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

\+ O.M.P.(I) (COMM.) 180/2025

PALGHAR ROAD PROJECT PRIVATE LIMITED .....Petitioner

Through: Mr. Aayush Agarwala, Mr. Siddhanth Jaiswal, Mr. Rahul Kumar Yadav, Advs.

versus

THE STATE OF MAHARASHTRA .....Respondent

Through: Mr. Anirudh Deshmukh, Adv.

CORAM:
HON'BLE MR. JUSTICE JASMEET SINGH

<u>O R D E R</u>

% **28.05.2025**

1. This is a petition filed under Section 9 of the Arbitration and Conciliation Act, 1996, seeking the following interim reliefs:

> "*A. RESTRAIN the Respondent from making any recoveries from the Annuity payments due to the Petitioner as per the All India CPI Index.*
>
> *B. Direct the Respondent to release the full and final amount towards the 6th Annuity payment calculated as per the All India CPI Index.*
>
> *C. The Respondent be directed not to withhold the 6th Annuity payment and to timely release the Annuity amounts due to the Petitioner.*
>
> *D. That the Respondent be directed to make annuity payments in terms of the All India Index which was the basis for making the first five annuity payments.*
>
> *E. RESTRAIN the Respondent from acting upon and stay the letter dated 31.01.2025.*"

2. In the present case, it is the allegation of the petitioner that the

respondent has unilaterally changed the annuity basis from All India Consumer Price Index ("AICPI") to Consumer Price Index (IW) basis for the Mumbai region, which is against the terms of the Concession Agreement dated 08.08.2018.

3. Additionally, for 5 earlier years, the annuity payment was made by the respondent based on the AICPI.

4. According to the petitioner, the change for the 6th annuity payment has been made unilaterally and as per the new formula sought to be enforced by the respondent.

5. When the matter came up on 16.05.2025, a notice was issued to the respondent and Mr. Anirudh Deshmukh appears for the respondent, PWD, State of Maharashtra and is instructed by Superintendent Engineer, PWD.

6. He states that in terms of the arbitration clause, being Clause 38.3 of the Concession Agreement, the respondent has already appointed an Arbitrator and the petitioner may also appoint another Arbitrator and thereafter, the Arbitral Tribunal in terms of the agreement can adjudicate the issues in controversy.

7. The apprehension of the petitioner is only regarding the arrears of 5 annuity payments made sought to be recovered by the respondent.

8. In the present case, *prima facie* it seems that no reason has been assigned as to the basis on which the index was changed from AICPI, especially in view of the fact that for 5 years, annuity payment was based as per AICPI.

9. Learned counsel for the respondent states that the first 5 payments were for CAPEX and the 6th one was after commercial operation and hence,

the change.

10. The issues as raised by the parties are to be decided through the agreed mechanism of arbitration. However, under Section 9 of the Arbitration and Conciliation Act, 1996, the Court is required to preserve the subject matter of the arbitral dispute.

11. I am of the view that the balance of convenience lies in the favour of the petitioner. If interim orders are not passed, irreparable damage and injury would be caused to the petitioner.

12. For the said reasons, till the Arbitral Tribunal takes a view in the matter, the respondent shall not deduct the alleged excess payment from the bi-annual payments to be made to the petitioner.

13. In the meanwhile, the respondent shall continue to make payments as per their own calculations without making any deductions from the payments made in 5 annuity payments.

14. The same would be accepted by the petitioner without prejudice to its rights and contentions as will be raised in the arbitration.

15. Mr. Anirudh Deshmukh, learned counsel for the respondent, shall file his *vakalatnama*.

16. With these directions, the petition is disposed of.

JASMEET SINGH, J

MAY 28, 2025/DM

<u>*Click here to check corrigendum, if any*</u>