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

+ **O.M.P.(I) (COMM.) 87/2024**

**GURUVAYOOR INFRASTRUCTURE PRIVATE
LIMITED**

..... Petitioner

Through: Mr. Jayant Mehta, Sr. Advocate
with Mr. Arjun Syal, Mr. Shreyan
Das, Mr. Pranay Chitale and Ms.
Smiti Verma, Advocates.

versus

**NATIONAL HIGHWAYS AUTHORITY OF
INDIA**

..... Respondent

Through: Mr. Ankur Mittal, Mr. Ashish
Gajwani, Ms. Shally Singal,
Advocates.

**CORAM:
HON'BLE MR. JUSTICE PRATEEK JALAN**

ORDER

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16.05.2024

I.A. 11167/2024 (for directions)

1. The petitioner has filed this application for clarification of an order dated 21.03.2024, by which its petition under Section 9 of the Arbitration and Conciliation Act, 1996 ["the Act"], was disposed of.
2. The context in which the proceedings under Section 9 of the Act were taken up by this Court, despite the fact that an arbitral tribunal had been constituted, is that a writ petition [W.P (C) 7404/2023] had been filed by the State of Kerala before this Court, against an order of the arbitral tribunal impleading it as a party in the arbitral proceedings. By an

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order of the Supreme Court dated 04.09.2023 in Civil Appeal Nos. 5602-5603 of 2023, proceedings in arbitration were stayed until disposal of the writ petition by this Court.

3. As the arbitral proceedings were thus at a standstill, by order dated 21.03.2024, the Court granted certain interim directions for the petitioner's compliance with its maintenance obligations under the Concession Agreement dated 27.03.2006, and specifically observed as follows:

“7. In view of the above, the petition is disposed of with the following directions:-

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g. These directions are intended to hold field until the arbitral tribunal is in a position to resume proceedings. Either party may thereafter approach the arbitral tribunal for appropriate orders, including for variation, vacation or modification of this order.

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8. Subject to the parties acting in terms of these directions, the respondent will defer any further action consequent upon impugned Cure Period Notices until the matter is taken up by the arbitral tribunal.”

4. This is an application by the petitioner for clarification of the above order, on the contention that the direction therein for survey to be conducted by a team of experts of IIT-Madras, is being misinterpreted by the respondent and IIT-Madras. Mr. Ankur Mittal, learned counsel for the respondent – National Highways Authority of India [“NHAI”], disputes these contentions and submits that the petitioner is, in fact, in breach of its obligations both under the Concession Agreement and the order dated 21.03.2024.

5. Quite apart from this controversy, it is surprising that the petitioner has not disclosed in the application that W.P.(C) 7404/2023 has been



disposed of by this Court, by order dated 24.04.2024, and that, at the instance of the petitioner, the arbitral tribunal has in fact fixed a hearing for 27.05.2024. These facts are brought to the notice of the Court by Mr. Mittal, and are not disputed by Mr. Jayant Mehta, learned Senior Counsel for the petitioner.

6. Having regard to paragraph 7(g) of the order dated 21.03.2024, it is obvious that the disposal of the writ petition and consequent vacation of the stay by the Supreme Court, are matters of significance. Having regard to Section 9(3) of the Act, the Court acts under Section 9 of the Act in an ongoing arbitration only if it is inefficacious for the parties to approach the arbitral tribunal. There is no justification offered for the petitioner's failure to disclose these facts in its application.

7. In view of these circumstances, without prejudice to any rights and remedies that the petitioner may have, Mr. Mehta seeks liberty to withdraw this application,.

8. While permitting the petitioner to withdraw the application, I am of the view that the petitioner is liable to be visited with costs on account of suppression of the facts noted above. The petitioner will deposit costs of Rs.50,000/- with the Delhi High Court Legal Services Committee [*UCO Bank, Delhi High Court, Shershah Road, New Delhi, Account No. 15530110008386, IFSC Code- UCBA0001553*] within 10 days from today.

9. The application is dismissed as withdrawn.

PRATEEK JALAN, J

MAY 16, 2024 SS/