

NDOH: 30.04.2024
SECTION: XVI
IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION
I.A. NO. OF 2024
IN
SPECIAL LEAVE PETITION (CIVIL) NO.23320 OF 2023

IN THE MATTER OF:

ROHAN BUILDERS INDIA PVT. LTD. ...PETITIONER

VERSUS

BERGER PAINTS INDIA LTD. ...RESPONDENT

INDEX OF FILING

Sr.	Description	Copies	C.F.
1.	Application for interim relief with affidavit on behalf of petitioner	1+3	220/-
2.	Annexures A-1 to A-4	1+3	
Copy to; Mr. Soumya Dutta, AoR Mr. Ivan, AoR		Total Rs.	220/-

Filed by:



(UDITA SINGH)

Advocate for the Petitioner
20-A, Lawyers Chambers,
Supreme Court
New Delhi - 110001
Code No. **2248**,
Mob:-9891436291

(BRAHM KISHORE)

Regd. Clerk:-
I.C.No.3935
Mob:-9818664073

Dated: 18.04.2024
New Delhi



Brahm Kishore <brahm3110@gmail.com>

FINAL ROHAN BUILDERS IA 18 APRIL

2 messages

Brahm Kishore <brahm3110@gmail.com>
To: U S <udita21@gmail.com>

Thu, Apr 18, 2024 at 2:12 PM

 **FINAL ROHAN BUILDERS IA 18 APRIL.pdf**
1300K

Udita Singh <udita21@gmail.com>
To: soumyadutta07@gmail.com, ivand2m@gmail.com
Cc: brahm3110@gmail.com

Thu, Apr 18, 2024 at 2:22 PM

Dear Sir,

Ref: Rohan Builders (India) Pvt. Ltd. v. Berger Paints India Ltd. SLP (C) No.23320/ 2023

PFA by way of service, an advance copy of IA for interim reliefs being moved in the captioned matter.

This is for your information and record.

Regards

Udita Singh
Advocate on Record for Petitioner

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1300K

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

I.A. NO. OF 2024

IN

SPECIAL LEAVE PETITION (CIVIL) NO.23320 OF 2023

IN THE MATTER OF:

ROHAN BUILDERS INDIA PVT. LTD. ...PETITIONER

VERSUS

BERGER PAINTS INDIA LTD. ...RESPONDENT

APPLICATION FOR INTERIM RELIEF

PAPER BOOK

(FOR INDEX PLEASE SEE INSIDE)

ADVOCATE FOR THE PETITIONER: **UDITA SINGH**

RECORD OF PROCEEDINGS

S.NO.	DATE OF RECORD OF PROCEEDINGS	PAGE NO.
-------	-------------------------------	----------

- | | | |
|-----|--|--|
| 1. | | |
| 2. | | |
| 3. | | |
| 4. | | |
| 5. | | |
| 6. | | |
| 7. | | |
| 8. | | |
| 9. | | |
| 10. | | |
| 11. | | |
| 12. | | |
| 13. | | |
| 14. | | |
| 15. | | |

INDEX

S. NO.	PARTICULARS	PAGE NO
1	Application for interim relief with affidavit	1-12
2.	<u>ANNEXURE A-1:</u> Order dt.17.10.2023 passed in SLP(C) No.23320 of 2023	13-14
3.	<u>ANNEXURE A-2:</u> Order dated 06.11.2023 passed in SLP (C) No.24489/2023	15
4.	<u>ANNEXURE A-3:</u> Common order dated 12.12.2023 passed in SLP (C) Nos.26990-26991/ 2023, SLP (C) Nos. 26945-26946/2023, SLP (C) No.26938/2023 and SLP (C) No.27353/2023	16-19
5.	<u>ANNEXURE A-4:</u> Order dated 22.01.2024 passed in SLP(C) Diary No.44644/2023	20

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

I.A. NO. OF 2024

IN

SPECIAL LEAVE PETITION (CIVIL) NO.23320 OF 2023

IN THE MATTER OF:

ROHAN BUILDERS INDIA PVT. LTD. ...PETITIONER

VERSUS

BERGER PAINTS INDIA LTD. ...RESPONDENT

APPLICATION FOR INTERIM RELIEF

TO

THE HON'BLE CHIEF JUSTICE OF INDIA
AND HIS COMPANION JUSTICES OF THE
SUPREME COURT OF INDIA

THE HUMBLE PETITION OF THE
APPLICANT ABOVE NAMED

MOST RESPECTFULLY SHOWETH:

1. That the petitioner has filed the aforesaid Special Leave Petition against the Impugned final Judgment and Order dated 06.09.2023 passed by the Hon'ble High Court at Calcutta ("**Hon'ble High Court**") in A. P. 328 of 2023 whereby the High Court dismissed the application filed by the Petitioner under section 29-A of the Arbitration Act,

praying for extension of the mandate of the Arbitral Tribunal, solely on the ground that the mandate of the Learned Arbitrator had admittedly terminated before the application for extension of time was filed and the Court is therefore statutorily precluded from extending the mandate and that the fact that Respondent refused consent to extend the time for the Arbitrator to complete the arbitration, was irrelevant.

- 2.** That the Petitioner is filing the present application, seeking interim reliefs including stay on the operation of the impugned order, since in connected matters tagged with the instant Petition, this Hon'ble Court has stayed the operation of the impugned orders and permitted Arbitration to proceed but no award to be passed.
- 3.** That the contents of the aforesaid Special Leave Petition are not being repeated herein for the sake of brevity and to avoid repetition. The Applicant herein craves leave of this Hon'ble Court to refer and rely on the same at the time of hearing the instant application.

4. That however, before proceeding further, it is relevant to state following few facts in the brief.
- (i) That in arbitration proceedings pending between parties, the statutory timeline of one year from the date of completion of pleadings before the Arbitral Tribunal expired on 07.03.2023.
 - (ii) That the Petitioner by way of a letter dated 15.03.2023 sought for consent of the Respondent in terms of Section 29-A(3) of the Act for extension of the period for making the award for a further period of six months which was received by the respondent on 16.03.2023.
 - (iii) That since the Respondent did not responded to the said letter dated 15.03.2023 a sitting was held by the Learned Arbitral tribunal on 28.03.2023 to ascertain whether the Respondent was consenting to the said extension in terms of Section 29-A(3) of the Act. However, the Respondent, with mala fide motive, and despite having a counter claim against the Petitioner, refused to give consent to extend the mandate of the

Arbitral Tribunal for completion of arbitration proceedings.

- (iv) That on 17.05.2023, the Petitioner filed an application, being A.P. 328 of 2023 before the Hon'ble High Court of Calcutta under section 29-A of the Arbitration Act, praying for extension of the mandate of the Arbitral Tribunal for one year.
- (v) However vide the impugned common final judgment and order dated 06.09.2023, the Hon'ble Calcutta High Court dismissed the application of the Petitioner on the ground that the mandate of the Arbitral Tribunal had terminated before the application for extension was filed by the Petitioner and the Court is therefore statutorily precluded from extending the mandate.
- (vi) That aggrieved by the aforesaid impugned order, the Petitioner herein approached this Hon'ble Court by way of the present Special leave Petition, wherein notice as issued by this Hon'ble Court vide order dated 17.10.2023. It was also indicated that on the next date the matter will be taken up for final hearing and disposal. A true copy of the order dated

17.10.2023 passed in the present matter is annexed herewith and marked as **Annexure A-1** at page no. **13 to 14.**

(vii) That thereafter the present Special Leave Petition has been listed regularly before this Hon'ble Court on Non-Miscellaneous day since February 2024 but could not be taken up on account of heavy board and the matter consequently not reaching.

(viii) That in the meantime, vide order dated 06.11.2023 in SLP (C) No.24489/2023 Vrindavan Advisory Services LLP v. Deep Shambhulal Bhanushali, this Hon'ble Court while issuing notice and tagging the said matter with that of the present Petitioner, directed stay on the operation of the impugned order. A true copy of order dated 06.11.2023 passed by this Hon'ble Court in SLP (C) No.24489/2023 is annexed herewith and marked as **Annexure A-2** at page no. **15.**

(ix) That further vide common order dated 12.12.2023 passed in SLP (C) Nos.26990-26991/ 2023, SLP (C) Nos. 26945-26946/2023, SLP (C) No.26938/2023

and SLP (C) No.27353/2023, this Hon'ble Court issued notice and tagged the said matters with that of the present Petitioner. Further in the said matters, this Hon'ble Court permitted the arbitration proceedings to continue but with the direction of no award to be passed. A true copy of common order dated 12.12.2023 passed in SLP (C) Nos.26990-26991/ 2023, SLP (C) Nos. 26945-26946/2023, SLP (C) No.26938/2023 and SLP (C) No.27353/2023 is annexed herewith and marked as **Annexure A-3** at **page no. 16 to 19.**

- (x) That vide order dated 22.01.2024 passed in SLP(C) Diary No.44644/2023, this Hon'ble Court while issuing notice tagged the said matter with SLP (C) No.24489 of 2023 (as mentioned in para 4(viii) above) and further stayed the operation of the impugned judgment. A true copy of order dated 22.01.2024 passed in SLP(C) Diary No.44644/2023 is annexed herewith and marked as **Annexure A-4** at **page no. 20.**

(xi) That all the afore-mentioned matters have been tagged with the captioned Petition being the lead Special Leave Petition. During the pendency of the present proceedings, arbitration proceedings have been permitted to be continued in connected / tagged matters barring the arbitration proceedings between the Petitioner and Respondent to the captioned Petition.

(xii) That the present Petitioner is thus claiming similar interim reliefs as has already been granted to similarly situated parties.

5. That the Petitioner has been able to establish a prima facie case in its favour, with the the Hon'ble Calcutta High Court by virtue of the impugned judgment, completely negating the whole purpose of insertion of Section 29-A, moreover specifically rendering Section 29-A(5) of the Act wholly otiose by reading Section 29-A(4) of the Act in isolation of Section 29-A(5) of the Act instead of reading them harmoniously. Furthermore, Respondent cannot be allowed to take advantage of its recalcitrant conduct by

delaying the continuation of the arbitration till the final disposal of the captioned Petition.

6. That balance of convenience lies squarely in favour of the Petitioner and against the Respondent. That it is in the best interest of all parties concerned that the arbitration proceedings proceed during the pendency of the instant Special leave Petition, with no award being passed till the final adjudication of present dispute at hand. This especially in light of the fact that similar reliefs have already been granted to the parties in various connected/ tagged matters as mentioned above.
7. That however irreparable loss and harm would be caused to the Petitioner if the said prayer for interim reliefs is not allowed by this Hon'ble Court as precious time in which the arbitral proceedings could proceed further, would be lost, which further defeats the entire purpose of alternate dispute resolution machinery being a fast and speedy mechanism for adjudication of disputes between the parties. Since it would be difficult to speculate the timeline within which the present Petition and other connected

matters are finally heard and decided by this Hon'ble Court, it would be prudent to continue with the arbitration proceedings and save further time in the determination of disputes at hand.

8. That in view of the aforesaid, the Petitioner is filing the present interim application seeking interim reliefs, inter-alia, to continue with the arbitration proceedings during the pendency of the present appeal.
9. That the present Application is being moved by the Petitioner *bona fide* and in the interest of justice and no prejudice whatsoever will be caused to the Respondent, if the present application is allowed by this Hon'ble Court.

PRAYER

It is therefore most respectfully prayed that this Hon'ble High Court may graciously be pleased to:

- (a) Grant a stay on the Impugned final Judgment and Order dated 06.09.2023 passed by the Hon'ble High Court at Calcutta in A. P. 328 of 2023 and permit and direct the Sole Arbitrator Sh. Suman Kumar Dutt to proceed with

the arbitral proceedings in the present matter without passing the final award till the pendency of the present Special Leave Petition; and

- (b) Pass such other order or orders as may be deemed fit and proper in the circumstances of the case.

AND FOR THIS ACT OF KINDNESS, THE PETITIONER AS DUTY BOUND, SHALL EVER PRAY

DRAWN & FILED BY:


[Udit Singh]

Advocate-on-Record for the Petitioner

Drawn On: 15.04.2024
New Delhi
Filed On: 18.04.2024

**IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION
I.A. NO. OF 2024
IN
SPECIAL LEAVE PETITION (CIVIL) NO.23320 OF 2023**

IN THE MATTER OF:

ROHAN BUILDERS INDIA PVT. LTD. ...PETITIONER

VERSUS

BERGER PAINTS INDIA LTD. ...RESPONDENT

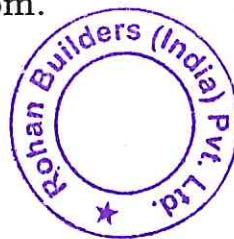
AFFIDAVIT

I, Shailendra Kumar Soni S/o Sh. G.L. Soni, aged about 67 years, R/o A-705, Nandan Euphora, Hawaldar Mala, Dashrath Nagar, Vishrantwadi, Pune -411015, do hereby solemnly affirm and state as under:

1. That I am the authorised signatory of the Petitioner Company duly authorized vide Board Resolution dated 20.09.2023 and as such, I am conversant with the facts and circumstances of the instant case. Hence, I am duly authorized to swear the instant affidavit.
2. That I have read the accompanying Interlocutory Application(s) and having understood the contents thereof, I state that the contents therein are true to my knowledge and belief.
3. That the annexures are true copies of their respective originals.



4. That the facts stated in the above affidavit are true to my knowledge and belief. No part of the same is false and nothing material has been concealed therefrom.

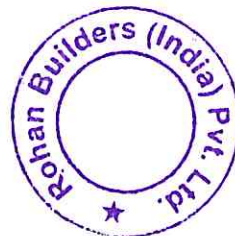


[Signature]
DEPONENT

VERIFICATION:

I, the abovenamed deponent do hereby verify that the facts stated in the above affidavit are true to my knowledge and belief. No part of the same is false and nothing material has been concealed therefrom.

Verified at Pune , on this the 15 day of April, 2024.



[Signature]
DEPONENT

BEFORE ME

[Signature]
SHAIKH HARUN YASIN
ADVOCATE & NOTARY
GOVT OF INDIA

19 Mirha Nagar Kondhward Pune 40



NOTED & REGISTERED AT
Sr. No. 906129 Dt. 15/4/24
ADV. SHAIKH HARUN YASIN
NOTARY GOVT. OF INDIA

15 APR 2024

ITEM NO.10

COURT NO.3

SECTION XVI

**S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS**Petition(s) for Special Leave to Appeal (C) No(s). 23320/2023

(Arising out of impugned final judgment and order dated 06-09-2023
in AP No. 328/2023 passed by the High Court at Calcutta)

ROHAN BUILDERS (INDIA) PRIVATE LIMITED[

Petitioner(s)

VERSUS

BERGER PAINTS INDIA LIMITED

Respondent(s)

(FOR ADMISSION and I.R.)

Date : 17-10-2023 This petition was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE SANJIV KHANNA

HON'BLE MR. JUSTICE S.V.N. BHATTI

For Petitioner(s) Mr. Nakul Dewan, Sr. Adv.
Mr. Nirav Shah, Adv.
Mr. Bhushan Panse, Adv.
Mr. Soumil Jhanwar, Adv.
Ms. Udit Singh, AOR
Mr. Sarthak Chandrashekhar, Adv.

For Respondent(s) Mr. Neeraj Kishan Kaul, Sr. Adv.
Mr. Udayaditya Banerjee, Adv.
Mr. Samrat Sengupta, Adv.
Mr. Parag Chaturvedi, Adv.
Mr. Raghav Agarwal, Adv.
Mr. Dhruv Sharma, Adv.
Ms. Shreya Bhojnagarwala, Adv.
Mr. Soumya Dutta, AOR
Mr. Siddhant Upmanyu, Adv.

UPON hearing the counsel, the Court made the following
O R D E R

Issue notice, returnable in the month of January 2024.

Mr. Soumya Dutta learned counsel, who is present in Court on
advance notice, waives service and accepts notice on behalf of the
sole respondent - Berger Paints India Limited. Hence, the notice

need not be served on the sole respondent.

Learned counsel for the parties will file written submission not exceeding three pages alongwith the relied upon decisions/judgments.

On the next date of hearing, the matter will be taken up for final hearing and disposal.

(BABITA PANDEY)
COURT MASTER (SH)

(R.S. NARAYANAN)
ASSISTANT REGISTRAR



//TRUE COPY//

ITEM NO.33

COURT NO.3

SECTION XVI

S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGSPetition(s) for Special Leave to Appeal (C) No(s). 24489/2023

(Arising out of impugned final judgment and order dated 29-08-2023 in AP No. 448/2023 passed by the High Court at Calcutta)

VRINDAVAN ADVISORY SERVICES LLP

Petitioner(s)

VERSUS

DEEP SHAMBHULAL BHANUSHALI

Respondent(s)

(FOR ADMISSION)

Date : 06-11-2023 This petition was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE SANJIV KHANNA
HON'BLE MR. JUSTICE S.V.N. BHATTI

For Petitioner(s) Mr. Swarnendu Chatterjee, AOR
Ms. Deepakshi Garg, Adv.
Mr. Yashwardhan Singh, Adv.
Ms. Megha Saha, Adv.
Mr. Nilay Sengupta, Adv.
Mr. Ankit Agarwal, Adv.
Ms. Deepakshi Garg, Adv.
Mr. Yashwardhan Singh, Adv.
Ms. Megha Saha, Adv.

For Respondent(s)

UPON hearing the counsel, the Court made the following
O R D E R

Issue notice and tag with SLP (C) No. 23320/2023 titled "*Rohan Builders (India) Private Limited vs. Berger Paints India Limited*".

Notice will be served by all modes, including *dasti*.

There shall be stay of operation of the impugned judgment till the next date of hearing.

(BABITA PANDEY)
COURT MASTER (SH)(R.S. NARAYANAN)
ASSISTANT REGISTRAR

//TRUE COPY//

ITEM NO.24+46

COURT NO.3

(REVISED)
SECTION XIV

S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS

Petition(s) for Special Leave to Appeal (C) No(s). 26990-26991/2023

(Arising out of impugned final judgment and order dated 17-11-2023 in OMP (T) (COMM.) No. 91/2023 17-11-2023 in OMP (M) (Comm) No. 493/2023 passed by the High Court of Delhi at New Delhi)

ATS INFRASTRUCTURE LTD. & ANR.

Petitioner(s)

VERSUS

RASBEHARI TRADERS

Respondent(s)

(IA No.253620/2023-EXEMPTION FROM FILING C/C OF THE IMPUGNED JUDGMENT)

WITH

SLP(C) No. 26945-26946/2023 (XIV)

(FOR ADMISSION and I.R. and IA No.253454/2023-EXEMPTION FROM FILING C/C OF THE IMPUGNED JUDGMENT)

SLP(C) No.26938/2023

SLP(C) No.27353/2023

Date : 12-12-2023 These petitions were called on for hearing today.

CORAM : HON'BLE MR. JUSTICE SANJIV KHANNA
HON'BLE MR. JUSTICE S.V.N. BHATTI

For Petitioner(s) Mr. S. Murlidhar, Sr. Adv.
Ms. Preetika Dwivedi, AOR
Mr. Kartik Nayar, Adv.
Mr. Abhisek Mohanty, Adv.

Mr. Arindam Ghosh, AOR

For Respondent(s) Mrs. Vanita Bhargava, Adv.
Mr. Ajay Bhargava, Adv.
Mr. Aseem Chaturvedi, Adv.
Mrs. Wamika Trehan, Adv.
Mrs. Raddhika Khanna Tandan, Adv.
M/S. Khaitan & Co., AOR

Mr. Vikas Mehta, AOR
Mr. Apoorv Khator, Adv.
Mr. Vinayak Sharma, Adv.

UPON hearing the counsel, the Court made the following
O R D E R

SLP (C) Nos. 26990-26991/2023 and SLP(C) Nos. 26945-26946/2023

Issue notice and tag with SLP (C) No.23320/2023 titled "*Rohan Builders (India) Private Limited vs. Berger Paints India Limited.*" and other connected matters.

Mr. Vikas Mehta , learned counsel, who is present in Court on advance notice, waives service and accepts notice on behalf of the sole respondent. Hence, notice need not be served.

The arbitration proceedings will continue but no award will be passed.

Learned counsel for the parties will file written submission not exceeding three pages along with the relied upon judgment/decisions.

Re-list for final hearing/disposal on a non-miscellaneous day in the month of February 2024.

SLP(C) Nos.26938/2023 and 27353/2023

Issue notice and tag with SLP (C) No.23320/2023 titled "*Rohan Builders (India) Private Limited vs. Berger Paints India Limited.*" and other connected matters.

Notice will be served by all modes, including *dasti*.

The arbitration proceedings will continue but no award will be passed.

Re-list for final hearing/disposal on a non-miscellaneous day in the month of February 2024.

(BABITA PANDEY)
COURT MASTER (SH)

(R.S. NARAYANAN)
ASSISTANT REGISTRAR

ITEM NO.24+46

COURT NO.3

SECTION XIV

S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS

Petition(s) for Special Leave to Appeal (C) No(s). 26990-26991/2023

(Arising out of impugned final judgment and order dated 17-11-2023 in OMP (T) (COMM.) No. 91/2023 17-11-2023 in OMP (M) (Comm) No. 493/2023 passed by the High Court of Delhi at New Delhi)

ATS INFRASTRUCTURE LTD. & ANR.

Petitioner(s)

VERSUS

RASBEHARI TRADERS

Respondent(s)

(IA No.253620/2023-EXEMPTION FROM FILING C/C OF THE IMPUGNED JUDGMENT)

WITH

SLP(C) No. 26945-26946/2023 (XIV)

(FOR ADMISSION and I.R. and IA No.253454/2023-EXEMPTION FROM FILING C/C OF THE IMPUGNED JUDGMENT)

SLP(C) No.26938/2023SLP(C) No.27353/2023

Date : 12-12-2023 These petitions were called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE SANJIV KHANNA
HON'BLE MR. JUSTICE S.V.N. BHATTI

For Petitioner(s) Mr. S. Murlidhar, Sr. Adv.
Ms. Preetika Dwivedi, AOR
Mr. Kartik Nayar, Adv.
Mr. Abhisek Mohanty, Adv.

Mr. Arindam Ghosh, AOR

For Respondent(s) Mrs. Vanita Bhargava, Adv.
Mr. Ajay Bhargava, Adv.
Mr. Aseem Chaturvedi, Adv.
Mrs. Wamika Trehan, Adv.
Mrs. Raddhika Khanna Tandan, Adv.
M/S. Khaitan & Co., AOR

Mr. Vikas Mehta, AOR
Mr. Apoorv Khator, Adv.
Mr. Vinayak Sharma, Adv.

UPON hearing the counsel, the Court made the following
O R D E R

SLP (C) Nos. 26990-26991/2023

Issue notice and tag with SLP (C) No.23320/2023 titled "*Rohan Builders (India) Private Limited vs. Berger Paints India Limited.*" and other connected matters.

Mr. Vikas Mehta , learned counsel, who is present in Court on advance notice, waives service and accepts notice on behalf of the sole respondent. Hence, notice need not be served.

The arbitration proceedings will continue but no award will be passed.

Learned counsel for the parties will file written submission not exceeding three pages along with the relied upon judgment/decisions.

Re-list for final hearing/disposal on a non-miscellaneous day in the month of February 2024.

SLP(C) Nos.26938/2023 and 27353/2023

Issue notice and tag with SLP (C) No.23320/2023 titled "*Rohan Builders (India) Private Limited vs. Berger Paints India Limited.*" and other connected matters.

Notice will be served by all modes, including *dasti*.

The arbitration proceedings will continue but no award will be passed.

Re-list for final hearing/disposal on a non-miscellaneous day in the month of February 2024.

(BABITA PANDEY)
COURT MASTER (SH)

(R.S. NARAYANAN)
ASSISTANT REGISTRAR



//TRUE COPY//

ITEM NO.15

COURT NO.2

SECTION XVI

S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGSSPECIAL LEAVE PETITION (CIVIL) Diary No(s). 44644/2023

(Arising out of impugned final judgment and order dated 06-09-2023 in AP No. 500/2023 passed by the High Court at Calcutta)

SMS PARYAVARAN LTD.

Petitioner(s)

VERSUS

ASANSOL DURGAPUR DEVELOPMENT AUTHORITY

Respondent(s)

(IA No.12975/2024-EXEMPTION FROM FILING C/C OF THE IMPUGNED JUDGMENT and IA No.12976/2024-CONDONATION OF DELAY IN REFILEING / CURING THE DEFECTS)

Date : 22-01-2024 This petition was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE SANJIV KHANNA

HON'BLE MR. JUSTICE DIPANKAR DATTA

For Petitioner(s) Mr. Hrishikesh Chitale, Adv.
Mr. Vijay Kari Singh, Adv.
Mr. Kaustubh Kadasne, Adv.
Mr. Rajat Joseph, AOR

For Respondent(s)

UPON hearing the counsel, the Court made the following
O R D E R

Delay condoned.

Issue notice and tag with SLP (C) No.24489 of 2023.

Notice will be served by all modes, including *dasti*.

In the meanwhile, there shall be stay of operation of the impugned judgment.

(BABITA PANDEY)
COURT MASTER (SH)

(R.S. NARAYANAN)
ASSISTANT REGISTRAR



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