

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO.867 OF 2024

Hemant Ashar
the Partner of Shreeji Network
Solutions : Petitioner.

Vs.

Nashik Municipal Smart City
Development Corporation Limited
and ors. : Respondents.

Mr. Ashutosh Kulkarni (through V.C.) a/w Mr. Susmit Phatale a/w
Mr. Somanath Kale i/by Mr. Susmit Phatale for the Petitioner.

Mr. M. L. Patil a/w Mr. Nikhil Patil for Respondent Nos. 1 and 2.

Dr. Milind Sathe, Senior Advocate, aw/ Mr. Jaideep Singh Khatter
and Ms. Rucha Prabhu i/by The Fort Circle for Respondent No.3.

**CORAM : DEVENDRA KUMAR UPADHYAYA, CJ. &
ARIF S. DOCTOR, J.
DATE : 22nd APRIL 2024**

P.C. :

1. We had vide our order dated 30th January 2024, after recording reasons, *inter-alia* directed that no further payment shall be made to Respondent No.3 by the Respondent-Corporation in relation to the work being performed pursuant to the subject tender.

2. Thereafter when the matter was on board on 15th April 2024 Learned Senior Counsel appearing on behalf of Respondent No.3 submitted that almost 90% of the work under the subject tender had been completed by Respondent No.3. He submitted that the certificate in question was never infact used by Respondent No.3 to secure the tender but had been withdrawn before the assessment of eligibility. He submitted that the interim order of 30th January 2024 gravely affected Respondent No.3 inasmuch Respondent No. 3 was in need of the said funds to ensure completion of the balance works awarded under the tender. Learned Senior Counsel thus submitted that the balance payments ought to be made in the interest of the project and to ensure completion of the work. He submitted that the said payments could always be made subject to outcome of the present Petition.

3. It was thus that on that date i.e. on 15th April 2024 we directed Respondent No.3 to file a requisite undertaking to

secure/bring back the payments if permitted to be made by this Court. Dr. Sathe, Learned Senior Counsel appearing on behalf of Respondent No.3 has today tendered a copy of Affidavit-Cum-Undertaking of one Aditya Prabhu, who is stated to be the Founder, Director & Chief Executive Officer of Respondent No.3, in addition to being a substantial shareholder of Respondent No.3. Mr. Prabhu is also present in Court today and is identified by his advocates. Mr. Prabhu has in paragraphs 7 and 8 of the said Affidavit-Cum-Undertaking stated as follows :-

"7. I say that at the hearing held on 19 April 2024, this Hon'ble Court directed that a personal undertaking should be filed by the director of Respondent no.3 (instead of an undertaking on behalf of Respondent no.3) undertaking that if payments are released to Respondent no.3 for work done under the Project, then the director shall undertake to bring back and deposit the same with the Registry of the Hon'ble Court or as otherwise directed by this Hon'ble Court.

8. Accordingly, I state that if payments are released to Respondent no.3 for work done under the Project, I undertake to bring back and deposit the same with the Registry of the Hon'ble Court or otherwise directed by this Hon'ble Court."

4. Hence in view of the Affidavit-Cum-Undertaking filed today we are satisfied that the interim order dated 30th January, 2024 can be clarified to the limited extent sought for in terms of the said Affidavit-Cum-Undertaking.

5. We thus make it clear that it will be open to the Respondent – Corporation to release payment to Respondent No.3 subject to fulfillment of other conditions, if any, where it is found due and payable on the usual terms. The order dated 30th January 2024 is thus varied to this limited extent. All Payments made shall be subject to the outcome of the Petition.

6. Stand over to **24th June 2024.**

(ARIF S. DOCTOR, J.)

(CHIEF JUSTICE)