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

Date of Decision : 24.06.2020

+ **W.P.(C) 3708/2020**

SAHAKAR GLOBAL LTD AND ANR Petitioners

Through: Mr.Sudhanshu Batra, Sr. Adv.
with Mr.Praveen Agrawal and
Mr.Harish Agrawal, Adv.

versus

NATIONAL HIGHWAY AUTHORITY OF INDIA AND ANR

..... Respondents

Through: Mr.Sanjay Jain, ASG &
Mr.Narendra Hooda, Sr. Adv.
with Mr.Talvinder Siddhu,
Ms.Padma Priya & Ms.Neetika
Sharma, Adv for R-1.

Mr.Abhay Prakash Sahay,
CGSC with Ms.Mannu Singh,
Adv. for R-2.

CORAM:

HON'BLE MR. JUSTICE NAVIN CHAWLA

NAVIN CHAWLA, J. (Oral)

This hearing has been held through video conferencing.

CM APPL. 13281/2020 (Exemption)

Allowed, subject to all just exceptions.

Court fee, if payable, shall be deposited online with the concerned authority within a period of one week and physical stamp be filed within 72 hours from the date of resumption of regular functioning of the Court, as mandated in terms of Office Order dated April 04, 2020 issued by this Court.

Application is disposed of.

W.P.(C) 3708/2020 & CM APPL. 13282/2020 (Stay)

1. As a short question is involved, the petition is being taken up for disposal at this stage itself.
2. This petition has been filed by the petitioners primarily claiming relief under Clause 25 of the Contract which has been executed between the petitioners and the respondent no.1.
3. It is the case of the petitioners that the petitioner no. 1 has lodged its claim under Clause 25 (*Force Majeure* clause) of the Contract on 19.03.2020, however, the respondent no.1 is yet to take a decision thereon.
4. The learned senior counsel for the petitioners submits that in the meantime, the respondent no.2 has issued various orders recognizing the *force majeure* conditions as also granting certain relief measures to the Concessioners by its Office Order dated 18.05.2020. However, the same is not in accordance with the contractual terms. The respondent no. 2 thereafter issued a further direction by its order dated 03.06.2020 directing the respondent no.1 to adjudicate the claims of the Concessioners in accordance with the Contract. He submits that the petitioners have presently submitted security of around Rs.160

crores for the contracts in question, in the form of Bank Guarantee(s) and Performance Security(s), including cash security of Rs.91 crores.

5. On the other hand, the learned ASG submits that the claim of the petitioners could not be processed by the respondents due to lack of documentation from the petitioners. He further submits that in any case, the petitioners would not be entitled to any relief as the petitioners have not paid any amount to the respondents between the period commencing from 23.03.2020 to 25.03.2020, and after 15.04.2020.

6. The learned ASG further submits, that the petitioners are also not entitled to claim benefit under the Office Memorandum dated 18.05.2020 issued by the respondent no.2 inasmuch as the petitioner no. 1 was a defaulter as on 19.02.2020.

7. The learned senior counsel for the petitioners refutes the above submissions of the learned ASG and submits that no amount was payable for the above period in dispute and in fact, the petitioners are to make recovery from the respondent no.1 for the said period. He further submits that the respondent no.1 has not raised any demand for any documents being lacking in the claim of the petitioners.

8. I have considered the submissions made by the learned Counsels. As the learned ASG appearing for the respondent no. 1 has stated that the claim of the petitioners shall be considered strictly in accordance with the Contract executed between the petitioners and the respondent no.1 and the Contract provides for such consideration within a period of 7 days (as far as interim relief is concerned) and within 15 to 30 days (as far as final relief is concerned) as also

keeping in view the fact that the petitioners have sought termination of the Contract with effect from 30.06.2020, it is directed that the respondent no.1 shall decide on the claims of the petitioners within a period of two weeks from today. In case, any additional document is sought for from the petitioners, demand for the same be sent to the petitioners within two days from today. The petitioners shall supply these documents to the respondent no.1 within three days of receipt of such demand. No coercive action shall be taken by the respondent no.1 against the petitioners for recovery of any claimed amount for a period of one week after the communication of its decision on the claim of the petitioners, to the petitioners. The petitioners, if aggrieved of the decision taken by the respondent no.1 on its claim under Clause 25 of the Contract, shall be free to agitate the same in accordance with law and in appropriate proceedings. The petitioners shall, however, continue to deposit the admitted toll collected at various toll plazas with the respondent no.1, after deducting the retention amount as claimed by them during this period. If any such amount has become payable as admitted by the petitioners for the earlier period, the same shall also be deposited by the petitioners with the respondent no. 1 within a period of one week from today.

9. The petition is disposed of in the above terms.

NAVIN CHAWLA, J

JUNE 24, 2020/rv