$~1 (original side)

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

\+ O.M.P.(COMM) 433/2020 & I.A. 4775/2020, I.A. 4776/2020

GMR POCHANPALLI EXPRESSWAY LTD. ..... Petitioner

Through: Mr. Manoj K. Singh, Mr. Vijay K. Singh and Mr. Vishal Gera, Advs.

versus

NATIONAL HIGHWAY AUTHORITY OF INDIA .... Respondent

Through: Mr. Ankur Mittal, Mr. Abhay Gupta and Ms. Aishwarya Pandey, Advs.

CORAM
HON'BLE MR. JUSTICE C. HARI SHANKAR

ORDER (ORAL)

% 01.07.2020

(video-conferencing)

O.M.P.(COMM) 433/2020 & I.A. 4775/2020 *(for stay)*

1. This petition, under Section 34 of the Arbitration & Conciliation Act, 1996 (hereinafter referred to as "the 1996 Act") challenges an award, dated 14th January, 2020, passed by the learned Arbitral Tribunal, to the extent of paras 160(I) and 160(VI) thereof. Consequently, the petition prays that claim numbers (i), (iii) and (iv), as preferred by the petitioner, before the learned Tribunal, be allowed.

2. These proceedings emanate from a Concession Agreement, dated 31st March, 2006, between the applicant and the respondent,

whereby the applicant was awarded a contract for maintenance of the National Highway Project concerning 4-laning of the Adloor Yellareddy-Gundla Pochanpali section of NH-7 spanning a total distance of 412 kms. The contract was on Build Operate and Transfer (BOT) Annuity basis. The appointed date was stipulated as 26th September, 2006, and the construction period was of 30 months. Provisional completion certificate was issued, to the applicant, by the respondent, on 26th March, 2009 and final completion certificate was issued on 25th July, 2009.

3. According to the terms of the Concession Agreement, annuity of ₹ 54.18 crores was payable to the petitioner, every 6 months, for the period from 24th September, 2009 to 25th September, 2026, as per Schedule G thereto.

4. The agreement also stipulated that a Pavement Riding Quality Test would be conducted every year jointly by the parties, under the supervision of an Independent Consultant. It appears that the conducting of the aforesaid riding quality test was to assess the surface roughness index of the highway. I am informed that the upper coat of the road is also referred, alternatively as the "pavement". Admittedly, the surface roughness index of the pavement has, throughout, been less than 2000 mm/km.

5. At this point, it would be appropriate to refer to certain clauses of the Concession Agreement, to which Mr. Manoj Kumar Singh, learned Counsel for the petitioner, drew my attention:

(i) Clause 1.2 of the Concession Agreement sets out certain general principles for interpretation thereof, and sub-clause (k) thereof reads thus:

> "(k) the Schedules to this Agreement form an integral part of this Agreement and will be in full force and effect as though they were expressly set out in the body of this Agreement;

(ii) Clause 1.4.2 of the Agreement, specifically sub-clause (iv) thereof, reads thus :

> "**1.4.2** In case of ambiguities or discrepancies within this Agreement the following shall apply:
>
> xxx
>
> (iv) Between the written description on the Drawings ,and the Specifications and Standards, the latter shall prevail;"

(iii) Chapter II of the Agreement sets out the scope of the project, and Clause 2.1 thereof reads thus :

> "2.1 The Project shall be executed on the Site; which is described in Schedule 'A' of this Agreement. The scope of the Project shall include performance and execution by the Concessionaire of all design, engineering, financing. procurement, construction, completion, operation and maintenance of the Project Highway as described in Schedule 'B' and Schedule 'C' of this Agreement. *It shall Include (brief description of the project in accordance with the Specifications and Standards set forth in Schedule ~D' and operation and maintenance thereof in accordance with Schedule 'L'.* It shall also include the performance and fulfilment of other obligations by the Concessionaire under this Agreement.

> The Concessionaire shall undertake its obligations at its own cost and risk."

(iv) Chapter XIX of the Agreement deals with "Monitoring and Supervision During Operation". Clause 19.2, thereunder, commences thus :

> "19.2 The Independent Consultant shall review the Maintenance Reports and inspect the Project Highway at least once a month during the Operations Period and make out an Inspection Report of such inspection (the "O&M Inspection Report")...

(v) Appointment of the Independent Consultant was contemplated by Chapter XX of the Agreement which is titled "Independent Consultant". Clause 20.1, thereunder, reads thus:

> "20.1 NHAI shall appoint a consulting engineering firm or body corporate in accordance with the selection process set forth in Schedule 'N' to be the Independent Consultant to undertake and perform the duties, work, services and activities set forth in Schedule 'O'. In addition NHAI, at any time during the Concession Period at its own cost, may appoint a Technical Auditor in the nature of a Proof Consultant to review the work carried out 'by' the Independent-Consultant."

(vi) Schedule B to the Agreement is titled "the Project". It has various clauses, of which, Clause 1 titled, "General", contains the following recital:

> "The Concessionaire shall also do the value addition for improving safety by providing safety items and also provide road furniture for this BOT package, after handing over to him to bring it to specified standard of Project Highway as per specifications and standards mentioned in Schedule D *and Schedule L*."

(vii) Schedule D to the Agreement is titled "Specifications and Standards". Clause 4, thereunder, deals with "Safety During Project Execution, Operation and Maintenance". Sub-clause 4.2 thereunder reads thus:

> "4.2 The Concessionaire shall also ensure complete safety of the Road Users during the construction work of various nature *spelt out in Schedule L*."

(viii) Schedule L to the agreement is titled "Operation and Maintenance Requirements". As is apparent from Clause 4.2 of Schedule D *supra*, the safety of the road has to be maintained in accordance with this schedule.

(ix) Clause 1 in Schedule L stipulates, *inter alia,* that Schedule L "elaborates the operation and maintenance Requirements of the Concession and is to be read together with the Concession Agreement for this purpose".

(x) Clause 4.3 in Schedule L deals with "Periodic Maintenance of Pavement" and Clause 4.3.1 deals with "Pavement Riding Quality". These clauses, which are fundamental to the controversy in issue, may be reproduced thus:

> **"4.3. Periodic Maintenance of Pavement**
>
> The framework of activities relating to pavement maintenance and rehabilitation in respect of flexible and rigid pavement are given in the flow charts in Appendix 3.1 and Appendix 3.2 respectively. The Concessionaire shall set forth in the Operations and Maintenance Manual the detailed procedures to be followed under each of these activities, and also choose

> the operational and performance criteria from the performance standards set forth in this Schedule.
>
> **4.3.1. Pavement Riding Quality**
>
> The riding quality of the pavement shall be ensured by satisfying the minimum requirements given herein under.
>
> i) Surface roughness of the Project Highway on completion of construction shall be 2000 mm/km as measured by vehicle mounted Bump Integrator.
>
> ii) Surface roughness shall not exceed 3000 mm/km during the service life of pavement at any time. A renewal coat of bituminous concrete shall be laid every 5 years after initial construction or where the roughness value reaches 3000 mm/km whichever is earlier to bring it to the initial value of 2000 mm/km."

6. The controversy in issue, in the present petition, centres essentially around Clause 4.3.1 (ii), reproduced hereinabove, specifically on the second sentence thereof, which stipulates that "a renewal coat of bituminous concrete shall be laid *every 5 years after initial construction* or where the roughness value reaches 3000 mm/km *whichever is earlier to bring it to the initial value of 2000 mm/km*". The learned Tribunal has interpreted this clause to mean that, even if the roughness value of the pavement is below 2000 mm/km, a renewal coat of bituminous concrete necessarily has to be laid every 5 years. The reasoning, as contained in the impugned award, specifically, in this regard, reads thus :

> "79. On a conjoint reading of Clause 4.3.1 of Schedule L of the CA and Appendix 3.1, we do not find any substance in the contention of the Claimant that the requirement of laying down of renewal coat

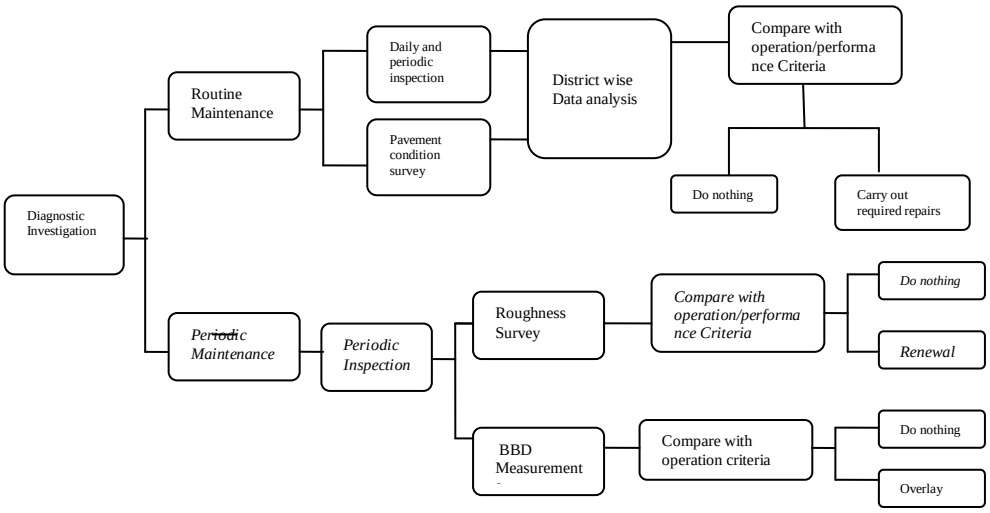
> after every five years is qualified by the words "to bring it to the initial value of 2000 mm/km". The words "to bring it to the initial value of 2000 mm/km" are used in respect of the phrase “where the roughness value reaches 3000 mm/km" meaning thereby that if the renewal coat is required to be laid down because the roughness value has reached 3000 mm/km, the same is laid down to bring the surface roughness value to 2000 mm/km. The words "to bring it to the initial value of 2000 mm/km" are not used with respect to the words "every 5 years after initial construction". The maintenance required to be done was in the nature of a regular periodic maintenance activity. It was required to be done every five years and did not depend upon the surface roughness value. Clause 4.3.1 cannot be interpreted to convey that the renewal coat was required to be done only when the surface roughness value was more than 2000 mm/km.”

7. Consequent on the aforesaid interpretation, the learned Arbitral Tribunal has, in the impugned award, directed the petitioner to commence the renewal work for the second cycle by 1st April, 2020 and to complete it by the end of 2020, and to complete the renewal work for the third cycle by 1st April, 2025.

8. Fundamentally, the petitioner questions the correctness of this direction on the ground that, if the roughness of the pavement is found to be less than 2000 mm/km, there is no requirement for renewal work to be carried out thereon, even as per the terms of the Concession Agreement. The manner in which the learned Tribunal has chosen to interpret Clause 4.3.1, Mr. Manoj Kumar Singh would strenuously contend, is not sustainable in law, as there are no commas in the said clause, and it is not possible to read the requirement of bringing the roughness index to 2000 mm/km only with the second part of the sub-

clause. Fundamentally, Mr. Singh argues that, if the roughness index is less than 2000 mm/km, there could be no question of requiring the petitioner to carry out any renewal work on the road, and that requiring the petitioner to do so would go against the terms of the contract itself and the intention thereof, as manifested from the aforementioned clauses.

9. Mr. Manoj Singh also draws my attention, in this context, to a flow chart, forming part of Schedule L to the Concession Agreement, which merits reproduction, thus :



Mr. Manoj Singh contends, by reference to the lower half of the afore-extracted flow chart, that, be it a case of periodic maintenance or periodic inspection, where the roughness index of the surface of the pavement compares favourably with the operation/performance criteria, the petitioner is required to do nothing, and it would be required to renew the surface only if the roughness index was discrepant vis-a-vis the optimum operation/performance criteria which

is 2000 mm/km. To buttress this submission, Mr. Manoj Singh has also drawn my attention to the "Equivalent Rating Conditions", also forming part of Schedule L, which indicates, that where the road is in "good condition", no repairs are needed. In conjunction therewith, Mr. Singh refers to a roughness survey relating to the test result of the pavement riding quality test, conducted in January, 2020, jointly by the petitioner and the respondent with the representative of the independent consultant, as communicated to the appellant *vide* letter dated 2nd March, 2020, by the respondent. He points out that, in the said report, it is specifically stated that "as per the obtained values at site, the road condition is good". He also draws my attention to the following recital, which forms part of the said report:

Type of Surface	Condition for Road Surface		
	Good	Average	Poor
Bituminous Concrete	*<2000*	2000-3000	>3000

10. Mr. Singh also questions the manner in which the learned Tribunal has sought to rely on clause 2.6.1 of the Concession Agreement, which reads thus :

> "**2.6. Operation and Maintenance Stage**
>
> 2.6.1. This is applicable for the entire Operations Period for the Project Highway during the entire Concession Period. Various important activities to be carried out during this stage are:
>
> a) Regular periodic maintenance activities:

i) Renewal of the wearing surface of the road pavement once every 5 years;

ii) Strengthening course to be provided on 'as required' basis.

b) Maintenance activities arising out of the specific need(s) on account of the site conditions are:

i. Strengthening course required on account of the Benkelman Beam Deflection (B.B.D), values in excess of the prescribed criteria obtained during regular testing as per the Concession Agreement requirement;

ii. Wearing course required on account of the IRI values higher than the prescribed criteria obtained during regular testing as per the Concession Agreement requirement;

iii. Localized repairs in short lengths less than 500 m on account of pot holes. cracking, subsidence in isolated spots or in scattered areas."

Mr. Singh submits that, while relying on the reference, in clause 2.6.1(a), to the requirement of renewal of the wearing surface of the road pavement once every 5 years, the learned Tribunal has overlooked sub-clause (ii) of clause 2.6.1(b), which stipulates that wearing course was required if the IRI values were higher than the prescribed criteria obtained during regular testing as required by the Concession Agreement. The testing, during the Concession Agreement, never having found the IRI values of the pavement to be higher than the prescribed criteria, Mr. Singh would submit that no requirement of renewal of the wearing surface of the road existed.

11. Mr. Singh has also drawn my attention to various decisions, notably ***NHAI v. Progressive MVR (JV)***[1] and ***NABHA Power Limited v. Punjab State Power Corporation Limited***[2]**.** He has invited my attention to para 15 of ***NHAI v. Progressive MVR (JV)***[1], which reads thus :

> **"15.** Thus, the main reason because of which the NHAI lost in those proceedings was that two possible interpretations could be given to the Clause in question and, therefore, the recourse taken by the Arbitral Tribunal by adopting one particular interpretation was not required to be interfered with. SLP against that was dismissed. In a situation like this, this Court would not have undertaken further exercise in the matter. However, another Arbitral Tribunal in the case of M/s. Ssangyong Engineering and Construction Co. Ltd. has accepted the other view, which goes in favour of the NHAI. It leads to an anomalous situation. The NHAI has entered into multiple contracts with different parties containing the same clauses of price variation. *Once we find that Arbitral Tribunals are taking different views, and the view taken in favour of the NHAI is also one of the possible interpretations, the effect thereof would be to uphold both kinds of awards even when they are conflicting in nature in respect of the same contractual provision. It may not be appropriate to countenance such a situation which needs to be remedied. Therefore, under this peculiar situation, we deem it proper to go into the exercise of interpreting the said Clause so that there is a uniformity in the approach of the Arbitral Tribunals dealing with this particular dispute and a sense of certainty is attached in the outcomes.*"
>
> (Emphasis supplied)

Mr. Singh submits that, in another arbitration for maintenance of a highway between NHAI and Nirmal BOT Ltd., the learned Arbitral Tribunal, in that case was concerned with the interpretation of an identical clause, and arrived at the conclusion that, as the roughness of

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[1] **(2018) 14 SCC 688**
[2] **(2018) 11 SCC 508**

the road was less than 2000 mm/km, renewal was not required. Mr. Ankur Mittal, learned Counsel for the NHAI confirms that this is, indeed the position. However, he points out that the said award, passed by the learned Arbitral Tribunal, in that case, has been challenged by the NHAI before this Court, under Section 34 of the 1996 Act, in O.M.P. (COMM.) 533/2019 (***NHAI v. Nirmal BOT Ltd.***), which is presently pending. Mr. Singh submits that, therefore, where two Arbitral Tribunals, concerned with identical covenants, between the NHAI and two contractors, have interpreted the covenants differently, the normally existing restriction, on interference by the High Court with the reasoning of the Arbitral Tribunal, in a challenge under Section 34 of the 1996 Act, would not apply, and that, in order to ensure uniformity, especially as such clauses have a pan-India ramification, it is incumbent on the Court to clarify as to the correct manner in which the clause is to be interpreted.

12. Mr. Singh also relies on para 49 of ***Nabha Power Limited***[2], which reads thus :

> "49. We now proceed to apply the aforesaid principles which have evolved for interpreting the terms of a commercial contract in question. Parties indulging in commerce act in a commercial sense. It is this ground rule which is the basis of The Moorcock test of giving 'business efficacy' to the transaction, as must have been intended at all events by both business parties. The development of law saw the 'five condition test' for an implied condition to be read into the contract including the 'business efficacy' test. It also sought to incorporate 'The Officious Bystander Test' [***Shirlaw vs. Southern Foundries (supra)].*** This test has been set out in B.P. Refinery (Westernport) Proprietary Limited vs. The President Councillors and Ratepayers of the Shire of Hastings (supra) requiring the requisite conditions to be satisfied: (1)

> reasonable and equitable; (2) necessary to give business efficacy to the contract; (3) it goes without saying, i.e., The Officious Bystander Test; (4) capable of clear expression; and (5) must not contradict any express term of the contract. The same penta-principles find reference also in ***Investors Compensation Scheme Ltd. vs. West Bromwich Building Society (supra)*** and ***Attorney General of Belize and Ors. vs. Belize Telecom Ltd. and Anr. (supra***). Needless to say that the application of these principles would not be to substitute this Court's own view of the presumed understanding of commercial terms by the parties if the terms are explicit in their expression. The explicit terms of a contract are always the final word with regards to the intention of the parties. The multi-clause contract inter se the parties has, thus, to be understood and interpreted in a manner that any view, on a particular clause of the contract, should not do violence to another part of the contract."

13. It is in the aforesaid circumstances that, contends Mr. Singh, the impugned directions of the learned Tribunal deserve to be set aside.

14. Mr. Singh also points out that the Independent Consultant, engaged by the NHAI itself had, initially, *vide* communication dated 23rd September, 2013, addressed to the petitioner, opined that, in view of the test report relating to the surface of the road as it existed till 2012, there was no necessity of any renewal thereof. He points out that, in fact, the Independent Consultant was vacillating in his stand and was at times, opining that no renewal was required, and, at others, directing the petitioner at the instance of the respondent, to carry out renewal.

15. Consequent to the passing of the impugned Award, the Independent Consultant presently engaged by the respondent has written, to the petitioner on 12th June, 2020, directing the respondent

to execute the second periodic renewal of the highway. The letter also purports to be in the nature of a notice issued under clause 18.12 of the Concession Agreement, which reads thus :

> "To,
>
> The Project Manager,
> GMR Pochanpalli Expressways Limited,
> Kill 443+910 Toll Plaza
> Ravellcy Village,
> Kadlakallu (P.O),
> Toopran MandaI, Medak (DlST.),
> Telangana State, PIN: 502336
>
> Sub:- Independent Engineer Services during Operation & Maintenance stage of 4-laned divided carriageway from Km.367.000(AdloorYellareddy)toKm.464.000 (GundlaPochanpali) (Contract Package No.NS-2/BOT/AP-2) on Nagpur -Hyderabad Section of NH-44 (Old NH-7)in the State of Telangana on BOT (Annuity) Basis under North-South Corridor (NHDP Phase-H) and additional highway from Km.464.000 (Gundla Pochanpalli) to Km.474.000 (Bowenpalli)-**Request for Submission of Work Programme for 2nd periodic Renewal of Wearing Surface of Road Pavement - Notice Issued-Reg**
>
> Ref: 1. NHAI/PlU-NRMLlGPELlAP-2/2019/1334 dated 08.02.2020
> 2. NHAI/RO-HYDI11 0 18151AP-21lIRCII 6 I 0 dated 22.10.2020
> 3. Court orders dated 02.11.2018
> 4. GPEL FYI 8-19/4245 dated 06.11.2018
> 5. ICAl1942/AC-2139 dated 24.0] .2020
> 6. NHAT/RO-HYDI11018/5IAP-2/911lRCI3066 dated 11.02.2020
> 7. NHAI/RO-IYDI11018/5IAP-2!911/RC/3109 dated 14.02.2020
> 8. MSV_SU/TPRN/AP-2/220iGMRPELl8 dated 15.02.2020
> 9. GMRJGPELlAP-2INHAI-RO-Hyd/202015847 dated 09.03.2020
> 1O. MSV_SITITPRN/AP-2/2020/GMRPELl47 dated 02.05.2020

11. MSV_SITITPRNIAP-2/2020/GMRPELl71
dated 27.05.2020

Dear Sir,

In continuation to our letter in reference (11) cited and subsequent discussion had with the Regional officer NHAI, RO, Hyderabad & the PD, NHAI, PIU, Nirmal during the meeting held at NHAI, RO, Hyderabad on 11.06.2020 on the above subject, it is informed as under.

In spite of repeated requests made by NHAI vide letters in references (6&7) cited and IE vide letters in references (8,10 & 11) cited there is no response from the Concessionaire as on date. Therefore, it is reminded once again to submit the work program for (1) the patch work in the entire Project Highway and (ii) 2nd Periodic Renewal in the entire 103 km length of Project Highway on or before 15.06.2020. Otherwise, we may be forced to ask NHAI to execute the 2nd Periodic Renewal for entire Project Highway at the risk and cost of the Concessionaire and to recover the same from Concessionaire. In addition to recover of the aforesaid cost of repair and maintenance by NHAI a sum equal to 25% (twenty five percent) of such cost shall also be recovered by NHAI from the Concessionaire as damages in accordance with CL. 18.12 (page no.53) of CA.

Further, it is to inform that Raising of the existing kerb shall be taken up before laying of Bituminous Concrete work in view of safety of live traffic. However, the painting of kerb shall be taken up after laying of Bituminous Concrete work & median filling works, after through cleaning of kerb for any dirt, grease, bitumen and any other foreign materials. Therefore, please ensure to incorporate the same while preparing and submitting the work program for 2nd Periodic Renewal of Wearing Surface of Road Pavement.

Please treat this as **NOTICE ISSUED** under clause 18.12 (page no.53) of the Concession Agreement.

This is for your information and immediate necessary action please."

16. The aforesaid letter has also been challenged in these proceedings, and stay of operation of the letter has been sought in the interregnum.

17. Mr. Ankur Mittal, learned Counsel appearing for the NHAI, seriously questions the manner in which Mr. Singh has sought to interpret the covenants of the Concession Agreement, and submits that the interpretation of the covenants by the learned Tribunal deserves to be affirmed by this Court. He places emphasis on Clause 2.6.1 in Schedule L to the Concession Agreement, which has been reproduced hereinabove. Mr. Mittal points out that Clause 2.6.1(a)(i), which requires renewal of the wearing surface of the road once every 5 years does not make the said requirement conditional upon the roughness of the road surface. Apropos Clause 2.6.1 (b)(ii) Mr. Mittal submits that the reliance, by Mr. Singh on the said clause, is misplaced, as it relates to maintenance activities arising out of specific needs on account of site conditions and does not detract from the necessity of 5 yearly renewal of the wearing surface of the road pavement. Adverting to Clause 4.3.1 in Schedule L to the Concession Agreement, Mr. Mittal submits that the interpretation, of the said clause, in para 79 of the impugned award, merits acceptance. The stipulation, of bringing the roughness of the road to the initial value of 2000 mm/km, submits Mr. Mittal, is only for the purpose of laying down the minimum criteria, with respect to the roughness index.

18. Mr. Mittal also seeks to rely on para 22 of the impugned award,

to state, that even while fixing the annuity, payable to the petitioner, the expense involved in the 5 year re-laying exercise had been factored into the said annuity by the petitioner itself.

19. Mr. Mittal also seeks to discountenance the reliance, by Mr. Singh, on the flow chart, extracted hereinabove, figuring in appendix 3.1 to Schedule L in the Concession Agreement, stating that the stipulation "do nothing", where the roughness survey compared favourably with the operation/performance criteria, related to periodic inspection of the pavement, and not to the 5-yearly renewal thereof, which was mandatory. Apropos the stipulation in the table and appendix 3.4 of Schedule L, stating that no repairs were needed where the condition of the road was good, Mr. Mittal seeks to distinguish between repairs of the road and the 5 yearly maintenance of the road, which required re-laying thereof.

20. Mr. Mittal submits that the roughness index of the road merely tests its riding quality, which cannot be determinative regarding the requirement of 5-yearly maintenance.

21. In my considered opinion, serious questions regarding interpretation of the clauses of the Concession Agreement, chiefly Clauses 2.6.1 and Clause 4.3.1, figuring in Schedule L thereto, arise for consideration. It is important to note that two learned Arbitral Tribunals, interpreting identical clauses, have admittedly arrived at two contrasting interpretations, which itself makes out a clear case for examination of the issue by this Court, applying the principle

enunciated in ***NHAI v. Progressive MVR. (JV)***[1].

22. At this stage, there appears to be a great deal to be argued on both sides, and, in my view, *prima facie,* there is some amount of ambiguity in the manner in which the various covenants in Schedule L to the agreement have been engrafted, which may also give rise to a question of whether the principle of *contra proferentem* would be amenable of invocation.

23. The issue, however, admittedly does not brook delay, in view of the emergent direction issued by the learned Arbitral Tribunal. As such, let notice issue on the petition as well as on I.A. 4775/2020, to the respondent, to file its response thereto within a period of three weeks with advance copy to the petitioner who may file his rejoinder, thereto, within a period of one week thereof.

24. Let the petition be set down for final disposal on 24th July, 2020.

25. It is absolutely clear that there shall be no extension of time granted to file the reply to the petition or the rejoinder thereto, and that failure to do so within the time stipulated hereinabove would result *ipso facto,* in closing the right to file the reply/rejoinder.

26. Insofar as the prayer for interim relief is concerned, Mr. Ankur Mittal submits that, even if the petitioner were to carry out the re-laying work, as directed by the learned Tribunal, and by the impugned

communication dated 12th June, 2020, issued by the independent consultant, no prejudice would result, as the petitioner would be liable to be recompensed for the work undertaken by it.

27. On the principles of balance of convenience, I am of the opinion that, when there are the very issue of the requirement of carrying out the renewal work is at large, requiring to be interpreted, and another Tribunal, dealing with a similar clause, has interpreted the agreement in the manner canvassed by Mr. Singh (which itself discloses a *prima facie* case worth examination), it would be more appropriate to allow the *status quo* to continue, and stay the operation of the impugned direction of the learned Tribunal till the next date of hearing. In case it is found that the impugned directions are in order and that the petitioner is required to undertake the relaying of the work, the said exercise could always commence after the arrival, at such a decision, by this court. If, however, this Court were to find finally, that the impugned directions are not justified or in accordance with the intention of the parties as contained in the Concession Agreement, the work done could not be undone and it would also involve avoidable drain on the public exchequer.

28. Applying, therefore, the principle of balance of convenience, I am of the view that the impugned directions of the learned Arbitral Tribunal, as well as the operation of the letter dated 12th June, 2020, issued to the petitioner by the presently existing Independent Consultant, deserve to be stayed till the next date of hearing.

29. It is ordered, accordingly.

C. HARI SHANKAR, J

JULY 01, 2020/kr