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

+ **W.P.(C) 3348/2020 & CM 11805/2020-(stay) & CM 12021/2020**

WEST HARYANA HIGHWAYS PROJECT PRIVATE LIMITED

..... Petitioner

Through: Mr. Harish Malhotra, Senior Advocate with Ms. Apoorva Agarwal, Mr. Gurpreet Singh and Ms. Akansha Sharma, Advocates

versus

NATIONAL HIGHWAYS AUTHORITY OF INDIA & ORS.

..... Respondents

Through: Ms. Gunjan Sinha Jain, Advocate with Mr. VK Sharma, Project Director, NHAI PIU Rohtak, Mr. AK Tripathi, Joint Advisor Technical, NHAI, Mr. Navneet Gupta, Legal, NHAI
Mr. Jai Sahai Endlaw, Advocate for R-2.
Mr. Apoorv Sarvaria and Mr. R.P. Vats, Advocates for R-3/PNB

CORAM:

HON'BLE MS. JUSTICE HIMA KOHLI

HON'BLE MR. JUSTICE SUBRAMONIUM PRASAD

ORDER

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20.08.2020

HEARD THROUGH VIDEOCONFERENCING

1 The matter is listed for final arguments today. However, Mr. Malhotra, learned Senior Advocate appearing for the petitioner states that there have been some developments in the Section 9 petition filed by the petitioner and pending on the Original Side of this Court, registered as O.M.P. (I) (COMM.) No.144/2020. He submits that on 30.07.2020 and

05.08.2020, the learned Single Judge has acceded to the request of the petitioner to undertake maintenance work on the highway, on being released certain amounts from the escrow account being maintained in this regard and on giving an undertaking that the maintenance work shall be completed in a time bound manner. We are informed that the said undertaking has yet to be accepted by the learned Single Judge and the date fixed in the matter is 04.09.2020.

2 Ms. Gunjan Sinha Jain, learned counsel for the respondent No.1/NHAI states that when the petitioner could have taken steps to invoke the provisions of Section 9 of the Arbitration and Conciliation Act to seek interim relief against the respondent No.1/NHAI, there is no good reason for it to press the present petition which is even otherwise, not maintainable, both in law and on facts. She submits that the petitioner must be relegated to the legal remedies available to it under the Concessionaire Agreement dated 06.11.2007, by invoking the provisions of the Arbitration and Conciliation Act.

3 Mr. Malhotra, learned Senior Advocate appearing for the petitioner states that the petitioner has no objection to withdrawing the present petition and invoking the provisions of Section 9 of the Arbitration and Conciliation Act for seeking interim relief with regard to its grievance against suspension of the Concessionaire Agreement by the respondent No.1/NHAI, in terms of the letters dated 27.05.2020 and 28.05.2020. He however requests that the interim order passed on 04.06.2020, staying the operation of the orders dated 27.05.2020 and 28.05.2020, may be continued for a reasonable time to enable the petitioner to file a Section 9 application on the Original Side of this court.

4 In view of the submissions made hereinabove, the present petition is disposed of alongwith pending applications with liberty granted to the petitioner to assail the letters dated 27.05.2020 and 28.05.2020, issued by the respondent No.1/NHAI, under the Arbitration and Conciliation Act. Needless to state that the respondent No.1/NHAI would be entitled to take all the pleas in opposition to such a petition that may be filed by the petitioner, as may be available to it, both in law and on facts. It is made clear that the interim order dated 04.06.2020, granted in favour of the petitioner shall continue to operate only for a period of five working days reckoned from today. It is therefore for the petitioner to approach the learned Single Judge for seeking interim orders within the aforesaid timeline. The learned Single Judge is at liberty to alter, modify, vacate and/or confirm the interim order dated 04.06.2020, as may be deemed appropriate.

5 We may also make it clear that this court has not made any observations on the right of the respondent No.2, who shall be entitled to seek legal recourse against the respondent No.1/NHAI and/or the petitioner on the ground that the period of three months granted to it for collecting the toll in terms of the letter dated 27.05.2020, has been frustrated.

HIMA KOHLI, J

SUBRAMONIUM PRASAD, J

AUGUST 20, 2020
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