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

+ **O.M.P.(I) (COMM.) 223/2017**

M/S C P RAMA RAO

..... Petitioner

Through Mr K.K. Sharma, Senior Advocate with
Mr Harsh Vinay, Advocate.

versus

NATIONAL HIGHWAYS AUTHORITY OF INDIA..... Respondent
Through Ms Gunjan Sinha Jain, Advocate.

CORAM:

HON'BLE MR. JUSTICE VIBHU BAKHRU

ORDER

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31.05.2017

IA No. 6947/2017

1. Allowed, subject to all just exceptions.
2. The application is disposed of.

O.M.P.(I) (COMM.) 223/2017

3. The petitioner has filed the present petition under section 9 of the Arbitration and Conciliation Act, 1996, *inter alia*, praying as under:-

- i. Direct the respondent not to take any coercive action including but not limited to raising of any demand of payment and the termination of contract as well as withholding any payment as may be permissible under the contract.

- ii. Stay operation of respondent's impugned letters dated 29.04.2017 and 08.05.2017;

4. Ms Jain, the learned counsel appearing for the respondent (NHAI) stoutly contested the aforesaid prayers. She submits that the petitioner has concealed material facts and has not produced the relevant correspondence on record. She referred to a letter dated 04.04.2017 sent by the petitioner and has drawn the attention of this court to paragraph (I) which indicates that the petitioner had sent a letter dated 14.03.2017 expressing its intention to accept termination of the contract. She has also referred to the letter dated 29.04.2017 sent by NHAI calling upon the petitioner to clear the sum of `8,77,36,413 including penalty without further delay and also indicate its consent along with submission of settlement cum closeout agreement.

5. Mr Sharma, learned senior counsel appearing for the petitioner has submitted that the petitioner is only seeking parity with other similarly placed contractors who have been granted additional time for working the toll in wake of the demonetization of high value currency, which was an unprecedented event. As far as non-production of relevant documents is concerned, he submits that he would produce the letters referred, if time is provided by this court.

6. I have heard learned counsel for the parties.

7. At the outset, it is necessary to observe that the present dispute is a commercial dispute and falls within the scope of the Commercial Courts, Commercial Division and Commercial Appellate Division of High Courts Act, 2015. Thus, the petition is required to be supported by a statement of truth and in this case a statement of truth has been affirmed and filed. In paragraph 5 of the said statement of truth the deponent has clearly affirmed

that all documents in his power, possession, control and custody pertaining to the facts and circumstances of the case have been disclosed. Quite plainly, the said statement is false. Undoubtedly, the petitioner's letter dated 14.03.2017 would be a vital document as it concerns termination of the agreement (since the petitioner seeks stay of such termination). The said relevant document has been concealed and the petition is liable to be dismissed on this ground alone.

8. It is also seen that the agreement between the parties is a determinable contract and thus cannot be specifically enforced. The petitioner has an adequate remedy by way of claiming damages and, therefore, the prayers sought for in this petition cannot be granted.

9. For the reasons stated above, the petition is dismissed with cost of `5000/- to be deposited with Delhi State Legal Services Authority.

VIBHU BAKHRU, J

MAY 31, 2017

pkv