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

+ W.P.(C) 11717/2024 & CM APPL. 48723/2024, CM APPL.
48724/2024

RISHIRAJ SINGH

.....Petitioner

Through: Mr. Parmod Kalirana, Mr. Manish
Choudhary and Ms. Amiya Vaid,
Advocates.

versus

NATIONAL HIGHWAYS AUTHORITY OF INDIA AND ORS

.....Respondents

Through: Mr. Santosh Kumar, Standing
Counsel.

CORAM:

HON'BLE MR. JUSTICE SANJEEV NARULA

ORDER

27.08.2024

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1. The present petition seeks to direct the Respondents to a) consider Petitioner's representation dated 27th July, 2024 and b) grant *force majeure* relief to the Petitioner as per Clause 25 of contract dated 04th September, 2023,¹ executed between the Petitioner and Respondent No. 1/ National Highways Authority of India.²

2. On 14th July, 2023, Respondent No. 1 issued a Request for Proposal for engagement of user fee collection agency for Pasyih fee plaza located at km 74.000 for the section from km 69.200 to km 108.200 (Jowai Meghalaya

¹ "the Contract"

² "NHAI"



Section) of NH-44 in the state of Meghalaya and upkeep/maintenance of adjacent toilet blocks, including recouping the consumable items.

3. The Petitioner emerged as the highest bidder and accordingly, was awarded the work through Contract dated 04th September, 2023, for a period of one year with an agreed annual remittance of INR 11,42,51,000/- by the Petitioner to the Respondents. According to the Petitioner, they took all steps to execute the work smoothly in consonance with the provisions of the Request for Proposal and the Contract, and remitted the agreed amount to the Respondents without fail.

4. It is asserted that in May, 2024, the State of Meghalaya witnessed unprecedented rainfall, resulting in extreme weather conditions including landslides and floods, which resulted in loss of lives and damage to infrastructure facilities, thus affecting the day-to-day lives of residents and inhabitants. Due to these weather conditions, the road network, including National Highway sections over which the Pasyih User Fee Plaza is located, was severely damaged and affected. Further, the road connectivity was also affected on account of floods and landslides, and NH-6 was also severely damaged. To support this contention, reliance is placed on order dated 08th July, 2024 passed by the High Court of Meghalaya in Public Interest Litigation (PIL) No. 11/2022,³ as well as newspaper reports and government press releases, which has covered the floods and landslides.

5. According to the Petitioner, the afore-noted events and severe weather conditions have the effect of triggering Clause 25 of the Contract, which is

³ Titled '*Kynjaimon Amse v. National Highways Authority of India (NHAI) & Ors.*'



the *force majeure* clause. In such circumstances, the Petitioner started corresponding with the Respondents through various communications commencing from 31st May, 2024, followed by several other letters in June and July, 2024. A detailed representation was submitted on 27th July, 2024, which has still not been responded to. However, since no response was received from the Respondents within the prescribed time period, the Petitioner, through communication dated 05th August, 2024, invoked Clause 25(c)(iii) of the Contract and issued notice of termination of the same. This was also followed up by another representation dated 21st August, 2024, calling upon the Respondent to decide the *force majeure* claims.

6. It is contended that the Respondents have not considered or addressed the Petitioner's invocation of the *force majeure* clause. In fact, on the other hand, the Respondents issued communication dated 19th August, 2024, directing the Petitioner to pay the outstanding remittance amount of INR 13,22,446/-. In the above background, Petitioner has approached the Court through the instant petition.

7. At the outset, counsel for Petitioner states, on instructions, that he is confining the reliefs sought in the present petition to only seeking directions for the Respondents to consider and decide their representation dated 27th July, 2024.

8. Mr. Santosh Kumar, Standing Counsel representing Respondents, denies all the allegations made in the present petition and argues that in view of an alternate dispute resolution mechanism of arbitration provided in the Contract where disputes such as the one at hand can be adjudicated, the present petition is not maintainable. Nonetheless, he states that insofar as the



decision on the representation dated 27th July, 2024 is concerned, the same shall be taken within one week from today. This statement is taken on record.

9. In light of the statement made by Mr. Kumar, the present petition is disposed of with a direction to the Respondents to take a decision on the Petitioner's representation dated 27th July, 2024 by passing a speaking order within seven days from today, which shall be communicated to Petitioner.

10. It is clarified that the Court has not expressed any opinion on the merits of the case. All rights and contentions of parties are left open. In case the decision is adverse in nature, Petitioner shall be entitled to take recourse to appropriate remedies against the same as available to them, in accordance with law.

11. With the above directions, the present petition is disposed of, along with pending applications.

SANJEEV NARULA, J

AUGUST 27, 2024

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