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

+ W.P.(C) 5744/2020 & C.Ms. No.20781-82/2020

M/S VARAHA INFRA LTD

..... Petitioner

Through Mr. Avishkar Singhvi and Mr.
Bhaskar Vali, Advocates.

versus

NATIONAL HIGHWAY AUTHORITY OF INDIA& ANR.

..... Respondent

Through Mr. Abhay Gupta, Mr. Ankur Mittal,
and Ms. Aishwarya Pandey, Advocates for R-1.
Mr. Asheesh Jain and
Mr. Adarsh Kumar Gupta, Advocates for R-2.

CORAM:

HON'BLE MS. JUSTICE HIMA KOHLI

HON'BLE MR. JUSTICE SUBRAMONIUM PRASAD

ORDER

28.08.2020

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HEARD THROUGH VIDEO CONFERENCING.

1. The present petition has been filed by the petitioner praying *inter alia* for issuing a writ of mandamus to the respondent No.1/NHAI and the respondent No.2/Ministry of Road, Transport and Highways, Union of India directing that it be awarded the project for construction of six-lane access-controlled GH from Km 67.000 to Km 99.000 of Rajasthan-Gujarat Border to Santalpur Section of NH-754K as a part of Amritsar-Jamnagar Economic Corridor in the State of Gujarat under *Bharatmala Pariyojana* on the ground that it was found to be L-1 on 3.6.2020, after the bid evaluation result was declared. The petitioner further seeks issuance of a writ of mandamus to the

respondents to consider its representations for awarding it the project in question with a condition that the said project shall be executed exclusively by it and not as a member of the Joint Venture (JV) constituted in this regard in collaboration with a foreign entity. Lastly, the petitioner seeks to restrain the respondent No.1/NHAI from taking any action of scrapping the tender process or issuing the Letter of Acceptance to any third party in respect of the subject project.

2. Mr. Abhay Gupta, learned counsel for the respondent No.1/NHAI states that as on date, no Letter of Acceptance has been issued in favour of the JV and in any case, the petitioner cannot singularly approach the court for seeking relief when admittedly, it is a part of the JV. He further states that both the representations dated 6.7.2020 and 21.8.2020, referred to by learned counsel for the petitioner have been addressed by the petitioner alone and not by the JV which had submitted the bid and in those circumstances, the prayer made that it be awarded the subject contract exclusively, cannot be entertained. It was for the petitioner to approach the JV partner for its consent before making such a representation to the respondents. No such consent letter has been filed. Learned counsel states that in any event, the petitioner being a part of the JV of which a foreign entity is a member, a letter was addressed by the NHAI to the respondent No.2/UID at the end of June, 2020 for seeking security clearance from the Competent Authority in terms of Clause 2.1.12 of the Instructions to Bidder, forming a part of the Tender Documents, which is awaited. He states that unless and until security clearance is received, respondent No.1/NHAI cannot issue a Letter of Acceptance to the L-1.

3. We may also note that the petitioner claims to be a member of a joint-

venture comprising of itself as the lead member along with M/s. China Railway No.10 Engineering Group Company Ltd. It is the said JV that had submitted the bid to the respondent No.1. But for reasons best known to learned counsel for the petitioner, neither has the JV been impleaded, nor has M/s. China Railway No.10 Engineering Group Company Ltd. been impleaded even as a proforma party in the present petition.

4. The present petition having been filed without impleading the JV and the foreign entity who is a member of the JV, the same is not maintainable on account of non-joinder of necessary parties. The petition is disposed of alongwith the pending applications with liberty granted to the petitioner to take necessary steps in this regard before approaching the court for appropriate relief.

HIMA KOHLI, J

SUBRAMONIUM PRASAD, J

AUGUST 28, 2020

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