

Non-Reportable

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

I.A. Nos. 4 & 5**IN****CIVIL APPEAL NO. 6158 OF 2013**

NATIONAL HIGHWAYS AUTHORITY OF INDIA

.....Applicant/
Appellant

Versus

M/S NCC- KNR (JV)

.... Respondent

ORDER**Uday Umesh Lalit J.**

1. These Interlocutory Applications arise out of Civil Appeal No.6158 of 2013 which was disposed of by this Court on 24.4.2015. While allowing said appeal preferred by National Highways Authority of India, the appellant herein, it was directed by this Court as under:-

“ In our view, the Arbitral Tribunal went beyond the scope of the contract and it clearly exceeded its jurisdiction. We, therefore, set aside the award insofar as it allows Claim No. 8. Consequently, the appeal

stands allowed. At the interim stage, this Court had directed the Appellant to deposit a sum of Rs.70,65,039/- which upon deposit was withdrawn by the Respondent on furnishing a bank guarantee. The appellant is entitled to encash that bank guarantee to recover the sum that was deposited. No order as to costs."

2. Soon thereafter Interlocutory Application No.3 of 2015 was filed on behalf of the respondent, which was disposed of by this Court by its order dated 8.5.2015, which order was to the following effect:-

"Mr. Amit George, leaned counsel appearing for the applicant-respondent shall pay to the petitioner, National Highways Authority of India and, therefore, the bank guarantee in question need not be encashed. He undertakes that the respondent shall make the payment to the applicant within four weeks from today. The said amount shall be paid by way of a bank draft drawn on a nationalized bank. If the amount is not paid within the stipulated period, the bank guarantee shall be encashed forthwith by the petitioner.

I.A. No. 3 of 2015 stands disposed of accordingly."

3. Accordingly, the respondent made over the amount in question within the time stipulated under the order dated 08.05.2015. Interlocutory Application No.4 of 2015 was thereafter preferred by the appellant contending that the

decretal amount was withdrawn by the respondent in December 2012 whereas the appeal was allowed in favour of the appellant on 24.4.2015 and that the respondent had reaped the benefits of decretal amount for more than three years. It was submitted that the Arbitral Tribunal had awarded interest @ 12% per annum against the appellant and that the respondent be directed to pay interest @ 12% per annum on the amount of Rs.70,65,039/- from the date of withdrawal till the date of actual payment.

4. The appellant is right in its submission that the Arbitral Tribunal in its award dated 09.01.2012 had awarded interest at the rate of 12% per annum on amounts awarded under various claims. Matter in issue in Civil Appeal No.6158 of 2013 pertained only to Claim No.8. In the fitness of things, the appellant is certainly entitled to interest at the same rate on the amount which was enjoyed by the respondent. The entitlement of the respondent to this amount stood negated by judgment and order dated 24.04.2015 and as such the respondent must pay back the amount with interest at the same rate.

5. We therefore, direct that the respondent shall pay interest at the rate of 12% per annum on the amount in question namely

.....J.
(Uday Umesh Lalit)

New Delhi
January 19, 2016

ITEM NO.1A-For Order

COURT NO.10

SECTION XIV

S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS

I.A. 4 & 5 in Civil Appeal No(s). 6158/2013

NATIONAL HIGHWAYS AUTHORITY OF INDIA

Appellant(s)

VERSUS

M/S NCC KNR JV

Respondent(s)

Date : 19/01/2016 These applications were called on for pronouncement of ORDER today.

For Appellant(s)

Mr. T.S. Sidhu, Adv.
Ms. Gunjan S. Jain, Adv.
Mr. Vivek Oriel, Adv.
Mr. Vikas Soni, Adv.
For M/s. M. V. Kini & Associates

For Respondent(s)

Mr. R. Sathish, Adv.

Hon'ble Mr. Justice Uday Umesh Lalit pronounced the order of the Bench comprising Hon'ble Mr. Justice Dipak Misra and His Lordship.

I.A. Nos. 4 and 5 are disposed of in terms of the signed non-reportable order.

Pending application(s), if any, stand(s) disposed of.

(VINOD KUMAR)
COURT MASTER

(MALA KUMARI SHARMA)
COURT MASTER

(Signed Non-Reportable order is placed on the file)