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

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Decision delivered on: 18.10.2022

+ **FAO(OS) (COMM) 52/2020**

M/S LABH CONSTRUCTION & INDUSTRIES LTD Appellant
Through: Mr Aniruddha Deshmukh and Mr
Nikhil Goel, Advs.

versus

CENTRAL GOVT EMPLOYEES WELFARE HOUSING
ORGANISATION Respondent
Through: Mr Debasish Moitra and Mr Rahul
Sharma, Advs.

CORAM:

HON'BLE MR. JUSTICE RAJIV SHAKDHER

HON'BLE MS. JUSTICE TARA VITASTA GANJU

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

RAJIV SHAKDHER, J. (ORAL):

1. This appeal is directed against the judgment dated 23.04.2019 passed by the learned Single Judge.
2. Mr Aniruddha Deshmukh, who appears on behalf of the appellant, says that the appeal is confined to the directions issued by the learned Single Judge in paragraph 46 of the impugned judgment. For the sake of convenience, the said paragraph is extracted hereafter:

“46. Under Section 31 of the Act, the Ld. Arbitrator has a discretion to award interest i.e. pre-reference, pendente lite, and post award. CGEWHO has been awarded various

sums in its favour including an amount of Rs.1,01,53,823/- in respect of principal amounts spent by CGEWHO. The award of interest relates to amounts paid by CGEWHO to the labour and suppliers at the behest of the Contractor. It cannot, therefore, be said that the CGEWHO is not entitled to pre-reference and pendente Lite interest. Considering that initially claims were raised by the Contractor and not by CGEWHO, it is held that the CGEWHO is entitled to pendente lite interest on the sums awarded in its favour, as also future interest from the date of award at 8% simple interest per annum. The challenge by the Contractor to this award insofar as the awarded counter claims are concerned, has already failed and attained finality. The amount so calculated in terms of the present judgement be paid to CGEWHO within three months by the Contractor. If the payment is not made within three months, interest at the rate of 10% would be liable to be paid on the awarded amount.”

3. It is Mr Deshmukh's contention that the learned Single Judge has erred in substituting the view taken by the Arbitral Tribunal, which was to confine payment of interest to the pre-reference period. In support of this submission, Mr Deshmukh has drawn our attention to paragraph 7.13.4 of the award.
4. On the other hand, Mr Debasish Moitra, who appears on behalf of the respondent, says that the learned Single Judge has, after appreciating the nuances of the matter, granted interest only for the period when the matter was pending before the learned Arbitrator, i.e., pendente lite interest and future interest from the date of award.
5. Paragraph 46 of the impugned judgment, which has been extracted hereinabove, shows that the learned Single Judge has awarded interest at the rate of 8% (simple) per annum for the period when the matter was pending

before the learned Arbitrator, i.e., pendente lite interest and interest from the date of the award, i.e., future interest.

5.1. As noted above, the interest has been pegged by the learned Single Judge at the rate of 8% (simple) per annum.

6. In our opinion, Mr Deshmukh is right, that if the learned Single Judge was of the view that the learned Arbitrator has committed an error which fell within the scope of Section 34 of the Arbitration and Conciliation Act, 1996 [in short, the “Act”], all that could have been done was to set aside and sever that portion of the award.

7. Mr Deshmukh, in our view, is also right in contending that the learned Single Judge could not have substituted the Arbitrator’s award concerning pendente lite and future interest by awarding and then proceeding to fix the rate of interest for the said periods.

8. The directions contained in the impugned judgment are, in our opinion, contrary to the ratio of the judgment rendered by the Supreme Court in *The Project Director, National Highways no. 45 and 220 National Highways Authority of India v M. Hakeem and Anr.*; (2021) 9 SCC 1.

9. Accordingly, the appeal is allowed. The directions contained in paragraph 46 of the impugned judgment are set aside concerning pendente lite and post- award interest are set aside.

10. The respondent will, however, be at liberty to trigger a fresh proceeding, *albeit*, as per law.

10.1. In case a fresh proceeding is triggered, the appellant would have an opportunity to demonstrate that the observations made in paragraph 46 of the impugned judgement are not sustainable in law.

10.2. In other words, the concerned adjudicatory forum would have to, in our opinion, examine counter claim no.20 *de novo* i.e., the claim concerning pendente lite and post-award interest.

11. The appeal is disposed of in the aforesaid terms.

**(RAJIV SHAKDHER)
JUDGE**

**(TARA VITASTA GANJU)
JUDGE**

OCTOBER 18, 2022/aj

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