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

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Decision delivered on: 21.02.2024+ **LPA 681/2022 & CM Nos.50927-28/2022****IDBI BANK LIMITED ON BEHALF OF
SENIOR LENDERS**

..... Appellant

Through: Mr Sandeep Sethi, Sr Adv. with Mr
Raunak Dhillon, Ms Riya Kumar, Mr
Sumer Seth, Ms Madhavi Khanna and
Ms Isha Malik, Advs.

versus

NATIONAL HIGHWAYS AUTHORITY OF INDIA.... RespondentThrough: Mr Parag P. Tripathi, Sr Adv. with
Mr Abhay Gupta, Ms Ikshita Parihar
and Ms Mishika Bajpai, Advs.**CORAM:****HON'BLE MR. JUSTICE RAJIV SHAKDHER****HON'BLE MR. JUSTICE AMIT BANSAL****[Physical Hearing/Hybrid Hearing (as per request)]****RAJIV SHAKDHER, J. (ORAL):**

1. This appeal is directed against the interim order dated 01.06.2022 passed by the learned Single Judge in W.P.(C) No. 7806/2022.

1.1 In sum, the appellant had approached the writ court with several pleas which are replicated in the impugned order.

2. Via the impugned order, the learned Single Judge declined to grant relief with regard to prayers made in clause (a) to (e) and (g). Insofar as prayer clause (f) is concerned, the learned Judge had directed counsel for the respondent/NHAI to take further instructions.



2.1 It is not in dispute that the prayers declined by the learned Single Judge concerned issuance of a direction to the respondent/National Highways Authority of India (NHAI) to extend the concession period under concession agreement [CA] dated 06.06.2008.

3. Mr Sandeep Sethi, learned senior counsel, who appears on behalf of the appellant, says that even while the learned Single Judge held that the concession agreement was a “cohesive, composite and interlinked repository of the bargain between the disputants”, he has ended up compromising the rights of the appellant as is evident upon perusal of the observations made in paragraphs 13 to 17 of the impugned judgment.

4. According to Mr Sethi, there are several rights which flow in favour of the appellant by virtue of substitution agreement [SA] dated 12.02.2009, escrow agreement [EA] dated 12.02.2009, restated facility agreement [FA] dated 18.06.2009 and the supplementary agreement [SPA] dated 20.12.2013.

5. Only the respondent/NHAI and the concessionaire, i.e., Pink City Expressway Private Limited [in short, “Pink City”] are parties to the CA and SPA.

6. Insofar as the SA is concerned, it is executed amongst Pink City, respondent/NHAI and the appellant (acting for and on behalf of the Senior lenders). The EA was executed amongst Pink City, the appellant, the escrow bank and respondent/NHAI. The restated facility agreement has been entered into between Pink City, the senior lenders and India Infrastructure Finance Company Limited.

7. Mr Sethi has taken us through various clauses of the agreements, referred to hereinabove including the CA, in an attempt to establish that the appellant had, in fact, a right to call upon the respondent no. 1/NHAI to



extend the concession agreement.

7.1 It is also Mr Sethi's contention that the appellant had a right to substitute the concessionaire.

8. On the other hand, Mr Parag Tripathi, learned senior counsel, who appears on behalf of the respondent, says that no such right vested in the appellant.

8.1 Mr Tripathi has brought to the fore an aspect, which is not in dispute, that respondent/NHAI has infused Rs. 352 crores into the subject project *via* the One Time Fund Infusion Scheme [Scheme].

8.2 It is Mr Tripathi's contention that the principal sum alone is Rs. 321 crores and nothing has been repaid to respondent/NHAI.

9. We may note that the original total project cost was estimated at Rs. 3,009/- crores.

9.1 It is the appellant's claim that it provided approximately Rs.1876.37 crores for the project of which Rs.1297 crores remains outstanding as on 02.06.2022, exclusive of penal interest, charges, and costs, etc.

10. The record shows that the project involved augmentation of the existing four lane road spanning between km 42.70 to km 273 (approximately 225.60 km), on the Gurgaon – Kotputli – Jaipur section of National Highway No. 8, in the State of Haryana and Rajasthan [“carriageway”].

11. The concessionaire was required to widen the carriageway to six (6) lanes, *albeit*, on a built, operate and transfer model.

12. As things stand today, disputes have erupted not only between the appellant and the respondent/NHAI but also between the respondent/NHAI and Pink City.



13. What we are required to rule upon is whether the learned Single Judge's conclusion that the reliefs (a) to (e) and (g) are not tenable in law or on facts, call for interference.

14. Mr Sethi submits that the learned Single Judge's order calls for interdiction as the concession period and the toll collectible was the only security available to the appellant to recover its dues.

15. Mr Tripathi, on the other hand, submits that the appellant did not have a right to seek an extension of the concession period neither under the CA nor the other agreements referred to hereinabove.

16. We have heard learned counsel for the parties and perused the record.

17. The learned Single Judge, while declining the prayers made in the writ petition, whereby, a writ mandamus was sought for extending the concession period has, *inter alia*, made the following observations:

*"16. ... **While senior lenders may have other remedies for redressal of an asserted loss on account of the action of NHAI, the Court in the present cause is concerned only with the question of whether a writ would issue based upon the express terms of the Concession Agreement.** That question, for reasons aforementioned, must necessarily be answered in the negative. This Court is of the considered opinion that for sustaining the instant writ petition, it was imperative for the petitioners to have established that the agreements conferred a positive right upon them to seek extension of the Concession Agreement. The right to seek extension of that period flowing from Articles 29, 34 and 35 stands invested in the Concessionaire alone. Absent such a clause or conferment of a corresponding right in the lenders, the Court is left with no option but to hold that they cannot seek issuance of a writ for extension of the concession period."*

[Emphasis is ours]

18. In our view, it is not as if the learned Single Judge has emasculated the appellant of its rights under the aforementioned agreements, which include the CA.



18.1 In our view, all that the learned Single Judge has said is that the Court cannot issue a writ to respondent/NHAI to extend the CA at the behest of the appellant since it is not a party to the CA.

19. The record shows that the interim extension was granted by the respondent/NHAI for 14 months *via* communication dated 08.12.2020 addressed to the Pink City. The extension of 14-months came to an end on 02.06.2022.

20. The record also shows that even though both the independent engineer and the project director had recommended extension of concession period by 28 months and 24 days (which would have expired on 26.08.2023), it did not receive the approval of the respondent's/NHAI's board.

21. In our view, no interference is called for with the impugned order. Firstly, for the reason that the appellant is not party to the CA. Secondly, the interim extension granted by the respondent/NHAI expired as far back as on 02.06.2022. As to whether the appellant can gain any mileage from the recommendation made by the Independent Engineer and the Project Director concerning extension of the concession period which, if it had received the approval of the respondent's/NHAI's Board, would have expired on 26.08.2023, maybe an aspect which could, possibly, be agitated before an appropriate forum. That said, if the appellant wishes to ventilate its grievance before an appropriate forum by way of a remedy provided under the aforementioned agreements obtaining between the parties, it would be open to it to do so. The respondent/NHAI, in that situation, will, naturally, have all defences available to it.



22. We make it clear that we have not ruled on the merits of the rights and contentions of the disputants flowing from the aforementioned agreements.
23. This appeal is disposed of in the aforesaid terms.
24. Consequently, the pending applications shall stand closed.

RAJIV SHAKDHER, J

AMIT BANSAL, J

FEBRUARY 21, 2024

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