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IN THE HIGH COURT OF DELHI AT NEW DELHI

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O.M.P.(I) (COMM.) 26/2020

ASHOKA DSC KATNI BY-PASS ROAD LTD Petitioner

Through: Mr. Jay Savla, Senior Advocate
with Mr. Rajpal Singh, Advocates.

versus

GOVERNMENT OF INDIA Respondent

Through: Mr. Jaswinder Singh, Advocate for
UOI with Mr. Sumit Kumar,
Superintendent Engineer.

CORAM:

HON'BLE MR. JUSTICE PRATEEK JALAN

ORDER

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12.03.2020

1. This petition was heard on 04.03.2020, and a detailed order was passed. The operative portion of the order is as follows:-

“16. Having regard to the aforesaid factors, I am of the view that the petitioner has made out a prima facie case for the grant of an order similar to the order of the Division Bench dated 17.07.2018, set out above. The Division Bench had directed that the petitioner herein would continue to collect the toll [pursuant to the award on claim no. 3], and would submit monthly accounts to the appellant. Subject to the final decision on claim no. 1(c), the balance of convenience between the parties would be served by making a similar direction as far as the extended period under claim no. 1(c) is concerned.

17. In the order dated 17.02.2020, as reiterated on 24.02.2020, learned counsel for the UOI was specifically

directed to take instructions as to the manner in which the petitioner may be restituted in the event the present petition is dismissed, and the award of the Arbitral Tribunal is ultimately upheld. The order dated 17.02.2020 also required a responsible representative of the parties to remain present in Court. By the order dated 24.02.2020, it was directed that the UOI's contentions in this regard should also be included in the reply to be filed by it.

18. Mr. Singh candidly admits that no suggestions in this regard have been incorporated in the affidavit in reply dated 28.02.2020, filed by the UOI. Today, no representative of the UOI is present to instruct him as to whether any other suitable method can be suggested, which would balance the interests of both parties. However, at Mr. Singh's request, the matter is adjourned to 12.03.2020, only to enable him to take instructions as to any alternative method by which equities can be balanced.

19. The prima facie observations in this order will not prejudice the rights and contentions of the parties in the Section 34 petition [OMP(COMM) 315/2020].”

2. Mr. Jaswinder Singh, learned counsel for Union of India (hereinafter, “UOI”), submits, upon instructions from Mr. Sumit Kumar, Superintendent Engineer of the Ministry of Road Transport and Highways, who is present in Court, that it is not possible to envisage any alternative method by which the petitioner may be restituted in the event the UOI's petition under Section 34 of the Arbitration and Conciliation Act, 1996 does not succeed.

3. In this view of the matter, the present petition is disposed of in terms of the order dated 04.03.2020. The petitioner herein will continue to collect the toll pursuant to the arbitral award on claim no.1(c), subject

to the adjudication of the petition filed by the UOI under Section 34 of the Act. The aforesaid permission is subject to the condition that the accounts be furnished to the respondent on a monthly basis.

4. Mr. Jaswinder Singh, points out that by an order dated 12.09.2014, passed on an application under Section 9 of the Act made by the petitioner, the petitioner was subjected to various conditions for continuing to collect the toll. These conditions included the condition that 50% of the amount collected will be kept in a fixed deposit. However, it is undisputed that since the order of the Division Bench dated 17.07.2018, the arrangement that has been in operation is that the petitioner is submitting monthly accounts to the respondent, and no amount is being deposited.

5. In this view of the matter, I am of the view that the arrangement set in place by the Division Bench may continue until the disposal of the petition under Section 34 of the Act.

6. The petition and pending application(s) are disposed of.

7. A copy of the order be given *dasti* under the signature of the Court Master.

PRATEEK JALAN, J

MARCH 12, 2020

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