

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

Petition(s) for Special Leave to Appeal (Civil) No.4019/2002

(From the judgement and order dated 04/10/2001 in SN 1582A/01  
of The HIGH COURT OF DELHI AT N. DELHI)

M/S. HOUSING & URBAN DEVELOPMENT CORPN.

Petitioner (s)

VERSUS

M/S. DSA ENGINEERS (BOMBAY) & ORS.

Respondent (s)

(With prayer for interim relief)  
( For Final Disposal )

Date : 23/08/2002 This Petition was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE N. SANTOSH HEGDE  
HON'BLE MR. JUSTICE BISHESHWAR PRASAD SINGH

For Petitioner (s) Mr. P.N. Kumar, Adv.  
Mr. Rishi Kesh, Adv.  
Mr. Anurag Kumar, Adv.  
Mr. Anagh Ahuja, Adv.

For Respondent (s) Mr. B.S. Shukla, Adv.  
Mr. E.C. Agrawala, Adv.  
Mr. Ashwini Kumar, Adv.

UPON hearing counsel the Court made the following  
O R D E R

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The petitioner in this petition suffered an award in an arbitration proceeding which was initially instituted under the Arbitration Act, 1940, and subsequently continued under the provisions of the Arbitration and Conciliation Act, 1996 by virtue of a clause in the arbitration agreement which permitted such continuation of arbitration proceedings inspite of any change in the Arbitration Act.

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The petitioner now wants to question the said award on the ground that the arbitral tribunal was not properly constituted under the 1996 Act since the number of arbitrators are even in number and not odd in number as required under the 1996 Act. This question is no more res integra. In view of the judgment of this Court in the case of Narayan Prasad Lohia v. Nikunj Kumar Lohia & Ors. (JT 2000(2)SC 222), learned counsel appearing for the petitioner tried to distinguish this

judgment with reference to some other judgment of this Court, but we can not accept this contention of the petitioner.

In the case of Narayan Prasad (supra), a 3-Judge Bench of this Court held : that a party cannot challenge the composition of the arbitral tribunal if he has not chosen to do so at the earliest point of time because an objection to the constitution of the arbitral tribunal is a matter which is derogable. In the present case, as in the case of Narayan Prasad (supra) since no objection was taken at the initial stage, we can not accept the argument of the petitioner that the arbitral tribunal is not properly constituted. The said judgment being a judgment of a bench of 3 Judges, we are bound by the said judgment, apart from the fact that we are in respectful agreement with the same.

For the reasons stated above, we find no merit in the SLP and the same is dismissed.

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(Pawan Kumar)  
Court Master

(Prem Prakash)  
Court Master