

**(2013) 02 DEL CK 0238**  
**In the Delhi High Court**  
**Case No : FAO (OS) 78 of 2013**

|                                                |            |
|------------------------------------------------|------------|
| National Hydro-Electric Power Corporation Ltd. | APPELLANT  |
| Vs                                             |            |
| M/s. Ali Mohammed Baba and Sons                | RESPONDENT |

**Date of Decision :** 05-02-2013

**Acts Referred:**

Arbitration Act, 1940 — Section 30, 33

**Citation :** (2013) 2 AD 550 : (2013) 2 ARBLR 576 : (2013) 2 PLR 46

**Hon'ble Judges :** Sanjay Kishan Kaul, J; Indermeet Kaur, J

**Bench :** Division Bench

**Advocate :** Kailash Vasdev with Mr. Ajit Pudussery, Ms. Joanne Pudussery, Mr. Dinesh Khurana and Mr. Shreejiges Singhvi, for the Appellant;

**Final Decision :** Dismissed

## Judgement

Indermeet Kaur, J.

CM No. 2120/2013 (Exemption)

1. Exemption allowed, subject to all just exceptions.

CM No. 2122/2013 (delay of 13 days in refiling the appeal)

In view of the averments contained in the instant application, delay of 13 days in refiling the appeal is condoned.

2. Application stands disposed of.

FAQ (OS) No. 78/2013 & CM No. 2121/ 2013(for stay)

3. The respondent had entered into a contract with the appellant in terms of a letter of Award dated 13.07.1989 whereby the respondent had agreed to supply materials for commissioning of a 33 KV transmission line for the URI hydro-electric project located at Baramullah District of Jammu and Kashmir. The entire work was to be completed within a period of nine months i.e. by 12.04.1990. The case of the appellant was that the respondent did not adhere to the time

schedule. The supply part of the contract was not completed within the stipulated period and the respondent even failed to complete the construction part within time. The contract was ultimately abandoned. Disputes arose between the parties which were referred to a sole Arbitrator who was the Chief Engineer, In-Charge of the appellant's project. The Award was pronounced on 30.04.2003. The appellant not satisfied with the Award filed objections under Sections 30 & 33 of the Arbitration Act, 1940 (hereinafter referred to as the said "Act") which were disposed of vide the impugned order dated 11.09.2012.

4. Learned counsel for the appellant has confined his arguments on two points. His first submission is that vide letter dated 17.01.1992, the respondent had himself abandoned the contract and once it was clear that the contractor had abandoned the work, the appellant was justified in retaining 10% of each bill; even otherwise the letter dated 17.01.1992 was written by the contractor much after the time when the contract was to be completed and the contractor had highlighted the problem relating to non-availability of site only at that time which was disputed by the appellant; not taking away the fact that this letter dated 17.01.1992 was written much after the stipulated date of completion of the contract and there was no justification for the contractor in not completing his part of the contract.

5. This argument had been raised before the learned Single Judge and it had been answered while dealing with claim No. 2. The Single Judge had noted that in respect of claim No. 2 elaborate reasons had been given by the Arbitrator and after considering the material brought on record had given a definite finding as regards the failure on the part of the appellant to make available the site to the contractor as to where the line was to be laid; it also did not create a conducive atmosphere for the work. This was after consideration of the evidence including the testimony of the witnesses. Learned Single Judge had noted that the view taken by the Arbitrator being a plausible one; he being an expert in the field and being aware of the ground realities; the Award on this count did not suffer from any illegality. The Single Judge refused to interfere with this finding which finding stands endorsed by this Court.

6. The second submission of the learned counsel for the appellant is bordered on reference to Clauses No. 39.1 to 39.3 of the contract which read as under:-

29. Clauses 39.1 to 39.3 of the contract read as under:

39. 1 All costs, claims, damages or expenses which the Corporation may have paid for which under the contract the Contractor is liable, may be deducted by the Corporation from Performance Guarantee or from any moneys due or may be recovered from the Contractor.

39.2 Any sum of money due and payable to the Contractor (including Performance Guarantee returnable to him) under this contract may be appropriated by the Corporation and set off against any claim of the Corporation out of or under any contract made by the Contractor with the Corporation.

39.3 It is an agreed terms of the contract that the sum of money so withheld or retained under this clause by the Corporation shall be kept, withheld or retained as such by the Corporation till the claims arising out of in the same contract are either mutually settled or determined by the Arbitrator, and the Contractor shall have no claim for interest or damage whatsoever on this account or any other ground in respect of any sum of money withheld or retained under this clause and duly notified a such to the Contactor.

7. Submission being that there was an express prohibition on the payment of interest.

8. Learned Single Judge had rightly noted that only when the appellant retains the money payable under the performance bank guarantee; the contractor shall have no claim for interest; the prohibition of payment of interest would not apply to any legitimate claim made by the contractor for a wrongful withholding of the moneys payable to him and once it is held that some money was due to the contractor which was not legitimately paid to him then obviously the prohibition against payment of interest would be inapplicable. It was rightly noted that there was no absolute prohibition on the payment of interest if the claim set up by the contractor was a legitimate claim. Compound interest has been disallowed by the Single Judge and to that extent the Award stood modified directing that the interest would be payable only on the principal sum. On neither count does the order of the learned Single Judge brook any interference. The appeal is without any merit. Appeal as also the stay application stands dismissed.