as the scope of intervention in an award arising out of an international commercial arbitration is very narrow.

13. It is submitted that the petitioner has failed to point out sufficient grounds under which the said findings of the learned Tribunal can be held to be against the fundamental policy of India.

14. It is also submitted that the learned Tribunal has rightly dismissed the claim of the petitioner in respect of the payment of interest payment of interest as the same can only be determined pursuant to issuance of the written discharge as provided under Clause 60 of the COPA.

15. In view of the foregoing submissions, the learned counsel appearing on behalf of the respondent submitted that the present petition,



being devoid of any merit may be dismissed.

ANALYSIS AND FINDINGS

16. Heard the learned counsel for the parties and perused the records.

17. The validity of the impugned award has already been adjudicated by this Court in OMP(COMM) No.340/2021 in detail, whereby, this Court deemed it appropriate to set aside and remanded back the impugned award on the grounds of violation of fundamental policy of this Country.

18. In light of the same, nothing is left for adjudication in the present petition and the same is therefore disposed of with liberty to the petitioner to raise its grievance before the learned Arbitral Tribunal.

19. Pending applications, if any, also stand disposed of.

**(CHANDRA DHARI SINGH)
JUDGE**

**APRIL 8, 2024
rk/av/db**