



2024:DHC:6815



\$~71

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ O.M.P. (T) (COMM.) 86/2024 & I.A. 38083/2024, I.A. 38084/2024
MINISTRY OF ROAD TRANSPORT AND HIGHWAYS
(MORTH) THROUGH ITS CHIEF ENGINEER (NH RANDB)

.....Petitioner

Through: Mr. A. P. Singh, Adv. with Mr. Sumit Gupta, Ms. Shankhla Tiwari and Mr. Varhit Vasutha, Adv.

versus

M/S DILIP BUILDCON LIMITED AND
MOSTOBUDIVELNYI ZAHIN NO 112 (JOINT VENTURE)
(MS DBL MBZ JV)

.....Respondent

Through: Mr. Jayant Mehta, Sr. Adv. with Mr. Dharendra Negi, Mr. Shaurya Rohit and Ms. Diva Saigal, Advs.

CORAM:
HON'BLE MR. JUSTICE C. HARI SHANKAR

JUDGMENT (ORAL)

%

04.09.2024

1. The facts of this case are identical to OMP (T) (Comm) 83/2024 and OMP (T) (Comm) 84/2024 and are fully covered by the said judgment.

2. The only difference is that the respondent's arbitrator was Justice Vinod Goel, also a retired Judge of this Court, and the petitioner's arbitrator was Mr. Ashok Bhan, learned Senior Advocate.

3. Mr. A. P. Singh, learned Counsel for the petitioner, prayed that the consideration of the view taken by me in the judgment dated 30

Signature Not Verified

Digitally Signed By: A.P. Singh, Adv.
KUMAR
Signing Date: 05.09.2024
17:55:52

Page 1 of 3

Signature Not Verified

Digitally Signed
By: CHANDRASHEKHARAN
HARI SHANKAR
Signing Date: 05.09.2024
17:55:03



2024:DHC:6815



August 2024 OMP (T) (Comm) 83/2024 and OMP (T) (Comm) 84/2024 be reconsidered, for which he relies on the decision of the Supreme Court in *NHAI v Transstroy (India) Ltd*¹.

4. He submits that the said decision could justify a reconsideration of the view taken by me in my judgment that the initial provision for conciliation contained in Clause 26.2 of the contract between the parties is not mandatory.

5. I have perused the decision in *Transstroy* and do not find, in the said decision, any enunciation of law by the Supreme Court to the effect that the initial provision for conciliation is mandatory.

6. Mr. Singh, on being queried in this regard, is also candid in his submission that there is no such direct enunciation of law in the present case. He, however, submits that the position, that the initial provision for conciliation in Clause 26.2 is mandatory may be read by implication into the judgment of the Supreme Court.

7. It is settled, since aeons, that a judgment of a court is an authority only for what it says, and not even for what may logically be said to flow from it.

8. Mr. Singh is not even seeking to contend that the principle that the provision for conciliation in Clause 26.2 is mandatory may be said to logically flow from the judgment in *NHAI*.



2024:DHC:6815



9. His contention, rather, is that the Supreme Court *could have held that the provision was mandatory*, but did not do so only in the peculiar facts of the case before it, as one of the parties had already availed of the conciliation mechanism.

10. I am unaware of any principle of law which entitles a court, lower in the judicial hierarchy to the Supreme Court, to interpret the judgment of the Supreme Court in such a fashion.

11. No occasion, therefore, arises for me to reconsider the view taken by me in my judgment dated 30 August 2024 in OMP (T) (Comm) 83/2024 and OMP (T) (Comm) 84/2024.

12. At this stage, Mr. Singh intervenes to submit that the court may clarify that the no objection, by the petitioner, to the impartiality or independence of the arbitrator appointed by the ICADR on the petitioner's behalf is only at the present stage and is being made without prejudice.

13. The submission is noted.

14. As such, following the judgment dated 30 August 2024 in OMP (T) (Comm) 83/2024 and OMP (T) (Comm) 84/2024, this petition is also dismissed in *limine*.

C. HARI SHANKAR, J

SEPTEMBER 4, 2024/dsn

[Click here to check corrigendum, if any](#)

Signature Not Verified

Digitally Signed By: A. K. M. P. (T) (COMM.) 86/2024
KUMAR
Signing Date: 05.09.2024
17:55:52

Page 3 of 3

Signature Not Verified

Digitally Signed
By: CHANDRASHEKHARAN
HARI SHANKAR
Signing Date: 05.09.2024
17:55:03