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

+ O.M.P. (T) (COMM.) 107/2019

MEP CHENNAI BYPASS TOLL ROAD PVT.LTD

& ANR.

..... Petitioners

Through: Mr.Tapesh Kumar Sinha, Mr.Sukrant
Vikram and Mr.Kumar Shashwat,
Advs.

versus

NATIONAL HIGHWAYS AUTHORITY OF
INDIA

..... Respondent

Through: Mr.Devender Singh, Adv.

CORAM:

HON'BLE MR. JUSTICE V. KAMESWAR RAO

ORDER

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14.01.2020

1. This is a petition filed under Section 15(2) of the Arbitration and Conciliation Act, 1996 with the following prayers:

“(i) Allow the instant application and appoint Hon’ble Mr. Justice Navaniti Prasad Singh (Retd.), Former Chief Justice of Kerala High Court in place of the unavailable co-arbitrator, Dr.Birendra Kumar Sinha in the ongoing arbitration proceedings between the Petitioners and the Respondent;

(ii) Pass any such further or other orders as this Hon’ble Court may deem fit in the facts and circumstances of the case.”

2. It is a conceded case of the parties that an Arbitral Tribunal, consisting three members, was constituted and was holding proceedings.

3. As noted from the order dated 28th October, 2019 of the learned Presiding Arbitrator, it is recorded that the parties were made aware of the ill health of Dr.Birendra Kumar Sinha, the nominee Arbitrator of the NHAI, he would not be available to participate in the proceedings. It was also stated

that it was expected that the parties shall take requisite actions expeditiously.

4. The said order was followed by another order dated 16th November, 2019, wherein the aforesaid order was reiterated.

5. Today, it is contended by the learned counsel for the NHAI that Justice V. N. Sinha, retired Judge, has been nominated as its nominee Arbitrator.

6. It is contended by learned counsel for the petitioners that even though neither he nor the petitioners have anything personal against Justice V. N. Sinha, the fact that initial order was passed by the presiding Arbitrator on October 28, 2019 and the appointment of Justice V.N. Sinha was made on December 17, 2019, the same would be untenable. In other words, it is his submission that NHAI has forfeited its right to nominate Justice V.N. Sinha after expiry of 30 days. The submission though sounds appealing, as the respondent NHAI has since made the nomination, this Court is not inclined to proceed with the present petition further and close the same.

7. It is made clear, the nomination of Justice V.N. Sinha is as replacement of Dr. Birendra Kumar Sinha as the member of the Arbitral Tribunal.

Dasti.

V. KAMESWAR RAO, J

JANUARY 14, 2020/bh