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

+ **FAO(OS) (COMM) 352/2019 & CM APPL. 52008-52009/2019**

MADHUCON PROJECTS LTD

..... Appellant

Through Mr. Amitabh Chaturvedi, Mr. Sumit
K. Shukla, Mr. Sangeeth Mohan K.,
Ms. Radha Tarkar, Advocates.

Versus

**NATIONAL HIGHWAYS AUTHORITY OF
INDIA & ANR**

..... Respondent

Through Ms. Padma Priya, Mr. Dhruv Nayar,
Advocates for R1/NHAI.

CORAM:

HON'BLE MS. JUSTICE HIMA KOHLI

HON'BLE MS. JUSTICE ASHA MENON

ORDER

% **03.12.2019**

1. The appellant/petitioner is aggrieved by the judgment dated 29.11.2019, passed by the learned Single Judge, declining to restrain the respondent No.1/NHAI to encash the Performance Bank Guarantee for a sum of Rs.29,77,12,501/- and the Retention Money Bank Guarantee for a sum of Rs.4,36,62,265/-, on the ground that no case was made out by the appellant/petitioner for granting it such a relief.

2. Today, learned counsel for the appellant/petitioner states at the outset that this morning at 6.56 a.m., the appellant/petitioner received an *e-mail* from the respondent No.2/Bank informing it that both the bank guarantees mentioned here-in-above, have been invoked by the respondent No.1/NHAI and the amounts remitted to the beneficiary i.e. respondent No.1/NHAI. He thus states that the present appeal has been rendered infructuous.

3. However, a request is made on behalf of the appellant that the respondent No.1/NHAI be directed to appoint an Arbitrator at the earliest, more so, when the appellant/petitioner has already terminated the contract between the parties on 20.02.2019, followed by a recent order of termination issued by the respondent No.1/NHAI on 20.11.2019. Learned counsel submits that the appellant/petitioner has nominated an Arbitrator under intimation to the respondent No.1/NHAI on 30.07.2019 but the respondent No.1/NHAI is dragging its feet.

4. Ms. Padma Priya, learned counsel for the respondent No.1/NHAI assures the Court that an Arbitrator from the panel of NHAI shall be nominated by the Competent Authority at the earliest.

5. The present appeal is disposed of as infructuous along with pending applications with directions issued to the respondent No.1/NHAI to ensure that it nominates an Arbitrator within 10 days from today, under written intimation to the appellant/petitioner.

HIMA KOHLI, J

ASHA MENON, J

DECEMBER 03, 2019/MK/s