

**FARAD CONTINUATION SHEET No.**  
**IN THE HIGH COURT OF JUDICATURE AT BOMBAY**  
**NAGPUR BENCH AT NAGPUR**

**WRIT PETITION NO. 176/2016**

(M/S ABHIJEET ROADS LIMITED, NAGPUR **VERSUS** NATIONAL HIGHWAYS AUTHORITY OF INDIA)

Office Notes, Office Memoranda of Coram,  
 appearances, Court's orders of directions  
 and Registrar's orders

Court's or Judge's orders

Shri D.V. Chauhan, counsel for the petitioner.

Mrs. Ketki Vaidya-Jaltare with Ms Prachi Sawant i/b Shri M.V. Kini,  
 counsel for the respondent.

**CORAM : SMT.VASANTI A. NAIK AND**  
**V.M. DESHPANDE, JJ.**

**DATE : MARCH 08, 2016.**

By this petition, the petitioner-Company has impugned the order of the respondent-National Highways Authority of India, dated 05.02.2014 debarring the petitioner-Company from participating and bidding in the projects undertaken by the respondent-Authority for a period of two years. According to the petitioner, the action of the respondent-Authority in debarring the petitioner-Company is arbitrary and unconstitutional.

A project of four laning was proposed in the State of Orissa and a tender was floated by the respondent no.1-Authority, through its Head Office at Delhi inviting tenders for the said project. The petitioner is a parent company that had participated in the tender process. The Head Office of the petitioner-Company is situated at Nagpur. The respondent-Authority had served the Letter of Award dated 03.11.2011 to M/s Abhijeet Angul Sambalpur Toll Road Limited, Nagpur, which is a SPV (Special Purpose Vehicle) Company of the petitioner. The concession agreement was signed between M/s Abhijeet Angul Sambalpur Toll Road Limited, Nagpur (SPV Company of the petitioner-Company) and the respondent-Authority on 13.03.2012 at Delhi. There was a clause in the concession agreement requiring the deposit of a sum of Rupees

Sixty One Crores towards the performance guarantee (security). It is the case of the respondent-Authority that since there was a default in making the payment of the said amount and since the petitioner-Company had participated in the tender process, it is liable to be debarred for a period of two years. The impugned order debarring the petitioner-Company for a period of two years from participating in the tender process of the respondent-Authority was passed. The petitioner-Company has challenged the said order by this petition.

Ms Ketki Vaidya-Jaltare, the learned counsel for the respondent-Authority, raises a preliminary objection to the tenability of the writ petition in the Nagpur Bench of the Bombay High Court. It is stated that the Head Office of the respondent-Authority is situated at Delhi. It is stated that the tender was floated by the respondent from its Delhi Office and the project of four laning was to be carried out at Orissa. It is stated that no part of cause of action, for that matter even a fraction of the same, would arise within the territorial jurisdiction of the Nagpur Bench. The learned counsel relied on the decision of the Hon'ble Supreme Court in the case of *Alchemist Limited & Another Versus State Bank of Sikkim & Others*, reported in **(2007) 11 SCC 335** to substantiate her submission.

Shri Chauhan, the learned counsel for the petitioner submitted that a part of cause of action would arise within the jurisdiction of the Nagpur Bench. It is stated that the Head Office of the petitioner-Company is situated at Nagpur. It is stated that the impugned order debarring the petitioner-Company as well as the show cause notice were served on the petitioner-Company at Nagpur. It is stated by placing reliance on the judgment of the Hon'ble Supreme Court reported in **(2014) 9 SCC 329** (*Nawal Kishore Sharma Versus Union of India & Others*) that a part of cause of action would arise within the jurisdiction of the Nagpur Bench. It is stated that in somewhat similar set of facts, the Hon'ble

Supreme Court had overruled the preliminary objection in regard to the territorial jurisdiction.

It would be necessary to uphold the preliminary objection raised on behalf of the respondent-Authority, in the circumstances of the case. Admittedly, the tender was floated by the respondent, which has its Head Office at Delhi. The concession agreement was signed between M/s Abhijeet Angul Sambalpur Toll Road Limited, Nagpur (SPV Company of the petitioner-Company) and the respondent-Authority at Delhi on 13.03.2012. The project of four laning was to be carried out in the State of Orissa. In the aforesaid set of admitted facts, it cannot be said that the Nagpur Bench would have jurisdiction to entertain and decide this writ petition merely because the impugned order of debarring the petitioner-Company and the show cause notice were served on the petitioner-Company, at Nagpur. A similar question fell for consideration before the Hon'ble Supreme Court in the case of *Alchemist Limited* (Supra) and in the said judgment, it is held by the Hon'ble Supreme Court that the service of the impugned communication on the petitioner therein at Chandigarh cannot be said to be an essential, integral or material fact so as to constitute a part of cause of action, within the meaning of Article 226(2) of the Constitution of India. It was observed by the Hon'ble Supreme Court that merely because the registered office of the petitioner therein was at Chandigarh, it cannot be said that the part of cause of action would arise within the jurisdiction of the Punjab & Haryana High Court. It was found in the said case that the registered and corporate office of the first respondent therein was at Sikkim and the secretariat of the second respondent was also at Gangtok, Sikkim. The advertisement in that case was issued by the respondent no.2 therein from Sikkim, the meetings of the Board of Directors were held at Gangtok, the resolutions were passed at Gangtok and the Government decided at Gangtok to reject the proposal of the petitioner therein. In the aforesaid set of facts, it

was held that the writ petition would not be maintainable in the Punjab & Haryana High Court. We find that the facts involved in the judgment reported in **(2007) 11 SCC 335** (*Alchemist Limited & Another Versus State Bank of Sikkim & Others*) would squarely apply to the facts of this case. The judgment reported in **(2014) 9 SCC 329** (*Nawal Kishore Sharma Versus Union of India & Others*) and relied on by the counsel for the petitioner-Company cannot be made applicable to the present case. In the facts of the said case, the employee-appellant therein had started residing in the State of Bihar after the termination of his services on account of his various ailments including difficulty in breathing. The communications were addressed by the Union of India & Others to the appellant therein at his home address in the district of Gaya (Bihar). The Hon'ble Supreme Court *prima-facie* observed in the aforesaid set of facts that a part or fraction of cause of action may arise within the jurisdiction of the Patna High Court. While making the aforesaid *prima-facie* observation, the Hon'ble Supreme Court held that when the petition was heard for grant of interim relief, the respondents therein had not raised any objection in regard to the territorial jurisdiction and had offered an amount of Rs.2,75,000/- to the appellant therein. The High Court had, in the facts of the aforesaid case, passed an interim order directing the authorities of the Shipping Corporation of India to pay at least a sum of Rs.2,75,000/- subject to the result of the petition, after hearing the respondents therein. It was held in the said decision that in the peculiar facts and circumstances of the case, it was necessary to overrule the objection with regard to the territorial jurisdiction. The facts in the case before the Supreme Court were peculiar and the judgment reported in **(2014) 9 SCC 329** (*Nawal Kishore Sharma Versus Union of India & Others*) would not be applicable to the case in hand. In the admitted facts of this case, it cannot be said that a part of cause of action arose within the territorial jurisdiction of the Nagpur Bench.

Hence, we uphold the preliminary objection raised on behalf of the respondent-National Highways Authority of India and refuse to entertain the writ petition at the Nagpur Bench. The petitioner-Company is free to take appropriate steps in accordance with law.

Order accordingly. No costs.

The points raised in the petition are kept open.

**JUDGE**

**JUDGE**

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