



2026:DHC:8782



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\* **IN THE HIGH COURT OF DELHI AT NEW DELHI**# **CNR No. DLHC010365852026**+ **ARB.P. 1381/2026 & I.A. 21539/2026****M/S WOODHILL-SHIVAM (JV)** .....PetitionerThrough: Mr. Dayan Krishnan, Sr. Adv.  
with Mr. Mr. Gaurav Khanna,  
Mr. Gautam Barnwal, Ms.  
Sakshi Attri, Ms. Astha  
Agarwal and Ms. Sunidhi  
Kashyap, Advs.

versus

**STATE OF ARUNACHAL PRADESH & ANR.**

.....Respondents

Through: Ms. Tanu Priya Gupta, Ms.  
Khushi Sharma and Ms. Aadya  
Kaliyar, Advs. for R-1 and 2.  
Ms. Arunima Dwivedi, CGSC  
with Ms. Himanshi Singh, Ms.  
Monalisa Pradhan and Mr.  
Suman Ghosh, Advs. for R-2.

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# **CNR No. DLHC010305182026**+ **O.M.P.(I) (COMM.) 277/2026 & I.A. 18341/2026****SHIVAM CONDEV PVT. LTD.** .....PetitionerThrough: Mr. Dayan Krishnan, Sr. Adv.  
with Mr. Mr. Gaurav Khanna,  
Mr. Gautam Barnwal, Ms.  
Sakshi Attri, Ms. Astha  
Agarwal and Ms. Sunidhi  
Kashyap, Advs.

versus

**STATE OF ARUNACHAL PRADESH & ORS.**

.....Respondents

Through: Ms. Tanu Priya Gupta, Ms.  
Khushi Sharma and Ms. Aadya



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Kaliyar, Advs. for R-1 and 2.  
Mr. Bipul Kumar, GP for R-2.

**CORAM:**  
**HON'BLE MR. JUSTICE OM PRAKASH SHUKLA**

**JUDGMENT(ORAL)**

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**25.09.2026**

**ARB.P. 1381/2026**

1. The present petition has been filed under Section 11(6) of the Arbitration and Conciliation Act, 1996<sup>1</sup> seeking appointment of a Sole Arbitrator to adjudicate the disputes arising out of the Engineering, Procurement and Construction Contract<sup>2</sup> dated 21.01.2021 relating to the four-laning of Itanagar to Banderdewa Section of NH-415 from Km 40+430 to Km 51+735.

2. The facts of the present case have already been recorded by this Court in its order dated 17 September 2026 in the Section 9 petition involving the same dispute and are reproduced hereinbelow:

*“4. This is a petition under Section 9 of the Arbitration and Conciliation Act, 1996<sup>3</sup> seeking the following reliefs:*

*a. Pass an interim order directing that during the pendency of disputes between the Joint Venture (comprising Petitioner and Respondent No. 3) and Respondent No. 1, to be adjudicated in arbitration, the order of termination dated 29.04.2026, passed by the Respondent No. 1, shall not have the effect of rendering the Petitioner ineligible or disqualified from participating in any future tender process of any civil infrastructure work, by the Central Government or any*

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<sup>1</sup> “Act” hereinafter

<sup>2</sup> “EPC” hereinafter

<sup>3</sup> “the Act”, hereinafter





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State Government or any of their undertakings and/or Departments;

*b. Pass any other order(s)/direction(s) as this Hon'ble court may deem fit and appropriate in the facts and circumstances of the present case.*

5. Mr. Dayan Krishnan, learned Senior Counsel for the Petitioner submits that the dispute arises out of an Engineering Procurement and Construction<sup>4</sup> Agreement dated 21.01.2021 executed between the Petitioner, Respondent No. 1 and Respondent No. 3 for four-laning of Itanagar to Banderdewa Section of National Highway-415 from Km 40+430 to Km 51+735.

6. The brief facts of the case are that the Petitioner and Respondent No. 3 formed a joint venture company, which was awarded an EPC highway contract by Respondent No. 1. In pursuance of the same, letter of acceptance was issued on 26.11.2020 and the EPC Agreement dated 21.01.2021 was executed for a contract price of Rs.341,71,74,400/-.

7. It is the case of the Petitioner that under the EPC Agreement dated 21.01.2021, Respondent No.1 was required to provide at least 90% encumbrance-free Right of Way<sup>5</sup>, including a continuous stretch of at least 5 Km, before declaring the appointed date of the project.

8. However, as per Petitioner only 81.74% ROW was available when 08.12.2021 was declared at the appointed date, and the site contained numerous structures, poles, trees and other obstructions that led to delay in completion of the work.

9. It is also the case of the Petitioner that work was also delayed by late approval of the flyover and other problems attributable to Respondent No. 1.

10. Mr. Dayan Krishnan further submitted that despite granting an extension up to 31.07.2026, the Respondent No.1 has invoked bank guarantees of Rs.10,25,20,000/- and terminated the contract on 29.04.2026.

11. It is also made out from the record that the Petitioner invoked arbitration and served notice dated 19.06.2026.

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<sup>4</sup> "EPC", hereinafter

<sup>5</sup> "ROW", hereinafter



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12. On the other hand, it is alleged that the Respondent No.1 has vide letter dated 29.04.2026 has terminated the lease and ordered forfeiture of performance security.

13. The prayer of the Petitioner through this petition is confined to the extent that order of termination dated 29.04.2026 passed by Respondent No. 1, shall not have the effect of rendering the Petitioner ineligible or disqualified from participating in future tender process.

14. The only short issue which falls for the consideration before this Court is whether the Petitioner is entitled to interim protection against the debarment by the Respondents in future tenders vide Termination Notice dated 29.04.2026.

15. The issue pertaining to debarment and blacklisting is settled in view of the judgment of Supreme Court in **M/s A.K.G. Construction and Developers Pvt. Ltd. v. State of Jharkhand & Ors** <sup>6</sup>.

16. The Hon'ble Supreme Court in the aforesaid judgment has held that even where termination of the existing contract is valid, blacklisting does not automatically follow. It was held that the relevant authority must independently consider whether the contractors conduct warrants exclusion from future contracts and must issue a clear and specific show cause notice informing the contract that blacklisting is proposed.

17. Adverting to facts of this case, it is made out from the record that no separate blacklisting notice herein was given to the Petitioner and the termination order contains no independent reason for future exclusion.

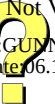
18. It cannot be overlooked that the Petitioner has a substantial record of satisfactory past performance and has never previously been subjected to termination. Therefore, imposing debarment without consideration of these factors would be contrary to the principal of natural justice.

19. In these circumstances, this Court finds that a strong prima facie case in favour of the Petitioner is made out.

20. Issue notice.

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<sup>6</sup> (2026 INSC 312)





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21. Mr. Bipul Kumar, learned Counsel accepts notice on behalf of Respondent No. 2/UOI.

22. Upon the Petitioner taking appropriate/requisite steps, let notice be issued to the remaining Respondents through all permissible modes, including electronic means and dasti, returnable on 25.09.2026.

23. Reply, if any, be filed within two weeks from today. Rejoinder thereto, if any, be filed within two weeks thereafter.

24. Meanwhile, there shall be a stay of the operation of the Termination Notice dated 29.04.2026, till the next date of hearing, insofar as it renders the Petitioner ineligible or disqualified from participating in any future tender process relating to civil infrastructure works issued by the Central Government, any State Government, or any of their respective undertakings and/or departments.”

3. Clause 26.2 of the EPC agreement provides for a multi-tier conciliation mechanism while Clause 26.3 provides for reference of disputes to arbitration which remains unresolved through mechanism prescribed under the agreement. Both clauses are reproduced hereinbelow:

*“26.2 Conciliation*

*In the event of any Dispute between the Parties, either Party may call upon the Authority’s Engineer, or such other person as the Parties may mutually agree upon (the “Conciliator”) to mediate and assist the Parties in arriving at an amicable settlement thereof. Failing mediation by the Conciliator or without the intervention of the Conciliator, either Party may require such Dispute to be referred to the Chairman of the Authority and the Chairman of the Board of Directors of the Contractor for amicable settlement, and upon such reference, the said persons shall meet no later than 7 (seven) business days from the date of reference to discuss and attempt to amicably resolve the Dispute. If such meeting does not take place within the 30 (thirty) business day period or the Dispute is not amicably settled within 30 (thirty) days of the meeting or the Dispute is not resolved as evidenced by the signing of written terms of settlement within 30 (thirty) days of the notice in writing referred to in Clause 26.1.1 or such longer period as may be*





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*mutually agreed by the Parties, either Party may refer the Dispute to arbitration in accordance with the provisions of Clause 26.3 but before resorting to such arbitration, the parties agree to explore conciliation by the Conciliation Committees of Independent Experts set up by the Authority in accordance with the procedure decided by the panel of such experts and notified by the Authority on its website including its subsequent amendments. In the event of the conciliation proceedings being successful, the parties to the dispute would sign the written settlement agreement and the conciliators would authenticate the same. Such settlement agreement would then be binding on the parties in terms of Section 73 of the Arbitration Act. In case of failure of the conciliation process even at the level of the Conciliation Committee, either party may refer the Dispute to arbitration in accordance with the provisions of Clause 26.3.*

### **26.3 Arbitration**

*(i) Any dispute which remains unresolved between the parties through the mechanisms available/ prescribed in the Agreement, irrespective of any claim value, which has not been agreed upon/ reached settlement by the parties, will be referred to the Arbitral Tribunal as per the Arbitration and Conciliation Act.*

*(ii) Deleted*

*(iii) The Arbitral Tribunal shall make a reasoned award (the "Award"). Any Award made in any arbitration held pursuant to this Article 26 shall be final and binding on the Parties as from the date it is made, and the Contractor and the Authority agree and undertake to carry out such Award without delay.*

*(iv) The Contractor and the Authority agree that an Award may be enforced against the Contractor and/or the Authority, as the case may be, and their respective assets wherever situated.*

*(v) This Agreement and the rights and obligations of the Parties shall remain in full force and effect, pending the Award in any arbitration proceedings hereunder. Further, the parties unconditionally acknowledge and agree that notwithstanding any dispute between them, each Party shall proceed with the performance of its respective obligations, pending resolution of Dispute in accordance with this Article.*

*(vi) In the event the Party against whom the Award has been granted challenges the Award for any reason in a court of law, it shall make an interim payment to the other Party for an amount*





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*equal to 75% (seventy five per cent) of the Award, pending final settlement of the Dispute. The aforesaid amount shall be paid forthwith upon furnishing an irrevocable Bank Guarantee for a sum equal to 120% (one hundred and twenty per cent) of the aforesaid amount. Upon final settlement of the Dispute, the aforesaid interim payment shall be adjusted and any balance amount due to be paid or returned, as the case may be, shall be paid or returned with interest calculated at the rate of 10% (ten per cent) per annum from the date of interim payment to the date of final settlement of such balance.”*

4. The learned senior counsel for the Petitioner submits that the contractual mechanism stood exhausted and that the arbitration was thereafter invoked *vide* Notice dated 19.06.2026.

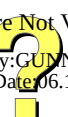
5. The Respondents oppose the petition principally on the ground that the pre-arbitration mechanism contemplated under Clause 26.2 had not been exhausted.

6. It is the case of the Respondents that although a meeting was held on 25.02.2026, the Petitioner did not pursue the Conciliation Committee of independent experts and proceeded to invoke arbitration pre-maturely.

7. Having considered the material available on record, this Court finds no impediment to the appointment of an Arbitrator in the present proceedings.

8. The petition is, accordingly, liable to be allowed.

9. Accordingly, Hon'ble Mr. Justice Sanjay Karol, Former Judge,





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Supreme Court of India (Mob. No.9821012524) is appointed as a learned Sole Arbitrator to adjudicate the disputes arisen between the parties. The learned Sole Arbitrator shall enter upon the reference within three weeks from today.

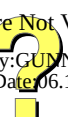
10. The learned Sole Arbitrator will proceed to the arbitration proceedings subject to furnishing requisite disclosures as required under Section 12(2) of the Act within three weeks of entering reference.

11. The fee of the learned Arbitrator shall be determined in consultation with the parties and with the consent of the learned Arbitrator.

12. The Respondents are at liberty to raise preliminary objections with respect to arbitrability and jurisdiction, if any, which shall be decided by the learned Sole Arbitrator in accordance with law.

13. It is clarified that the observations made herein are only for the purpose of deciding the present petition under Section 11(6) of the Act. The learned Sole Arbitrator shall adjudicate the disputes independently and on their own merits, uninfluenced by any observations contained in the present order.

14. The Registry is directed to send a receipt of this order to Mr. Sanjay Karol, learned Arbitrator through all permissible modes





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including email.

15. Accordingly, the present petition is disposed of in the above terms. Pending application(s), if any, also stand disposed of.

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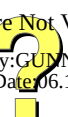
16. The present petition has been filed under Section 9 of the Act seeking interim measures.

17. As order has already been passed in Section 11 petition, the present petition filed under Section 9 of the Act shall stand treated as an application under Section 17 of the Act, and same shall be considered and decided by the learned Sole Arbitrator upon entering into the reference.

18. It is clarified that the interim order shall continue till such time as Section 17 application is taken up for adjudication by the learned Sole Arbitrator.

19. The learned Sole Arbitrator is requested to decide the application under Section 17 of the Act preferably within two months of entering upon reference and both the parties are directed not to take any adjournment in the proceedings.

20. Accordingly, the present petition along with pending





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application, if any, is disposed of.

**OM PRAKASH SHUKLA, J**

**SEPTEMBER 25, 2026/gunn**

