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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **O.M.P.(I) (COMM.) 361/2024**
SOLAPUR TOLLWAYS PRIVATE LIMITED

.....Petitioner

Through: Mr. Darpan Wadhwa, Sr. Adv with
Ms. Smiti Verma, Adv.

versus

NATIONAL HIGHWAYS AUTHORITY OF INDIA & ANR.

.....Respondent

Through: Mr. Manish Bishnoi, Mr. Anish
Chawla, Mr. Abhishek K Mishra, Mr. Khubaib,
Advs.

CORAM:
HON'BLE MR. JUSTICE JASMEET SINGH

ORDER
23.10.2024

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I.A. 42829/2024-EX.

1. Exemption is granted subject to all just exceptions.
2. The applicant shall file legible and clearer copies of exempted documents, compliant with practice rules before the next date of hearing.
3. The application is disposed of.

O.M.P.(I) (COMM.) 361/2024

4. This is a petition filed under Section 9 of the Arbitration and Conciliation Act, 1996 seeking the following prayers:-

“a. Pass an order restraining the Respondent No. 1 from coercing the Petitioner on undertaking any action in furtherance of Concession Agreement dated 29.02.2012 and/or direct the



Respondent No. 1 ensure the continued operations and maintenance of the Project Highway in the interest of the Public;

b. Pass an order directing the Respondent No. 1 to deposit an amount of Rs. 1455.60 crores towards the termination payment due and payable to the Petitioner in terms of Clause 37.3.2 of the Concessionaire Agreement dated 29.02.2012 with the Registry of this Hon'ble Court and moreover also direct the Respondent No. 2 to ensure that all future toll collections are remitted directly to the account of the Respondent No. 1;

c. Pass an order directing the Respondent No. 1 to independently engage with Ashmi Road Careers Private Limited for the purpose of tolling operations and road management.

d. Pass an order restraining the Respondent No. 1 from operating the Escrow Account and utilizing the amounts lying in the Escrow Account.

.....”

5. Mr. Wadhwa, learned senior counsel for the petitioner, on instructions, only presses prayer 'a'. He states that since the Concessionaire Agreement dated 29.02.2012 has been terminated by the petitioner on 19.07.2024, the petitioner is under no obligation and will not undertake any further action as demanded/requested by the respondent No.1.
6. Mr. Bishnoi, learned Standing Counsel for the respondent No.1, who appears on advance notice, states that the prayer itself is misconceived and the petitioner is in financial default *vis-à-vis* its lenders and hence, is seeking to deprive the lenders of their valuable rights of substitution. The same is disputed by Mr. Wadhwa, learned senior counsel.
7. Be that as it may, prayer 'a' as sought cannot be a subject matter of



Section 9 petition as under Section 9, the Court is only required to preserve the subject matter of the arbitral dispute.

8. The rights and obligations of the parties under the Concessionaire Agreement dated 29.02.2012 and/or the termination dated 19.07.2024, as well as the respective statements made by the learned counsels for the parties, as well as all other prayers, which pressed, will be adjudicated by the learned Arbitrator as and when appointed.
9. The petition is disposed of in the aforesaid terms.

JASMEET SINGH, J

OCTOBER 23, 2024 / (MS)

Click here to check corrigendum, if any