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

*Date of decision: 30<sup>th</sup> May, 2023*

+ **O.M.P.(I) (COMM.) 69/2023 & I.A. Nos. 4381/2023, 4383/2023**

M/S. SIMPLEX INFRASTRUCTURES LIMITED

..... Petitioner

Through: Mr.Raj Shekhar Rao, Sr. Advocate with Ms. Hetu Arora Sethi, Ms. Lalit Mohini Bhat, Mr.Rahul Jain, Mr.Siddharth Agarwal, Mr.Anirudh Bhat and Ms.Prachi Dubey, Advocates.

versus

NATIONAL HIGHWAY AUTHORITY OF INDIA

..... Respondent

Through: Mr.Manish K. Bishnoi and Mr.Nirmal Prasad, Advocates.

**CORAM:**

**HON'BLE MR. JUSTICE NAVIN CHAWLA**  
**NAVIN CHAWLA, J. (ORAL)**

1. This petition has been filed under Section 9 of the Arbitration & Conciliation Act, 1996 (hereinafter referred to as 'the Act') seeking stay on the operation of the Termination Notice dated 27.02.2023 issued by the respondent, terminating the Contract dated 12.04.2018 by which, the respondent had awarded to the petitioner the work of rehabilitation and upgradation to four laning of NH-31D from km 113.200 to km 154.854 (Package-II A) Ghoshpukur-Salsalabari

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Section in the State of West Bengal on Engineering, Procurement and Construction (“EPC”) basis.

2. The petitioner further prays for restraining the respondent from encashing/invoking the Bank Guarantees given under the Contract and also floating any fresh tender to carry/execute the balance work awarded to the petitioner under the above mentioned Contract.

3. The learned senior counsel for the petitioner, placing reliance on Article 4.1.3 read with Article 8.1 and Annexure-II (Schedule-A) of the Contract, submits that the respondent was under an obligation to provide 60 meter Right of Way in 90% of the length along with existing Right of Way in the complete length of the Project by the ‘Appointed Date’, which was 21.01.2019, and the balance 10% within 90 days of the said Appointed Date. He submits that admittedly, the respondent failed to discharge its obligations under the Contract, resulting in a Supplementary Agreement dated 01.04.2021 being executed between the parties. The said Supplementary Agreement records that even on the date of the Supplementary Agreement, only 27.8 kms of length of the land out of total of 41.654 kms was provided by the respondent to the petitioner. The balance 13.854 kms of length was to be provided by June, 2021. The petitioner was also instructed not to deploy any machinery/resources on the stretches without requirement to do so and written confirmation of the Authority Engineer.

4. He submits that in support of the above understanding, as on 31.10.2022, only 37.514 kms of the land was handed over by the

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respondent to the petitioner, and that too only in stretches which made it impossible for the petitioner to carry out the work with expedition. In this regard, he places reliance on a chart that has been handed-over by the learned counsel for the petitioner during the course of submissions.

5. He submits that, therefore, the assertion in the Impugned Termination Notice dated 27.02.2023 of the petitioner having abandoned the Project Site is patently false and the respondent is merely trying to pass the blame on to the petitioner. He submits that the petitioner, without prejudice to all the rights and contentions of the petitioner, is ready & willing to complete the project work and has machinery, material and manpower on the site to complete the work in an expeditious manner.

6. On the other hand, the learned counsel for the respondent, placing reliance on the monthly progress reports, submits that hardly any work is being carried out by the petitioner at the Project Site. He submits that even as per the recommendation of the Authority Engineer, the petitioner was to achieve the Second Project Milestone by 19.12.2022, which has not been achieved till date.

7. He submits that, in fact, for the last few months before the termination, the petitioner had almost abandoned the work site, which is evident from the fact that the work had been progressively decreasing in the months commencing from May, 2022. This has also been relied upon by the respondent in its Termination Notice dated 27.02.2023, in the form of following table :-

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| <i>Months</i> | <i>Cumulative Physical Progress (%)</i> | <i>Physical Progress in the month</i> |
|---------------|-----------------------------------------|---------------------------------------|
| <i>Feb-22</i> | <i>18.364</i>                           | <i>0.714</i>                          |
| <i>Mar-22</i> | <i>19.75</i>                            | <i>1.386</i>                          |
| <i>Apr-22</i> | <i>20.432</i>                           | <i>0.682</i>                          |
| <i>May-22</i> | <i>21.623</i>                           | <i>1.191</i>                          |
| <i>Jun-22</i> | <i>21.864</i>                           | <i>0.241</i>                          |
| <i>Jul-22</i> | <i>22.185</i>                           | <i>0.321</i>                          |
| <i>Aug-22</i> | <i>22.39</i>                            | <i>0.205</i>                          |
| <i>Sep-22</i> | <i>23.045</i>                           | <i>0.655</i>                          |
| <i>Oct-22</i> | <i>24.071</i>                           | <i>1.026</i>                          |
| <i>Nov-22</i> | <i>24.521</i>                           | <i>0.45</i>                           |
| <i>Dec-22</i> | <i>25.101</i>                           | <i>0.58</i>                           |

8. He places reliance on Section 14(d) of the Specific Relief Act, 1963 (hereinafter referred to as “Specific Relief Act”) to submit that the contract being determinable in nature, the same cannot be specifically enforced.

9. Placing reliance on Sections 20A and 41(ha) of the Specific Relief Act he submits that an injunction cannot be granted against the termination of the contract as the Contract in question relates to an infrastructure project and an order of injunction would cause impediment or delay in the progress of completion of such infrastructure project.

10. The learned counsel for the respondent submits that the record

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would reveal that even if the plea of the petitioner is to be accepted, the petitioner would not be in a position to complete the work. He submits that, therefore, no order of injunction can be passed.

11. On the question of invocation of the Bank Guarantees, the learned counsel for the respondent submits that no case within the parameters of the limited scope of jurisdiction on grant of an injunction against the Bank Guarantee has been made out by the petitioner. It is not even pleaded that there is any egregious fraud in issuance of the Bank Guarantees or a case of irretrievable injury being caused to the petitioner. He submits that the Bank Guarantees in question are unconditional in nature and, therefore, invocation thereof cannot be enjoined.

12. I have considered the submissions made by the learned counsels for the parties.

13. Section 20A of the Specific Relief Act is reproduced herein below:-

***“Section 20A. Special provisions for contract relating to infrastructure project-***

*(1) No injunction shall be granted by a court in a suit under this Act involving a contract relating to an infrastructure project specified in the Schedule, where granting injunction would cause impediment or delay in the progress or completion of such infrastructure project.*

*Explanation.-For the purposes of*



*this section, section 20B and clause (ha) of section 41, the expression "infrastructure project" means the category of projects and infrastructure Sub-Sectors specified in the Schedule.*

*(2) The Central Government may, depending upon the requirement for development of infrastructure projects, and if it considers necessary or expedient to do so, by notification in the Official Gazette, amend the Schedule relating to any Category of projects or Infrastructure Sub-Sectors.*

*(3) Every notification issued under this Act by the Central Government shall be laid, as soon as may be after it is issued, before each House of Parliament, while it is in session, for a total period of thirty days which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session immediately following the session or the successive sessions aforesaid, both Houses agree in making any modification in the notification or both Houses agree that the notification should not be made, the notification shall thereafter have effect only in such modified form or be of no effect, as the case may be; so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that notification."*



14. A reading of the above provision would show that an injunction involving the contract relating to an infrastructure project specified in the Schedule to the Specific Relief Act cannot be granted as it may cause impediment or delay in the progress or completion of such infrastructure project. Serial No.1 in the Schedule includes “roads and bridges”. The Contract in question clearly falls within the above entry and, therefore, an order of injunction should not be granted as it would prevent the Respondent Authority from getting the work completed in an expeditious manner.

15. Even otherwise, the respondent has alleged that the petitioner, even for the land that was made available to it, was not carrying out the work with expedition. Though this is denied by the learned senior counsel for the petitioner, it will be a matter of dispute to be adjudicated upon by the learned Arbitrator. For *prima facie* opinion, even the recommendation of the Authority Engineer dated 07.07.2022 records that both the petitioner and the respondent are responsible for the delay in the project. The Authority Engineer had recommended 19.12.2022 as a date for completion of Project Milestone (II). Admittedly, the said milestone was not completed till the date of termination of the agreement. The petitioner has taken a plea that as scattered stretches of land were being handed over by the respondent, the work could not be carried out with expedition. This again is a question to be determined on the parties leading their respective evidence. In case the petitioner is found to be correct in its submissions, the termination of the Contract can be declared as bad in

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law and consequential damages awarded to the petitioner.

16. In view of the above, I find that the petitioner has not been able to make out a ground for grant of an injunction against the termination notice.

17. On the question of invocation of the Bank Guarantee, the law on the subject is now too well-settled and an order of injunction against the Bank Guarantee can be passed only in limited circumstances where the petitioner can show egregious fraud or irretrievable injury (**Refer: Gujarat Maritime Board Vs Larsen and Turbo Infrastructure Development Projects Limited & Anr, (2016) 10 SCC**).

18. In the present case, the Bank Guarantees in question are unconditional in nature, and no case of egregious fraud or irretrievable injury has been made out by the petitioner. Therefore, an order of injunction restraining the respondent from encashing the Bank Guarantees cannot be granted.

19. Accordingly, the *interim* order dated 03.03.2023 is vacated.

20. The present petition is dismissed, leaving it open to the petitioner to agitate all its claims before the learned Arbitral Tribunal that may be constituted in accordance with the Contract between the parties. The parties are directed to act expeditiously towards such appointment.

21. It is further made clear that any and all observations made hereinabove are only *prima facie* in nature and shall not in any manner influence the learned Arbitral Tribunal in the adjudication of the



disputes on merits. All rights & contentions of either parties shall remain open in such proceedings.

**NAVIN CHAWLA, J.**

**MAY 30, 2023**

***neelam/KP/RP***



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