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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ W.P.(C) 394/2023, CM APPL. 1578/2023, CM APPL. 53168/2023,
CM APPL. 64972/2023

M/S NOMA INFRASTRUCTURE PVT. LTD. Petitioner
Through: Mr. Abhijat, Mr. Jatan Singh, Dr.
Bharat Nagar, Mr. Siddharth Singh
and Mr. Shobhit Jain, Advs.

versus

UNION OF INDIA, MINISTRY OF RAILWAYS & ANR.
..... Respondents
Through: Mr. Pratima N. Lakra, CGSC
alongwith Mr. Chandan Prajapati, Ms.
Vanya Bajaj, Advs.

CORAM:
HON'BLE MR. JUSTICE SACHIN DATTA

ORDER

% **29.05.2024**

1. *Vide* order dated 28.11.2023, it was noticed that the petitioner had sent a concrete proposal to the railways to break the stalemate and to ensure that the railway rakes in question do not remain idle.
2. Thereafter, the petitioner has also placed on record their proposal along with CM No. 64972/2023. The said proposal reads as under:-

“1.By 15-12-2023, NOMA shall be permitted to take possession of the two rakes, FCO05 and FC002, from the workshop/maintenance depot at Sabarmati and Sinchara Station (Jhansi Division) respectively where they are lodged.

2. NOMA will be permitted to take the aforesaid rakes to a private party of NOMA's choice for the purposes of repair and maintenance.

3. Upon the completion of the repairs if required and maintenance work, the rakes shall be presented to the relevant authorities in the Railways for the purposes of commercial operation and once certified, NOMA will use them for commercial operation under the Concession



Agreement dated 27.07.2018. Certification will not be unreasonably refused/delayed in the interest of both parties.

4. For removing the rakes from the workshop/maintenance depot, NOMA shall, purely without prejudice to its rights and contentions, deposit a sum of Rs. 1.5 Crores in two instalments (Rs. 75 lacs before the repairs and Rs. 75 lacs after the repairs with the Railways.

5. The Railways will consider the non-applicability/ waiver of stabling charges in the present case as the rakes are lying in the workshop/maintenance depot and had not been in commercial operation during the period for which a claim for stabling charges is being made.

6. Negotiations in so far as the final amounts due and payable, if any, by NOMA to the Railways, shall not prevent the rakes from being operated once they are found to be fit for commercial operations.

7. On arriving at the amount due and payable if any by NOMA to the Railways, an adjustment of Rs. 5.2 Crores that was paid by Fourcee Infrastructure and Equipment Ltd. towards the SFTO licence shall be duly made/adjusted since admittedly the said license has not been granted. Further, the sum of Rs. 1.5 Crores deposited under clause 4 will also be adjusted.

8. Railways should cooperate and give “No-Objection” to the petitioner’s Bankers to create any security on the said rakes for raising funds.”

3. Learned counsel for the petitioner fairly submits that in terms of the aforesaid proposal, the petitioner is willing to make a deposit Rs. 1.5 Crores without prejudice to its rights and contentions to break the stalemate and to ensure that the rakes do not continue to lie idle as the same is causing immense losses to the petitioner and also to the railways which is precluded from earning any freight charges on accounts of these rakes lying idle.

4. Learned counsel for the petitioner also fairly submits that the stipulation mentioned in Clause 7 of the aforesaid proposal viz. adjustment of an amount of Rs.5.2 Crores that was paid by Fourcee Infrastructure and



Equipment Ltd. towards the SFTO licence be also deferred for the time being so as to ensure that there is no impediment to the railways giving its no objection to the aforesaid proposal of the petitioner.

5. *Prima facie*, the proposal of the petitioner is fair and is in the interest of both the parties.

6. After some hearing, learned counsel for the respondent submits that the aforesaid proposal of the petitioner shall be seriously considered and another meeting shall be convened to seek to arrive at an agreement with the petitioner and to work out modalities for the purpose of ensuring that the rakes in question do not continue to remain idle and are made operational at the earliest.

7. Let a meeting be convened between the petitioner and the concerned officers of the Railway Board in the 3rd week of June, 2024. It is assured by the learned counsel for the respondent that a serious attempt shall be made to resolve the matter, and to ensure that the rakes in question are put into operation at the earliest.

8. Let the minutes of the meeting to be held in the 3rd week of June, 2024 be placed on record before the next date of hearing.

9. List on 10.07.2024.

10. In the meantime, the Railways will not take any precipitative/coercive steps in the form of auctioning of the rakes in question.

MAY 29, 2024/at

SACHIN DATTA, J