$~36

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

\+ O.M.P.(I) (COMM.) 32/2024

HK TOLL ROAD PRIVATE LIMITED ..... Petitioner

Through: Mr. Jayant Mehta, Sr. Advocate with Mr. Aditya Ganju, Mr. Hasan Murtaza, Mr. Sameer Sharma, Mr. Ankit Kr. Sinha, Advocates.

versus

NATIONAL HIGHWAYS AUTHORITY OF INDIA AND ANR. ..... Respondents

Through: Mr. Manish K. Bishnoi, Ms. Illa Haldia Sheel, Mr. Hitesh Lodwal, Advocates.

CORAM:
HON'BLE MR. JUSTICE PRATEEK JALAN

<u>O R D E R</u>

% **25.01.2024**

1. The petitioner has approached this Court for interim measures of protection in anticipation of arbitration proceedings under a Concession Agreement dated 02.07.2010 ["the Agreement"] for six laning of Hosur-Krishnagiri Section of National Highway-7.

2. During the course of hearing, parties have arrived at a consensus by which this petition can be disposed of. Learned counsel for the parties state that the Arbitral Tribunal is on the verge of constitution, with each of them having nominated their respective nominees, and the nominees being at an advanced stage, in the process of appointment of a presiding arbitrator. With the consent of learned counsel for the parties, it is

This is a digitally signed order.
The authenticity of the order can be re-verified from Delhi High Court Order Portal by scanning the QR code shown above.
The Order is downloaded from the DHC Server on 15/06/2024 at 11:31:06

directed that, upon the constitution of the Arbitral Tribunal, the present petition will be treated as an application under Section 17 of the Arbitration and Conciliation Act, 1996 ["the Act"]. Reply to the application will be filed by the respondents within one week from today or immediately upon the Arbitral Tribunal entering into the reference, whichever is earlier.

3. The parties will request the Arbitral Tribunal to take up the application under Section 17 of the Act as expeditiously as possible.

4. The remuneration of the Arbitral Tribunal will be computed in accordance with the Rules of Delhi International Arbitration Centre.

5. Learned counsel for the parties join issue as to the operation of an escrow account operated in terms of the agreement, both on the question of whether the respondent is required to deposit toll revenue collected by it in the said account, and as to the utilisation of the account. They reserve their rights to make appropriate submissions in this regard before the Arbitral Tribunal, but agree that, until the Arbitral Tribunal is in a position to hear the application and to pass an order thereupon, at least for the purposes of *ad-interim* protection, the petitioner will be at liberty to use the amounts lying in the escrow account (Account No.: 1903201010136, IFSC: CNRB0001903, MICR: 400015102 in Canara Bank: 1903, Mumbai, Fort LCB, 400021) only for the purposes of payment of salaries to its employees and servicing the monthly interest component of the debt in respect of this project. Mr. Jayant Mehta, learned Senior Counsel for the petitioner, states that balance in the escrow account as of today is approximately Rs.20 crores, and that expenses on account of these heads amount to approximately Rs.2.5 crores per month

This is a digitally signed order.
The authenticity of the order can be re-verified from Delhi High Court Order Portal by scanning the QR code shown above.
The Order is downloaded from the DHC Server on 15/06/2024 at 11:31:06

(salary), and Rs.5.5 crores per month (interest). It is made clear that the petitioner will render accounts for any withdrawals from the escrow account during this period, and that the expenses should be in line with the expenses under these heads prior to termination.

6. Learned counsel for the parties assure the Court that they will cooperate with the Arbitral Tribunal for expeditious hearing of the application.

7. It is made clear that this order is intended only to put an arrangement in place, which would hold the field until the Arbitral Tribunal passes orders, *ad-interim* or otherwise, on the application under Section 17 of the Act. Parties are free to request the Arbitral Tribunal to continue, vary, modify or vacate this order, as it may consider appropriate.

8. The petition stands disposed of in these terms.

PRATEEK JALAN, J

JANUARY 25, 2024
"Bhupi"/

This is a digitally signed order.
The authenticity of the order can be re-verified from Delhi High Court Order Portal by scanning the QR code shown above.
The Order is downloaded from the DHC Server on 15/06/2024 at 11:31:06