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

+ **FAO(OS) (COMM) 4/2021 and CM APPL. 982/2021**

NATIONAL HIGHWAYS AUTHORITY
OF INDIA

..... Appellant

Through: Ms Gunjan Sinha Jain and Mr Manu
Bajaj, Advocates.

versus

WEST HARYANA HIGHWAYS PROJECTS
PRIVATE LIMITED & ORS.

..... Respondents

Through: Mr Pradyuman Sewar and Mr
Shashwat Sinha, Advocates for R-2 to
7.

CORAM:

HON'BLE MR. JUSTICE VIBHU BAKHRU

HON'BLE MS. JUSTICE TARA VITASTA GANJU

ORDER

07.03.2024

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1. None appears for respondent no.1.
2. Ms Sinha, learned counsel appearing for the appellant (NHAI) points out that the interim directions no longer survive in view of the express stipulation in paragraph 80(ii) of the impugned order, that if the respondents fail to invoke the arbitration agreement within three months, the directions would not operate.
3. She submits that NHAI is essentially, aggrieved by the interim order staying the operation of the suspension notice/letters dated 27.05.2020 and 28.05.2020 whereby the rights of the respondents were suspended under the Concession Agreement dated 06.11.2007.
4. She submits that the respondents did not invoke the arbitration agreement within the stipulated period after the conciliation had failed in



terms of Clause 44.2 of the Concession Agreement. She states that the respondents have now invoked the arbitration agreement on 11.10.2023.

5. It is clear from the impugned order that the said directions would not be effective, if the respondents fail to invoke the arbitration within the stipulated period of three months from the date of the order dated 07.10.2020. In view of the above, we do not consider it apposite to pass any orders in this appeal as the impugned order dated 07.10.2020 is no longer operative.

6. Insofar as the grievance of NHAI regarding observations made in the stay order dated 04.06.2020 passed by a Coordinate Bench of this Court is concerned, it is trite law that the same would not be binding on the parties in the final adjudication of the disputes. The order under Section 9 of the Arbitration and Conciliation Act, 1996 is in the nature of interim measure of protection. The observations or findings are necessarily to be construed as *prima facie* findings solely for the purposes of grant of interim measures of protection.

7. The appeal is disposed of with the aforesaid observations. The pending application is also disposed of.

VIBHU BAKHRU, J

TARA VITASTA GANJU, J

MARCH 07, 2024
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