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

+ **W.P.(C) 3668/2020 & CM APPLs. 13115-17/2020**

SKYLARK INFRA ENGINEERING PVT LTD Petitioner

Through: Mr. Sandeep Sethi, Senior Advocate with Mr. Krishna Vijay Singh, Mr. Manish Dembla, Mr. Nachiketa Goyal and Mr. Pradyuman Sewar, Advocates.

versus

NATIONAL HIGHWAYS AUTHORITY OF INDIA
& ANR

..... Respondents

Through: Mr. Tushar Mehta, SGI with Mr. Narender Hooda, Senior Advocate, Mr. Tavinder Sidhu, Ms. Padma Priya, Ms. Neetika Sharma, Advocates, Mr. Akhilesh Shrivastava, CGM (CO) NHAI and Mr. Ajay Mishra, GM (CO) NHAI for R-1. Mr. Dev P. Bhardwaj, CGSC for UOI.

CORAM:
JUSTICE PRATHIBA M. SINGH

ORDER

% **22.06.2020**

1. This hearing has been held through video conferencing.
2. The Petitioner, Skylark Infra Engineering Pvt. Ltd., has filed the present writ petition against the National Highways Authority of India (*hereinafter*, "NHAI") as also the Ministry of Road Transport & Highways (*hereinafter*, "MORTH") seeking various reliefs.
3. The Petitioner runs toll plazas across the country and has entered into various contracts with NHAI. It is the Petitioner's case that the lockdown on

account of COVID-19, which came into effect from March, 2020, has affected the toll collections as also the payments to NHAI. The gravamen of the dispute is that in respect of the contracts relating to the toll plaza in Assam and Meghalaya, the Petitioner has been threatened that performance bank guarantees will be encashed and cash performance security forfeited to the tune of approximately Rs.9.44 crores.

4. The submission of Mr. Sandeep Sethi, Id. Senior counsel appearing for the Petitioner, is that MORTH had on 18th May, 2020 given broad guidelines to NHAI as to the manner in which toll plaza operators ought to be given relief during the lockdown period. He relies upon the circular dated 18th May, 2020. His submission is that in response to the 18th May, 2020 directive, the Petitioner had made a representation and accordingly, a revised directive was issued by MORTH on 3rd June, 2020. According to Ld. Sr Counsel the directives are not being followed by NHAI and the invocation of the bank guarantees and forfeiture of the cash performance security is contrary to the letter and spirit of the said directives.

5. Mr. Tushar Mehta, Id. Solicitor General and Mr. Narender Hooda, Id. Senior counsel representing NHAI, submit that NHAI, at least insofar as the toll plaza in Assam and Meghalaya is concerned, has taken a decision on 5th June, 2020 as to the extent of benefit to be given to the Petitioner. It is submitted that the said decision would be placed on record and the matter may be heard thereafter.

6. Mr. Dev P. Bhardwaj, Id. counsel appearing for MORTH, seeks time to take instructions as to the manner in which the directive of 3rd June, 2020 is to be implemented by NHAI.

7. There are various questions that have arisen in this petition including

in respect of maintainability and joining of reliefs relating to various contracts together. Before going into the same, let NHAI place on record the decision dated 5th June, 2020. MORTH to also instruct its counsel and take a stand in respect of the directives dated 18th May, 2020 and 3rd June, 2020. In the meantime, *status quo* shall be maintained in respect of the bank guarantees and other securities. However, the Petitioner shall continue to deposit all the toll collected at the various toll plazas with NHAI, after deducting the retention amount as per the respective contracts.

8. An urgency is expressed as the toll agreement in respect of Assam and Meghalaya is stated to be coming to end on 5th July, 2020. Accordingly, a short date is prayed for. Mr. Sandeep Sethi, Id. Senior counsel, submits that the contract has been extended till August. In any event, list this matter on 2nd July, 2020.

PRATHIBA M. SINGH, J.

JUNE 22, 2020/dj/T