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

+ **FAO(OS) (COMM) 154/2024 & CM APPL. 42117/2024**

BENARA SOLAR PRIVATE LIMITED

.....Appellant

Through: Mr Pragyan Pradip Sharma, Mr
Anoop George, Mr Anirudh
Ramanathan and Mr Hardik Jain,
Advs.

versus

**SOLAR ENERGY CORPORATION OF
INDIA LIMITED & ANR.**

.....Respondents

Through: Ms Mansi Gupta, Mr Aman
Chaudhary and Ms Sonali Jain, Advs.
for R-1/SECI.
Ms Shivangi Kumar, Adv. for R-
2/MCD along with Mr Vinay Sharma,
AE (Electrical).

CORAM:

HON'BLE MR. JUSTICE RAJIV SHAKDHER

HON'BLE MR. JUSTICE AMIT BANSAL

ORDER

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26.07.2024

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

CM No.42117/2024

1. Allowed, subject to just exceptions.

FAO(OS) (COMM) 154/2024

2. Mr Pragyan Sharma, learned counsel, who appears on behalf of the appellant, says that although a finding of fact has been returned that the delay in completion of work is not attributable to the appellant, i.e., the claimant, it has still been denied incentive at a higher rate, i.e., Rs.18,750/- per KW.

FAO(OS) (COMM) 154/2024

page 1 of 2



3. Mr Sharma contends that the finding of fact read with clauses 3.33.2 and 3.33.3 of the subject contract ought to have been taken into account in deciding the matter one way or the other.

4. Mr Sharma fairly concedes that reference to the clauses was not made before the arbitral tribunal.

4.1 It is, however, Mr Sharma's contention that reference to the aforementioned clauses was made during the arguments advanced before the learned Single Judge.

5. According to us, since there is no reference to the aforementioned clauses in the impugned judgment, the appellant/claimant would have to take recourse to an appropriate remedy before the learned Single Judge.

6. Given this position, the appellant seeks and is granted leave to withdraw the appeal with liberty to take recourse to an appropriate remedy, as advised.

7. The appeal is, accordingly, dismissed as withdrawn.

RAJIV SHAKDHER, J

AMIT BANSAL, J

JULY 26, 2024

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Click here to check corrigendum, if any