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

+ **W.P.(C) 7732/2019**

GHV(INDIA) PVT. LTD.

..... Petitioner

Through: Mr Balbir Singh, Sr. Advocate with
Mr Samir Malik, Advocate.

versus

**NATIONAL HIGHWAY AUTHORITY OF INDIA
AND ORS.**

..... Respondents

Through: Ms Madhu Sweta and Ms Shivangi
Khanna, Advocates for NHAI.
Mr Akshay Makhija, CGSC with Ms
Seerat Deep Singh, Advocate for R-
5/UOI.

CORAM:

HON'BLE MR. JUSTICE VIBHU BAKHRU

ORDER

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19.07.2019

CM No.32070/2019

1. Allowed, subject to all just exceptions.

W.P.(C) 7732/2019 & CM No.32069/2019

2. The petitioner (hereafter 'GIPL') has filed the present petition, *inter alia*, praying as under:-

“(a) Issue a writ of Mandamus or any other appropriate writ and/or direction and/or order to direct Respondent No. 1 to release any amount of Rs. 340,85,27,523/- (Rupees Three Hundred and Forty Crores Eighty Five Lakhs Twenty Seven Thousand Five Hundred and Twenty Three Only) along with interest @ 18%

per annum computed from 08.10.2018 till the date of payment of the aforesaid amount, directly to the Petitioner on account of the work done for the Project and under the Office Memorandum No. 24028/19/2018-H(Pt) dated 09.03.2019 (“Office Memorandum”).”

3. Respondent no.1 (National Highway Authority of India – hereafter ‘NHAI’) had entered into a Concession Agreement with respondent no.4 (hereafter ‘FSEL’) for construction of the highway being a part of the National Highway - 6 commencing from km 510.000 to 649.000 km from Fagne to Gujarat-Maharashtra. The said Concession Agreement also granted FSEL the concession to collect toll for the said section of the Highway for a period of nineteen years, commencing from the appointed date. It is important to note that FSEL is a subsidiary of respondent no.3 (IL&FS Transportation Network Ltd. – hereafter ‘IL&FS’). IL&FS was appointed as the EPC Contractor for the said contract with the approval of NHAI.
4. GIPL is a sub-contractor of IL&FS and claims that the entire work of construction of the highway in question has been implemented by GIPL.
5. GIPL claims that IL&FS, *inter alia*, owes a sum of ₹3,40,85,27,523/- to it. Since IL&FS was not in a position to discharge the said payment, the said dues were converted into a loan. GIPL claims that the said loan was secured by pledge of 51% of the equity share capital of FSEL and a charge over its cash flows from the project in question.
6. Due to the financial constraints faced by IL&FS and FSEL, the project has come to a standstill. It is stated that there are also other similar

projects which have come to a standstill on account of constraints faced by the Concessionaires. In these circumstances, the Central Government issued an Office Memorandum dated 09.03.2019 indicating the procedure to be followed in cases of “Stuck Highway Projects.” In terms of the said Memorandum, NHAI is required to enter into a settlement with concessionaires and EPC contractors of the ‘Stuck Highway Projects.’ Such settlement entails the payment for the work done and removal of the concerned concessionaire/EPC contractor in order to enable NHAI to get the project executed by another contractor/concessionaire.

7. GIPL believes that in terms of the said Office Memorandum, NHAI would make payments in relation to the project in question to FSEL/IL&FS. GIPL apprehends that in the event such payments are made to IL&FS/FSEL, the same may get stuck and not reach GIPL. It is stated that this would compel GIPL to initiate proceedings for enforcement of its security interest (which, the petitioner claims over the cash flows of FSEL) and the same would be time consuming.

8. It is in this context, GIPL has filed the present petition, essentially, seeking that all payments that NHAI requires to pay in connection with the project, be paid directly to it and not to FSEL and/or IL&FS.

9. Mr Balbir Singh, learned senior counsel appearing for the petitioner contended that the petitioner cannot be viewed as an ordinary secured creditor (although it does hold security interest in the cash flows of FSEL) in the light of the object for which the Office Memorandum dated 09.03.2019 has been issued. He submits that the said Office Memorandum was for resolution of the impasse relating to ‘Stuck Highway Projects’ and for

freeing the same from the existing concessionaire/contractor. He states that in this case, GIPL has carried on the entire work and is in possession of the site. He states that the petitioner's plant and machinery is also located at the project site.

10. The learned counsel appearing for the NHAI submits that at this stage, NHAI had not taken any decision to release any amount to FSEL and IL&FS in terms of the Office Memorandum dated 09.03.2019. She submits that the said matter is likely to be considered shortly and the NHAI would take necessary decision in accordance with law.

11. In view of the above, at this stage, this Court is not inclined to examine GIPL's claim that it is entitled to the payment directly from NHAI. This Court is also not inclined to examine whether the present petition under Article 226 of the Constitution of India to seek an order – which, essentially, seeks an order in the nature of a garnishee order – is maintainable.

12. This Court is of the view that the said issue(s) ought to be examined by the NHAI in the first instance. In this view, NHAI is directed to consider the petitioner's contention/claim as and when a decision is taken by the NHAI to release any funds in relation to the project in question. It is further directed that NHAI would give atleast one week's prior notice to GIPL before releasing any funds relating to the execution of the project in question, to FSEL/IL&FS.

13. The petition is disposed of in the aforesaid terms.

14. It is clarified that this Court has not expressed any opinion on the merits of the contentions advanced by the petitioner. It is further clarified that the petitioner is also not precluded from initiating appropriate

proceedings for enforcement of its security interest in respect of the shares of FSEL or the its cash flows as claimed by the petitioner. Needless to state that if any such proceedings are initiated, the same would be considered in accordance with law.

JULY 19, 2019
MK

VIBHU BAKHRU, J