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

+ **O.M.P.(I) (COMM.) 15/2025, CAV 23/2025**

KHALGHAT SENDHWA TOLLWAYS PVT LTDPetitioner

Through: Mr. Jayant Mehta, Sr. Advocate along
with Mr. Samar Kachwaha, Ms. Tara
Shahani, Ms. Akanksha Mohan, Ms.
Bhavana Chandak, Mr. Pratyush
Khanna, Mr. Aakshat Khetarpal,
Advocates.

versus

NATIONAL HIGHWAYS AUTHORITY OF INDIARespondent

Through: Mr. Manish K Bishnoi, Mr. Khubaib
Shakeel, Advocates.

CORAM:

HON'BLE MR. JUSTICE ANISH DAYAL

ORDER

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17.01.2025

I.A. 1017/2025 (Exemption)

1. The application for exemption is allowed, subject to the plaintiff granting inspection of the certified copies/original documents filed, as and when required to do so, or filing the original documents at the stage of admission/denial.

2. The application stands disposed of.

O.M.P.(I) (COMM.) 15/2025

1. After obtaining instructions, petitioner has decided to nominate *Hon'ble Mr. Justice Sanjay Kishan Kaul (Retd.)* as its nominee arbitrator.



2. After obtaining instructions, respondent/NHAI has decided to nominate *Hon'ble Mr. Justice Mukeshkumar Rasikbhai Shah (Retd.)* as its nominee arbitrator.

3. Both parties agree that the two nominated arbitrators shall jointly appoint the Presiding Arbitrator and the arbitration shall be an *ad-hoc* arbitration.

4. With the consent of the parties, purely as an interim arrangement, till such time the arbitral tribunal decides the Section 17 Arbitration and Conciliation Act 1996 ('A&CA') Application, the following arrangement is agreed to:

i. *The petitioner agrees, that without prejudice to its legal rights and contentions, with effect from 28th January 2025, it shall commence making further payment of premium of 25% of the realisable fee, over and above the premium of 16.11% being currently paid by it. The said payments to NHAI shall be subject to and shall abide by further orders which may be passed by the Arbitral Tribunal.*

ii. *In view of the aforesaid, the respondent shall not takeover the Toll Plaza on 28th January 2025, as stated in its communication dated 17th December 2024. This is again without prejudice to the respondent's legal rights and contentions, including its contention that the petitioner has lost its right to avail the benefit under the proviso to clause 29.2.2 of the Concession Agreement. The respondent shall be at liberty to seek relief with regard to taking over of the Toll Plaza in terms of its communication dated 17th December 2024, by moving an appropriate application for*



modification of this interim arrangement, before the Arbitral Tribunal, to be decided along with the Section 17 A&CA application.

iii. The present Section 9 A&CA Petition shall stand referred to the Arbitral Tribunal, as a Section 17 A&CA application, to be adjudicated upon in accordance with law. Parties are at liberty to file any further application before the Arbitral Tribunal, to seek further interim relief(s), or to seek any modification of the present interim directions. All pleas and contentions of both the parties are left open to be considered by the Arbitral Tribunal.

iv. Insofar as disbursements from the Escrow Account are concerned, the present arrangement would continue, subject to further orders to be passed by the Arbitral Tribunal in the Section 17 A&CA applications.

v. In the event, constitution of the Arbitral Tribunal is delayed, the parties shall be at liberty to approach this Court again, by way of an appropriate application.

3. This order shall not prejudice the rights of the parties to attempt conciliation under the Concession Agreement or through the CCIE, if both parties so desire.

4. Accordingly, the petition is disposed of, with pending applications rendered infructuous.

5. Order be uploaded on the website of this Court.

ANISH DAYAL, J

JANUARY 17, 2025/ak