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

+ **FAO(OS) (COMM) 55/2022**

NTPC LTD

..... Appellant

Through: Mr.Adarsh Tripathi with Mr.Ajitesh
Garg and Mr.Vikram Singh Baid,
Advocates.

versus

M/S TATA PROJECTS LTD

..... Respondent

Through: Ms.Smita Bhargava with Mr.Tanuj
Agarwal and Ms.Pavitra Singh,
Advocates.

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Date of Decision: 03rd March, 2022

CORAM:

HON'BLE MR. JUSTICE MANMOHAN

HON'BLE MR. JUSTICE SUDHIR KUMAR JAIN

J U D G M E N T

MANMOHAN, J (Oral):

C.M.No.10815/2022

Exemption allowed, subject to all just exceptions.

Accordingly, the application stands disposed of.

FAO(OS) (COMM) 55/2022 & C.M.No.10816/2022

1. Present appeal has been filed challenging the judgment dated 08th December, 2021 passed by learned Single Judge in OMP (Comm) No.171 of 2021 whereby the award rendered by learned Arbitral Tribunal was upheld.
2. Learned counsel for Appellant states that the Arbitral Tribunal has grossly erred in not preserving the right of the Appellant to raise its claims for levying liquidated damages subsequently. He states that the learned

Single Judge as well as the Arbitral Tribunal failed to consider that the extension given to the Respondent was subject to levy of liquidated damages and the learned Single Judge even failed to note that the Arbitral Tribunal was of the view that the majority of the delay caused in completion of project had been caused by the Respondent. He emphasises that though no claim was raised by the Appellant in the Arbitral Tribunal qua the liquidated damages, yet the Arbitral Tribunal as well as the learned Single Judge concluded that neither party was justified in claiming any compensation/damages on account of prolongation of the work.

3. A perusal of the paper book reveals that the Respondent/claimant had specifically prayed for a declaration that the Respondent/claimant was not entitled to levy any liquidated damages for the delay in completion of the project. In view of the said specific prayer, this Court is of the opinion that it was incumbent upon the Appellant to prove that the delay was caused by the Respondent/claimant and the Arbitral Tribunal was legally bound to give a finding thereon.

4. In any event, upon a perusal of the award as well as the impugned order, it is apparent that the Appellant had sought to attribute delay in completion of the project on account of the certain action/inaction on the part of the Respondent/claimant. Consequently, the Arbitral Tribunal was legally obliged to render a finding on the said aspect.

5. Further, this Court is of the view that the intent of the arbitration proceeding, which is an alternative dispute resolution mechanism, is to give a quietus to the dispute. No party can say that even when the Respondent/claimant is seeking liquidated damages on account of delay and had sought a declaration that the Appellant was not entitled to liquidated

damages, yet the Appellant would raise its counter-claim before another Arbitral Tribunal.

6. It is also settled law that once an arbitral award has been confirmed in an application filed under Section 34 of the Act, the Appellate Court must be extremely cautious in disturbing concurrent findings of the fact and law as they are ordinarily not amenable to interference under Section 37 of the Act. (See: *M/s. Mangalwar Filling Station v. Indian Oil Corporation Ltd.*, *FAO (COMM) 75/2021* dated 07th July, 20221.)

7. In view of the aforesaid, this Court finds no ground to interfere with the decision passed by the learned Single Judge. Accordingly, the present appeal along with pending application is dismissed.

MANMOHAN, J

SUDHIR KUMAR JAIN, J

MARCH 03, 2022
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