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

+ **W.P.(C) 5104/2018**

NICHOLAS O DWYER & CO LTD

..... Petitioner

Through Mr. Joy Basu, Sr. Adv. with Mr. Alok
Agarwal, Mr. Sudhir Mishra, Ms.
Ritwika Nanda, Ms. Petal Chandhok
and Mr. Abhinav, Advs.

versus

NATIONAL HIGHWAY AUTHORITY OF INDIA..... Respondent

Through Ms. Soumya Priyadarshini, Adv.

CORAM:

HON'BLE MR. JUSTICE RAJIV SHAKDHER

ORDER

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14.05.2018

CM No.19725/2018

1. Allowed, subject to all just exceptions.

W.P.(C) 5104/2018

2. Issue notice. Ms. Soumya Priyadarshini accepts notice on behalf of the respondent.

3. In view of the order that I propose to pass, learned counsel for the respondent says that she does not wish to file a counter affidavit.

4. This is a second round of litigation. In the first round, the petitioner had approached this Court by way of a writ petition which was numbered as W.P.(C) No.803/2017. Via the said writ petition, challenge had been made by the petitioner to the order dated 3.1.2017,

passed by the respondent, whereby the petitioner was debarred for a period of three years; effective from the date of issuance of the said order.

5. The petitioner obtained an interim order on 15.2.2017. By virtue of the said order, this Court, stayed the operation of order dated 3.1.2017, passed by the respondent, till the next date of hearing.

6. Finally, W.P.(C) 803/2017 was disposed of on 22.8.2017, based on the submissions made on behalf of the petitioner. The petitioner had indicated to the Court that it would like to withdraw the writ petition, with liberty, to take recourse to the appropriate appellate remedy as provided under the Policy framed by the respondent for “Deterrent Penalty Action Against Defaulting Consultants”.

6.1 To be noted the said Policy stands captured in Circular dated 17.4.2012 (in short ‘Circular’).

7. Thus, in consonance with provisions of the Circular, the petitioner, filed an appeal with the Appellate Committee comprising of the Chairman, NHAI, Member (Administration) and the “concerned member”. The provision for the appeal is encapsulated in clause 6 of the Circular.

8. The petitioner’s grievance, today, is that, the Appellate Committee held its last hearing on 5.12.2017. The petitioner says that despite writing to the Appellate Committee on 13.4.2018, there has been no movement in the matter.

9. A perusal of the petitioner’s communication dated 13.4.2018 would show that it attempts to set out as to what transpired at the hearing held before the Appellate Committee on 5.12.2017.

9.1 Ms. Soumya, who, appears for the respondent says that she is not aware as to whether or not what is indicated in the petitioner's letter dated 13.4.2018, actually transpired.

10. Given these circumstances, I put to Mr. Basu, learned senior counsel, who, appears for the petitioner as to whether the petitioner would like to approach the Appellate Committee once again. Mr. Basu says that the petitioner would have no difficulty in approaching the Appellate Committee.

11. As a matter of fact, prayer made in the writ petition is that the appeal should be disposed of by the Appellate Committee in a time bound manner, ideally, within one week.

12. Mr. Basu, further submits that, for the moment, the petitioner would not want to press prayer clause B.

13. Consequently, having regard to foregoing, the writ petition is disposed of with the following directions:

(1) The petitioner will appear before the Appellate Committee on 31.5.2018 at 11.00 a.m. In case, the said date is not convenient to the Appellate Committee, it will fix another date, which is proximate to the date fixed by the Court. Due written notice qua the same will be given to the petitioner.

(2) The Appellate Committee, while considering the matter, will bear in mind the contents of the communication dated 13.4.2018 and thereafter render its view, on the issues at hand.

(3) The Appellate Committee will pass a speaking order; a copy of which will be furnished to the petitioner.

14. Needless to say, if the petitioner is aggrieved by the final

determination of the Appellate Committee, it will have liberty to assail the same in the manner known to law.

15. The Appellate Committee will conclude the entire exercise within six weeks from the date it accords hearing to the petitioner via its authorised representative.

RAJIV SHAKDHER, J

MAY 14, 2018

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