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(2023) 05 DEL CK 0212

In the Delhi High Court

Case No : First Appeal From Order (OS) (COMM) No. 114 Of 2023, Civil Miscellaneous Application No. 28707, 28716, 29463-29464, 29625 Of 2023

Roadway Solutions India Infra Limited — APPELLANT

Vs

National Highway Authority Of India — RESPONDENT

Date of Decision : 29-05-2023

Acts Referred:
Arbitration and Conciliation Act, 1996 — Section 17

Citation : (2023) 05 DEL CK 0212

Hon'ble Judges : Suresh Kumar Kait, J;Neena Bansal Krishna, J

Bench : Division Bench

Advocate : Rajiv Nayar, Samir Malik, Saurabh Seth, Prachi Garg, Sandeep Sharma, Varun Kalra, Krishan Kumar, Parag P. Tripahti, Ankur Mittal, Abhay Gupta, Raushal Kumar, Vasundhara Bakhru

Final Decision : Disposed Of

Judgement

1. Vide this appeal, the appellant is praying as under:

"(a) Set aside the Order and judgment dated 24.05.2023 passed by this Hon'ble Court in OMP (I) (COMM) 41 of 2023.

(b) Pass an order staying the operation and effect of the Notice dated 31.01.2023 of intent to terminate the Contract issued by the Respondent to the Appellant, and restrain the Respondent from acting upon the said notice pending the completion of the dispute resolution process set out in Clause 67 of Conditions of Particular Application in the Contract;

(c) Set aside the Notice dated 31.01.2023 of intent to terminate the Contract issued by the Respondent to the Appellant;

(d) Direct the Respondent to maintain status quo with respect to the Performance Security Bank Guarantee dated 27.06.2022 and Additional Performance Security Bank Guarantee dated 27.06.2022, pending determination

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of subject matter of dispute between the parties in accordance with the terms of the Contract;

(e) Pending hearing and disposal of this Appeal, to pass an Order staying the effect and operation of the Order and Judgment dated 24.05.2023 passed by this Hon'ble Court in OMP (I) (COMM) 41 of 2023;”

2. After hearing learned counsel for parties in brief, it is not in dispute that the Tribunal has been constituted on 22.04.2023.

3. Learned Senior Counsel for respondent has informed this Court that earlier the last date for submission of bid for new tender for the project in question was 31.05.2023 which is likely to be extended to 05.06.2023 and it normally takes a week thereafter to finalise the successful bidder.

4. Accordingly, without expressing any opinion on the merits of the case, we hereby dispose of present appeal by giving liberty to the appellant to file a petition under Section 17 of the Arbitration and Conciliation Act, 1996 including challenging termination of Contract of appellant, the issue of participation in the bid in question and the bank guarantee.

5. Till the appellant approaches the Tribunal and first sitting of the Tribunal takes place in the petition to be preferred by the appellant herein, the respondent shall not encash the bank guarantee.

6. Needless to say, respondent is at liberty to take all the challenges including the maintainability of the claim before the Tribunal.

7. Pending applications also stand disposed of.

Copy of this order be given dasti under signatures of Court Master.

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