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

+ **FAO(OS) (COMM) 117/2016**

GVK JAIPUR EXPRESSWAY PRIVATE LIMITED..... Appellant

Represented by : Mr.Gopal Jain, Senior
Advocate instructed by Aseem
Chaturvedi, Ms.Ritika Ahuja
and Mr.Chinmayee Chandra,
Advs.

versus

NATIONAL HIGHWAYS AUTHORITY OF INDIA..... Respondent

Represented by : Mr.Vikas Goel and Ms.Arushi
Gupta, Advs.

CORAM:

HON'BLE MR. JUSTICE PRADEEP NANDRAJOG

HON'BLE MR. JUSTICE YOGESH KHANNA

ORDER

% 22.11.2016

1. On November 11, 2016 we had required the learned counsel for the respondent to obtain instructions on two points as under :

(i) *By when would the respondent appoint its nominee arbitrator requiring ICA to be communicated that it should appoint Arbitrator so that the arbitral Tribunal is constituted.*

(ii) *Upon directions being issued by this Court to ICA to nominate the third Arbitrator upon the respondent nominating its nominee arbitrator whether respondent would be agreeable not to enforce the demand to recover ₹9.27 crores for a period of 30 days after the arbitral Tribunal is constituted; the said time being available for the appellant to file an application under Section 17 of the Arbitration & Conciliation Act, 1996 before the arbitral Tribunal praying for an interim measure.*

2. The reason was that the appellant handed over in Court photocopy of the letter addressed to the Chairman of the respondent intimating appointment of justice B.P.Singh, former Judge of the Supreme Court of India as the arbitrator.

3. As per the arbitration clause the respondent has to appoint an arbitrator. The third arbitrator to constitute the arbitral tribunal has to be nominated as per the ICA Rules.

4. On the first point on which instructions had to be obtained, learned counsel for the respondent states that he has been instructed to inform the Court that within two weeks from today, under intimation to the appellant, the respondent would nominate an arbitrator.

5. Thus, as regards the formation of the arbitral tribunal, with consent of parties we direct that pursuant to the present order ICA (competent authority) would nominate the third arbitrator within two weeks from the date of the receipt of the present order.

6. As regards the enforceability of the demand in sum of ₹9.27 crores, concededly the money has to be withdrawn by the respondent from an Escrow account; meaning thereby the money is lying secured.

7. Under the circumstances, we dispose of the appeal directing that upon constitution of the arbitral tribunal, which would perhaps be within three weeks from today, the appellant would file an application under Section 17 of the Arbitration and Conciliation Act, 1996 within one week of intimation by ICA of nominating the third arbitrator. Till said application is taken up for preliminary consideration and passing pro-tem ad-interim orders the respondent would not withdraw ₹9.25 crores from the Escrow account or

enforce the demand against the appellant.

8. Liberty is granted to the respondent to file an appropriate application in this Court if the appellant does not comply with its obligations as aforementioned i.e. within a week of the constitution of the arbitral tribunal does not file the application under Section 17 of the Arbitration and Conciliation Act, 1996.

9. *Dasti* under signature of Court Master today itself to counsel for the parties.

10. It would be the obligation of both parties to ensure that they deliver the *dasti* copy supplied to them under signatures of the Court Master to the competent authority of the Indian Council of Arbitration latest by November 25, 2016.

11. N costs.

CM No.42198/2016

Since the main appeal has been disposed of, instant application is disposed of as infructuous.

PRADEEP NANDRAJOG, J.

YOGESH KHANNA, J.

NOVEMBER 22, 2016
VLD