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

CNR No. DLHC010475162026

+ **O.M.P.(I) (COMM.) 460/2026 & I.A. 27389/2026**

M/S JANDU CONSTRUCTION INDIA PVT LTD Petitioner

Through: **Mr. Jayant Mehta, Senior Advocate
with Mr. Anil Kumar, Mr. V. Hariharan
and Mr. Aryan Vora, Advocates.**

versus

**NATIONAL HIGHWAYS AND INFRASTRUCTURE
DEVELOPMENT CORPORATION LIMITED** Respondent

Through: **Mr. Anshul Rai, Mr. Raunaq Singh and
Ms. Mallika Ranjan, Advocates.**

CORAM:

HON'BLE MR. JUSTICE TUSHAR RAO GEDELA

ORDER

% **01.10.2026**

I.A. 27391/2026 (Exemption)

1. This is an application filed on behalf of the petitioner under Section 151 of the Code of Civil Procedure, 1908 (hereinafter referred to as the 'CPC') seeking exemption from filing true typed/legible copies of the illegible/dim document nos.2 to 22.
2. Exemption allowed, subject to just exceptions. However, true typed/legible copies of the said illegible/dim documents with proper margins be filed within four weeks with an advance copy to the respondent.
3. The application stands disposed of.

I.A. 27392/2026 (Seeking exemption to file lengthy list of dates and synopsis)

4. This is an application filed on behalf of the petitioner under Section 151



of CPC seeking exemption to file lengthy list of dates and synopsis.

5. For the reasons stated therein, the application is allowed.

6. The application stands disposed of.

I.A. 27390/2026 (Under Order II Rule 2, CPC)

7. This is an application filed on behalf of the petitioner under Order II Rule 2 read with Section 151 of CPC seeking permission to reserve rights to amend, alter or add to the reliefs prayed for in the present petition.

8. For the reasons stated therein, the application is allowed.

9. The application is disposed of.

O.M.P.(I) (COMM.) 460/2026

10. This is a petition under Section 9 of the Arbitration and Conciliation Act, 1996 (hereinafter referred to as the 'Act') seeking interim measures of protection in terms of the prayer clauses which are extracted hereunder:

“(a) Stay the operation, implementation and effect of the Temporary Suspension Order No. NHIDCL/Tripura/ Mtc./ 2026-27 dated 25.09.2026 issued by the Respondent, whereby the Petitioner has been temporarily suspended from participating in the ongoing and future bidding processes of NHIDCL, MoRTH and its implementing agencies, pending constitution of the Arbitral Tribunal and adjudication of the disputes between the parties; and

(b) Restrain the Respondent, its officers, agents and representatives from giving effect to or acting upon the impugned Temporary Suspension Order dated 25.09.2026, including by treating the Petitioner as suspended, debarred or otherwise ineligible to participate in any ongoing or future tender/bidding process of NHIDCL, MoRTH or its implementing agencies, during the pendency of the present proceedings;

(c) Restrain the Respondent, during the pendency of the present Petition and the arbitral proceedings, from taking any coercive or precipitative action against the Petitioner, including termination of the Contract, invocation or encashment of Performance Security/ Additional Performance Security, risk-and-cost action, declaration of the Petitioner as a Non-Performer, debarment/blacklisting, or any other adverse action arising out of the subject matter of the present dispute, without following due process of law and without prior leave of this Hon'ble Court;

(d) Pass any further or other Order(s), direction(s), which are deemed fit,



reasonable and expedient in the circumstances of the case.”

11. Mr. Jayant Mehta, learned senior counsel states that the impugned notice dated 25.09.2026 issued by the respondent, taking the action of temporarily suspending the petitioner would result in the petitioner being unable to participate in ongoing/future bidding of the NHIDCL, MoRTH and its implementing agencies. It would be onerous and may lead to financial distress for the petitioner.

12. He draws attention of this Court to the MoRTH circular dated 06.10.2021 under which the impugned notice was issued, particularly to para 5 thereof, to submit that the mandatory 15 days prior notice which was required to be issued by the authorities has not been issued in the present case, thus violating the Principles of Natural Justice. He would insist that if such notice, as required, is not mandatorily provided to the petitioner, the temporary suspension would be liable to be set aside.

13. That Apart, learned senior counsel submits that though the stretch of the highway under the project implemented by the petitioner is a subject matter of the High Court of Tripura in WP(C)(PIL) No.6/2026, yet, on the direction of the learned Division Bench of the High Court of Tripura, the respondent itself requested the Central Road Research Institute (hereinafter referred to as “CRRRI”) to conduct an independent survey of the entire stretch of the highway, including that of the petitioner.

14. By drawing attention of this Court to various relevant pages of the said report, learned senior counsel contends that the CSIR-CRRRI Report clearly rates the work executed by the petitioner as either good or fair and definitely not adverse. He states that in such circumstances, the respondent has no merits or any grounds as to why the petitioner’s eligibility for ongoing and future bidding should be suspended.

15. Contrary to the aforesaid arguments, learned counsel appearing on



behalf of the respondent submits, at the outset, that the present petition under Section 9 itself is not maintainable on account of two facts.

16. He states that in terms of para 7 of the MoRTH circular, the petitioner has availed a review against the decision as provided under the impugned order for temporarily suspending the petitioner, which is still pending consideration before the reviewing authority. He states that under such circumstances, the petitioner is to exercise his doctrine of election as to which remedy he needs to follow and in such circumstances, the present petition would not be maintainable.

17. He also relies upon the judgement of Coordinate Bench of this Court in ***“NCC Limited vs. Airport Authority of India”, O.M.P.(I)(COMM) 140/2026 dated 01.07.2026***, to state that Section 9 is not maintainable when it comes to an issue of debarment initiated by the authorities.

18. Learned counsel also draws attention of this Court to the Defect Cure Notice dated 17.07.2026 enclosed in the petition to state that a 60 day time-period was granted to the petitioner to cure/rectify the defects which were noticed by the authorities, however, having failed in that time-period to cure the defects, the respondent was constrained to issue the temporary suspension notice under the impugned notice dated 25.09.2026.

19. In this context, learned counsel states that the present petition has no merits and ought to be dismissed.

20. Learned counsel for the respondent also raised an issue of pecuniary jurisdiction inasmuch as he states that the entire petition of the petitioner is predicated only on the defect liability period, which is to the extent of 0.5% of the entire project, which comes to equal to or less than Rs.1 Crore. Thus, this Court may not be of the requisite pecuniary jurisdiction to entertain the present petition.

21. Be that as it may, this Court has heard learned counsel appearing on



behalf of the parties.

22. It is not doubted that the order dated 25.09.2026 of temporary suspension of the petitioner has been invoked by the respondent authority in terms of para 5 of the MoRTH circular dated 06.10.2021. The operative portion of the impugned order is extracted hereunder:

“Temporary Suspension:

M/s Jandu Construction India Pvt. Ltd. in JV with Maan Builders having registered office at A-21, 2nd Floor, Pushpanjali Enclave, Front of Pillar No.30, Pitampura, New-Delhi-110034, EPC Contractor of Improvement and widening to two lane with paved shoulder of road from Km 49.200 to Km 63.700 (Total length: 14.500 km) i.e. Jurichara-Bamanchara section of NH-208 (Package-III) in the state of Tripura on EPC basis, is hereby temporarily suspended from participating in ongoing/future bidding of NHIDCL, MoRTH and its implementing agencies, as applicable under the aforesaid MoRT&H Circular dated 06.10.2021, for a period of up to one month from the date of this Order.”

23. It is also relevant to note para 5 of the MoRTH circular, which is extracted hereunder:

“5. Before deciding a contractor/concessionaire as Non Performer debarring/penalizing it, the concerned authority shall issue a notice to the contractor/concessionaire by giving 15 days' time to furnish its written reply and allow personal hearing, if so desired by the contractor/concessionaire, before the competent authority or any person designated for the purpose. Such a notice shall not be issued without the approval of an officer below the rank of Chief Engineer/CGM/ED. In case of projects where public safety is endangered by the behavior/conduct/action of the consultant/contractor/concessionaire, the authority may temporarily suspend the consultant/contractor/concessionaire from participating in ongoing/future bidding upto 1 month period during which the regular process of debarment shall be concluded.”

24. A bare reading of the para 5, *prima facie*, demonstrates that before the authority can proceed against any contractor or concessionaire as a non-performer or initiate any action for debarring or penalizing it, the authority is required to issue a notice to the entity by giving a 15 days' time to furnish its written reply and allow personal hearing, if so desired by the said



contractor/concessionaire. This, itself, appears to be a provision ensuring compliance of Principles of Natural Justice before any administrative action is taken by the authority. The power to temporarily suspend the contractor/concessionaire from participating in ongoing and future bidding upto one month period is also provided in para 5, however, it does not appear at this stage, *prima facie*, that this portion of para 5 is an exception or delinked from the previous portion which required giving a 15 day prior notice before proceeding to take any action in respect of declaring the contractor/concessionaire as an non-performer or initiation of action for debarring it.

25. That apart, learned senior counsel has also invited attention of this Court to the CSIR-CRRI Report, which was generated at the instance of the competent authority, pursuant to the direction of the learned Division Bench of the High Court of Tripura, which was submitted to it in the month of September, 2026. This Court has perused the relevant pages and paragraphs as indicated by the learned senior counsel, which are extracted hereunder for the purpose of clarity:



Table 4: Details of the Distress Survey and Pavement Condition

S. No.	Chainage (km)	Predominant Condition	Recorded Pavement Condition/Distress
1	49.200–50.200	Good to Fair	Pavement is generally in Good to Fair condition, with no significant distress observed.
2	50.200–51.200	Good to Fair	Pavement is generally in Good condition, with isolated minor surface irregularities.
3	51.200–52.200	Good	Pavement is predominantly in Good condition, with no major distress observed.
4	52.200–53.200	Good to Fair	Pavement condition varies from Good to Fair, with only isolated minor surface defects.
5	53.200–54.200	Good to Fair	Pavement is generally in Fair to Good condition. No continuous or severe distress was observed.
6	54.200–55.200	Good to Fair	Pavement is predominantly in Fair to Good condition, with localized minor surface irregularities.
7	55.200–56.200	Good	Pavement is generally in Good condition, with no significant distress observed.
8	56.200–57.200	Fair	Localized alligator cracking and ravelling were observed near Km 56+300 . The remaining portion is generally in Fair to Good condition.
9	57.200–58.200	Fair to Good	Pavement is generally in Fair to Good condition, with isolated minor surface defects.
10	58.200–59.200	Fair to Good	Pavement is predominantly in Fair to Good condition, without any major continuous distress.
11	59.200–60.200	Fair to Good	The pavement is generally in Fair to Good condition, with only isolated minor surface deterioration.
12	60.200–61.200	Fair, with localized Poor condition	A localized deteriorated portion was observed near Km 60+700 due to inadequate surface drainage, where water flows transversely across the carriageway from one side of the road to the other. The remaining stretch is generally in Fair to Good condition.
13	61.200–62.200	Fair to Good	Pavement is generally in Fair to Good condition, with no significant continuous distress.
14	62.200–63.200	Fair to Good	Pavement is predominantly in Fair to Good condition, with isolated minor surface defects.
15	63.200–63.700	Good	Pavement is generally in Good condition, with no major distress observed.

Note: 1. The reported condition is during survey in the month of January 2026, the current condition may vary.

Note: 2. Although the overall project road was generally in Fair to Good condition, with isolated deterioration observed at only a few locations. **Localized pavement distress and surface irregularities were noticed near the approach portions of some structures, particularly culverts, mainly due to differential settlement.**



CHAPTER 6

6.0 ANALYSIS AND DISCUSSIONS OF PAVEMENT DATA

6.1 Pavement Surface Condition

The visual pavement condition survey indicated that the Jurichhara–Bamanchhara section of NH-208 from Km 49.200 to Km 63.700 is predominantly in Fair to Good condition. Most portions of the project road were found to be free from significant structural distress. The observed pavement defects were generally isolated and localized in nature.

Localized alligator cracking and ravelling were observed near Km 56+300. A comparatively distressed location was identified near Km 60+700, where inadequate surface drainage allows water to cross the carriageway from one side to the other. The continued movement of surface water over the pavement has resulted in localized surface deterioration and irregularity at this location.

Pavement distress and surface irregularities were also observed near the approach portions of some structures, including culverts. These defects appear to be associated primarily with inadequate drainage, localized loss of support and differential settlement between the pavement and the structure approaches.

Thus, although the overall project road is in Fair to Good condition, localized corrective measures are required at the identified distressed locations. The observed condition does not indicate widespread pavement failure warranting full-length reconstruction or rehabilitation.

6.2 Evaluation of Test Pit and Laboratory Investigation Results

6.2.1 Existing Pavement Composition and Layer Thickness

Five test pits were excavated along the project road for verification of the existing pavement composition and layer thickness. The observed Bituminous Concrete thickness ranged from 40 mm to 43 mm, with an average thickness of 41.4 mm, against the designed thickness of 40 mm.

The thickness of the Zydex-stabilized cement-treated base ranged from 340 mm to 355 mm, with an average of 344.4 mm, against the designed thickness of 340 mm. Consequently, the total observed pavement thickness ranged from 380 mm to 395 mm, with an average thickness of 385.8 mm, compared with the designed structural crust thickness of 380 mm.



The results indicate that no pavement thickness deficiency was observed at any of the five test pit locations. The existing pavement composition is generally consistent with the adopted design comprising 40 mm BC over 340 mm Zydex-stabilized cement-treated base.

6.2.2 Subgrade Soil

The subgrade soil recovered from the five test pits was generally of low plasticity. The Liquid Limit ranged from 21.5% to 27.5%, while the Plasticity Index ranged from 4.5% to 7.0%. These values are within the specified limits and indicate that the subgrade material is not highly susceptible to plastic deformation.

The field dry density of the subgrade ranged from 1.897 g/cc to 1.926 g/cc. The corresponding degree of compaction ranged from 96.8% to 98.1%, with an average of approximately 97.4%. The subgrade at Km 56+050 RHS recorded a degree of compaction of 96.8%, which is marginally below the specified minimum requirement of 97%. The remaining four test pit locations satisfied the specified compaction requirement.

The soaked CBR values of the retrieved subgrade samples ranged from 9.3% to 13.0%, with an average value of approximately 11.0%. All the observed CBR values are higher than the design subgrade CBR of 8%, indicating that the existing subgrade possesses adequate bearing capacity at the investigated locations. The optimum moisture content was generally higher than the corresponding field moisture content.

6.2.3 Zydex-Stabilized Cement-Treated Base

The Zydex-stabilized base material recovered from the test pits was found to be non-plastic. The field dry density ranged from 1.948 g/cc to 2.050 g/cc, while the laboratory maximum dry density ranged from 1.988 g/cc to 2.105 g/cc.

Based on the field and laboratory dry densities, the degree of compaction of the Zydex-stabilized layer ranged from 97.2% to 98.3%, with an average of approximately 97.6%. Against a minimum compaction requirement of 98% of laboratory MDD, the results at Km 53+100 LHS, Km 59+350 LHS and Km 63+400 RHS are marginally below the specified requirement. Km 56+050 RHS meets the requirement at 98.0%, while Km 50+300 LHS records 98.3%.

The Unconfined Compressive Strength (UCS) of the in-service Zydex-stabilized layer could not be determined because core samples from this layer were not collected during the field investigation. Therefore, direct verification against the specified UCS requirement of 4.50 MPa

26. From a perusal of the aforesaid paragraphs, it appears that the CSIR-CRRI Report, which is an independent authority and has submitted its report, *prima facie*, appears to be indicating that the work executed by the petitioner in respect of the payment etc., are either fair or good and definitely does not appear to indicate any adverse report of the status and condition of the



project stretch which was contracted to the petitioner.

27. In that view of the matter and having regard to the fact that the respondent is yet to demonstrate, if any notice, as contemplated under para 5 of the MoRTH Circular dated 06.10.2021 was issued, it appears justifiable and in the interest of justice to keep the impugned order dated 25.09.2026 of temporary suspension, in abeyance till the next date of listing.

28. At this stage, learned counsel for the respondent states, under instructions, that the parties may be referred to arbitration.

29. Mr. Jayant Mehta, learned senior counsel, under instructions of learned counsel for the petitioner, agrees to the same.

30. Though, it is noted that Clause 26.1 regarding dispute resolution also contemplates conciliation proceedings to proceed the arbitration, however, the parties are *ad idem* that the disputes be referred to arbitration straightaway by this Court.

31. The parties are also *ad idem* that irrespective of what the arbitration clause envisages regarding the constitution of the Tribunal, they are agreeable that the said arbitration be conducted by a Sole Arbitration, preferably, retired Judge of the High Court under the aegis of the Delhi International Arbitration Centre (hereinafter referred to as '*DIAC*').

32. If that be so, this Court appoints Mr. Justice G.S. Sistani (Retd.), (Mobile: 9871300034), as the learned Arbitrator who shall adjudicate the disputes between the parties under the Rules framed by the DIAC.

33. The fees of the learned Arbitrator shall be in terms of DIAC (Administrative Cost and Arbitrators' Fees) Rules, 2018. Learned Arbitrator is requested to submit the requisite declaration under Section 12 of the Act.

34. The petitioner shall approach the learned Arbitrator within two weeks from today.

35. The learned Tribunal shall treat the present petition under Section 9 as



well under Section 17 of the Act and proceed to dispose it of without being influenced by the observations made herein.

36. Needless to state that the present order shall operate till the Tribunal considers and disposes of the present application.

37. *Dasti* under the signatures of Court Master.

TUSHAR RAO GEDELA, J

OCTOBER 1, 2026/anj