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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **O.M.P.(I) (COMM.) 119/2021 & I.A. 4812/2021**

ANANTA PROCON PVT. LTD Petitioner
Through: **Mr. Nitin Mishra & Mr. Arun**
Sharma, Advs.
versus

NATIONAL HIGHWAYS AUTHORITY OF INDIA Respondent
Through: **Ms. Kaadambari Puri, Adv.**

CORAM:
HON'BLE MR. JUSTICE C.HARI SHANKAR
O R D E R (O R A L)
08.04.2021

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1. The prayer clause in this petition, under Section 9 of the Arbitration and Conciliation Act, 1996, read as under:

“It is therefore, humbly prayed that this Hon'ble Court may be pleased to. –

- a. Pass an ex-parte ad interim order and confirm the same upon return of notice restraining the Respondent from raising any taking any precipitative or any other coercive action against the Petitioner, till the resolution of the disputes by arbitration;
- b. Pass an ex-parte ad interim order and confirm the same upon return of notice restraining the Respondent from invoking the Performance Bank Guarantee dated 06.07.2019 issued by Yes Bank having reference number 007BG0719187001 for a sum of Rs. 1.5145 Crore (Rupees One Crore Fifty One Lacs and Forty Five Thousand only) valid up to 30.09.2024, till the resolution of the disputes by arbitration;

c. Pass any other further orders as this Hon'ble Court may deem fit and appropriate in the facts and circumstances of the present case.”

2. At the very outset, Ms. Kaadambari Puri, learned counsel for the respondent, NHAI, invited my attention to the most recent communication between the petitioner and the respondent, which took place on 26th March, 2021 (wrongly typed, in the letter, as 26th March, 2020), which read thus:

“Dear Sir,

With reference to your concern the following clarification is offered:-

1. The price variation / escalation as per Contract agreement taking base rate as per original bid scheduled shall be payable.
2. Reasonable claim of additional time period may be given for construction of diversion / service road.
3. As per your letter in para-16 you have requested Authority for declaration of appointed date vide letter dated 26.02.2020 that means up to February-2020 you are agreed to work & as you know in the March-2020 Covid-19 Pandemic stuck & Country went into lockdown with no possibility of carrying out any work, also the above period has been declared as Force Majeure Event by Government. Accordingly, you are requested to carry out the work as per decision held in the meeting in PIU-Surat on 24.03.2021 Authority has agreed for appointed date to be declared in the 1st week of April.

Thanking you,

Yours Sincerely
[Tushar Vyas]
DGM (T) & Project Director
NHAI, PIU-Surat (Expressway)”

3. In view thereof, Ms. Puri submits that this petition is premature, and that the petitioner has rushed to the Court on an unwonted apprehension. She submits that the respondent is interested in the petitioner's continuing and concluding the work. She also points out that there is no whisper of any intent, in this letter, to invoke the bank guarantee furnished by the petitioner, and that, therefore, there is really no cause of action for moving this petition.

4. In view of the statement made by Ms Kaadambari Puri, the present petition is disposed of, noting the above submissions and reserving liberty for the petitioner to re-approach the Court at an appropriate stage, if necessary.

C.HARI SHANKAR, J

APRIL 8, 2021

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