

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 542 OF 2021

(Arising out of SLP (Civil) No. 10851 of 2020)

NATIONAL HIGHWAYS AUTHORITY OF INDIA

... APPELLANT

VERSUS

M/s. PROGRESSIVE CONSTRUCTION LTD.

... RESPONDENT

ORDER

INDU MALHOTRA, J.

Leave granted.

The present Appeal arises out of the Judgment passed under Section 34 of the Arbitration and Conciliation Act, 1996 wherein the Single Judge vide Order dated 10.04.2019 has substantially set aside the Award dated 27.04.2016 passed by a three-member tribunal. It has been observed that the arbitral tribunal has drawn incorrect inferences from the documents on record, and has not considered vital and relevant evidence in reaching its conclusions. On this basis, a substantial number of claims and counter claims were rejected,

granting liberty to the parties to re-agitate their claims, and counter claim (a) afresh in accordance with law.

Aggrieved by the judgment of the Single Judge, cross appeals were filed by both parties under Section 37 before the Division Bench. The Division Bench vide the impugned interim Order dated 04.12.2019 directed that the Appeals be confined to the findings with respect to claim nos. 1(i) and (ii); and counter claim (a).

The Appellant-NHAI filed the present Appeal to challenge the interim Order dated 04.12.2019.

During the pendency of the present Appeal, the parties agreed to a fresh adjudication of all the claims and counter claims made by the parties before a Sole Arbitrator to be appointed by this Court.

We direct that the arbitral proceedings be conducted afresh by the Indian Council of Arbitration, Federation House, Tansen Marg, New Delhi-110001 in accordance with its Rules. The Indian Council of Arbitration will have the entire record of the arbitral proceedings collected from the previous arbitral tribunal.

Accordingly, with the consent of the Counsel for the parties, we appoint Justice G. S. Singhvi, former Judge of this Court, as the Sole Arbitrator, who will adjudicate all the claims and counter claims

afresh. If the Sole Arbitrator requires the assistance of qualified Engineer/s or Expert/s, he may appoint such person/s under Section 26 of the Arbitration and Conciliation Act, 1996. The Ld. Arbitrator is free to fix his fees after consultation with the parties, which will be borne equally by them.

The appointment of the Sole Arbitrator is subject to the declarations made under Section 12 of the Arbitration and Conciliation Act, 1996 (as amended) with respect to the independence and impartiality of the arbitrator, and the ability to devote sufficient time to complete the proceedings within the statutory period of 12 months under Section 29A of the Act. Parties are directed to approach the Indian Council of Arbitration within a period of 2 weeks to fix the date of the arbitral proceedings.

A copy of the Appeal paper-book be provided by the Registry to the Indian Council of Arbitration, to enable it to proceed with the matter.

In view of the aforesaid directions, the Order dated 04.12.2019 passed by the Delhi High Court in FAO(OS)(Comm) 353/2019 is set aside. The Appeals filed by both parties under Section 37 of the Arbitration Act being FAO (OS) (Comm) 353 and 182 of 2019 pending before the Delhi High Court have accordingly become infructuous.

The present Appeal is allowed in the aforesaid terms. Pending applications, if any, stand disposed of.

.....J.
(INDU MALHOTRA)

.....J.
(AJAY RASTOGI)

New Delhi,
February 12th, 2021