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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ W.P.(C) 11664/2024 & CM APPL. 48456/2024, CM APPL.
48457/2024, CM APPL. 48458/2024
IRB INFRASTRUCTURE TRUSTPetitioner

Through: Mr. Saurabh Kirpal, Senior Advocate
with Mr. Karan Bharihore, Mr.
Anirudh Bakhru, Ms. Devika Mohan,
Mr. Sarthak Sahdev, Ms. Charu
Shriyam Singh, Mr. Pragya Gautam
and Mr. Prabhav Bahuguna,
Advocates.

versus
NATIONAL HIGHWAYS AUTHORITY OF INDIA

.....Respondent
Through: Mr. Ankur Mittal, Mr. Abhay Gupta,
Ms. Ikshita Parihan and Mr. Ashish
Gagwani, Advocates.

CORAM:
HON'BLE MR. JUSTICE SANJEEV NARULA

ORDER
27.08.2024

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1. Respondent issued a letter of award dated 31st July, 2012 to the successful bidder– IRB Infrastructure Developers Limited for the project of Four laning of the Goa/ Karnataka Border - Kundapur Section NH-66 (formerly NH-17) under NHDP Phase-IV on a Design, Build, Finance, Operate Transfer ('DBFOT') Toll Basis. Pursuant thereto, the Concessionaire– IRB Westcoast Tollway Private Limited was incorporated and a Concession Agreement dated 25th March, 2023 was entered into between the Respondent and the Concessionaire, wherein under Schedule B, the Concessionaire was required to repair and rehabilitate an old two-lane Kali River Bridge at Km 102/500 (Bridge No 103/1). Unfortunately, in the



early morning of 7th August, 2024, three spans of the Kali Bridge collapsed.

2. In this regard, two Show Cause Notices¹ were issued by Respondent to the Concessionaire leading to order dated 19th August, 2024, passed by the competent authority of Respondent whereby the Concessionaire has been temporarily suspended/debarred/blacklisted from participating in ongoing/ any future tenders for one month or till the completion of investigation by the Expert Committee of the Respondent, whichever is later, in accordance with Policy Guideline Circular dated 16th November, 2021 issued by the Respondent.

3. In the above background, the Petitioner, who is the beneficial owner of 99.99% of equity shares of the Concessionaire company, held by IDBI Trusteeship Services Limited, has approached this Court seeking directions to be issued to the Respondent not to take any adverse action of suspension/ debarment/ disqualification against the Petitioner due to SCN against the Concessionaire. This apprehension stems from the Policy Guideline Circular dated 16th November, 2021, which in Paragraph 8 states as follows:

*“8. Upon declaration of non-performer/debarred, the contractor/concessionaire will not be able to participate in any bid with MoRTH or its executing agency till such time the contractor/concessionaire is removed from the list of non-performers or the debarment persists. **The contractor/concessionaire shall include its JV partners, promoters etc. whose credentials were considered while qualifying them for the project.** Non-performer/ debarment status of a bidder on the bid due date will be the criteria for eligibility of a bidder to participate in the said bid”*

[Emphasis added]

4. The Petitioner contends that since they are the promoters of the Concessionaire, they are apprehensive that the Respondent would not allow



them to submit a bid for consideration on merits in respect of another tender floated by the Respondents being - Tender ID 2023_NHAI_179801_1 for TOT Bundle-16 for project comprising “Tolling, Operation, Maintenance And Transfer of Hyderabad Nagpur Corridor of NH-44 on Toll Operate Transfer (TOT) Mode” or/and any other highway project.

5. On the above issue, Mr. Ankur Mittal, counsel for Respondent had sought some time to receive instructions and today, on the basis thereof, he states that Petitioners will be allowed to submit their bid in the abovementioned tender and the same shall be considered on its own merits, as per the tender documents and applicable policies.

6. In light of the above, the primary grievance of the Petitioner stands redressed and the present writ petition is disposed of taking on record the statement made by Mr. Mittal and binding the Respondent to the same.

7. It is made clear that the bid would be evaluated on its own merit and as per the tender documents and applicable policies. In case the decision to award the said tender is adverse to Petitioner’s interest, they shall be free to take appropriate recourse, in accordance with law and as per the applicable policies. The Court has not taken made any comment on the merits of the case. All rights and contentions of the parties are left open.

8. Disposed of, along with pending applications.

SANJEEV NARULA, J

AUGUST 27, 2024
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¹ “SCN”