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

\+ O.M.P.(I) (COMM.) 307/2018

ESSEL GWALIOR SHIVPURI TOLL ROADS PRIVATE LIMITED
..... Petitioner

Through: Mr.Amit Singh Chaddha, Sr. Adv. with Mr.Dhruv Malik & Ms.Madhurima Sarangi, Advs.

versus

NATIONAL HIGHWAY AUTHORITY OF INDIA & ANR.
..... Respondent

Through: Mr.Mukesh Kumar & Ms.Gunjan S. Jain, Advs. for NHAI.
Mr.V.Seshagiri & Mr.Siddharth Sachar, Advs. R-2.

CORAM:
HON'BLE MR. JUSTICE NAVIN CHAWLA

O R D E R

% 09.08.2018

Mr. V.Seshagiri, Advocate enters appearance on behalf of the respondent no. 2. He submits that the bank is in process of renewing the bank guarantee in question and, the same is likely to happen on or before 31.08.2018. He further submits that incase for any reason whatsoever the bank guarantee is not renewed on/or before 31.08.2018, the proceeds pursuant to the invocation of the bank guarantee vide letters dated 28.07.2018 and 31.07.2018 shall be dully honoured and paid to the respondent no. 1.

The learned counsel for the respondent no. 1 submits that in the meantime the review report has been received from the Independent Engineer pursuant to which the respondent no. 1 shall be entitled to invoke the bank guarantee in terms of the order dated 22.08.2016 passed by this Court in OMP. (I) (COMM) 271/2016, Essel Gwalaior Shivpuri Toll Roads Pvt. Ltd. vs. National Highways Authority of India & Anr. He submits that merely because respondent no. 2 is taking time to renew the bank guarantee till 31.08.2018, right of respondent no. 1 to invoke the bank guarantee on this cause cannot be prejudiced.

The learned senior counsel for the petitioner on the other hand submits that this purpotive report of the Independent Engineer has not been supplied to the petitioner and the reason for the invocation of the bank guarantee at present, is only the non-renewal of the bank guarantee by respondent no. 2.

In view of the above and based on the statement made by the counsel for respondent no. 2 on instructions, the Interim Order dated 31.07.2018 shall continue till 31.08.2018 or till such time that the bank guarantee is duly renewed by the respondent no. 2, whichever is earlier. Incase the bank guarantee is renewed, the cause of invocation as stated in the letters dated 28.07.2018 and 31.07.2018, in any case, will not survive and no payment based on such invocation shall be made to respondent no. 1.

This order, however, shall not prejudice the rights of respondent no. 1 to write a fresh letter of invocation of the bank guarantee to respondent no. 2 based on its rights under the agreement and in accordance with the order dated 22.08.2016 passed by this Court. It is made clear that this Court has not gone into the validity of such action, if at all taken by the respondent no. 1 and the petitioner is within its right to seek appropriate remedy against the same, if so advised. In case of such invocation, non-renewal of the bank guarantee shall not be a valid ground for refusing to honour such invocation.

The petition is disposed of with the above directions and with no order as to cost.

Dasti.

NAVIN CHAWLA, J

AUGUST 09, 2018/*rv*