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

+ O.M.P.(I) (COMM.) 1/2024
MANGLOOR HIGHWAYS PRIVATE LIMITED Petitioner

versus

NATIONAL HIGHWAYS AUTHORITY
OF INDIA Respondent

+ O.M.P.(I) (COMM.) 2/2024
MANGLOOR HIGHWAYS PRIVATE LIMITED Petitioner

versus

NATIONAL HIGHWAYS AUTHORITY
OF INDIA Respondent

Appearance:

Mr. Prashanto Chandra Sen, Senior Advocate with Mr. Samiron Borkataky, Mr. Purusharth Singh & Mr. Ikshvaaku Marwah, Advocates for Petitioner-Mangloor Highways Private Limited.

Mr. Santosh Kumar & Mr. Kushagra Aman, Advocates for National Highways Authority of India.

CORAM:

HON'BLE MR. JUSTICE PRATEEK JALAN

ORDER

% **16.01.2024**

1. These two petitions, under Section 9 of the Arbitration and Conciliation Act, 1996 ["the Act"], have been filed by the petitioner for interim measures of protection pending adjudication of disputes between the parties under a Concession Agreement dated 09.05.2018 ["the Contract"].



2. During the course of hearing, it is stated by Mr. Prashanto Chandra Sen, learned Senior Counsel for the petitioner, that the petitioner has already invoked arbitration and nominated Hon'ble Dr. Justice S. Muralidhar, former Chief Justice of Orissa High Court, as its nominee Arbitrator. Mr. Santosh Kumar, learned counsel for NHAI, has also taken instruction and submits that NHAI will nominate its nominee Arbitrator within three days from today. Both parties will also request the learned Arbitral Tribunal for expeditious constitution of the Tribunal.

3. In O.M.P.(I) (COMM.) 1/2024, the petitioner has raised a dispute as to the formula for computation of annuity payments under the Contract. After some hearing, Mr. Sen does not press this relief, without prejudice to the rights and contentions of the petitioner to seek appropriate interim and final reliefs before the learned Arbitral Tribunal.

4. In O.M.P.(I) (COMM.) 2/2024, the petitioner's grievance is against a communication dated 29.12.2023, which deals with both the computation of annuity payments and also seeks to levy damages towards delay in taking up of rectification work by the petitioner. The respondent has directed the Project Director, National Highways Authority of India ["NHAI"] to address the escrow bank for recovery of damages, failing which the Project Director has been directed to take action to recover the amount from annuity payments.

5. Mr. Kumar submits that, until the learned Arbitral Tribunal has had an opportunity to consider the application of the petitioner for interim relief, the respondent will not take steps in terms of paragraph 4 of the communication dated 29.12.2023.

6. Having regard to the above, these petitions are disposed of with the



following directions:

- a. The respondent is at liberty to nominate its Arbitrator to the Arbitral Tribunal within three days from today.
 - b. The parties will request the learned Arbitrator to constitute the Arbitral Tribunal as expeditiously as possible.
 - c. These petitions under Section 9 of the Act will be placed before the learned Arbitral Tribunal as the petitioner's applications under Section 17 of the Act.
 - d. The respondent – NHAI will file its replies to the aforesaid applications within one week after the constitution of the Tribunal.
 - e. The parties will request the learned Tribunal to take up the applications as expeditiously as possible, at least on the question of *ad-interim* relief.
 - f. Until the learned Arbitral Tribunal has had an opportunity to consider the matter in terms of the aforesaid directions, NHAI will not take any further steps pursuant to paragraph 4 of the communication dated 29.12.2023.
7. A copy of this order be given *dasti* under the signature of Court Master.

PRATEEK JALAN, J

JANUARY 16, 2024
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