



\$~67

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

+ **W.P.(C) 3821/2025, CM APPL. 17803/2025**

SHINDE DEVELOPERS PRIVATE LIMITED & ANR.....Petitioners

Through: Mr. Arvind Nigam, Sr. Adv., Mr. Sanjeev Mahajan, Mr. Mahip Singh, Ms. Ayushi Pandey and Mr. Krishan Kumar, Advs.

versus

THE NATIONAL HIGHWAYS AUTHORITY OF INDIA & ORS.

.....Respondents

Through: Mr. Santosh Kumar, SC and Mr. Kartik Gupta, Adv. for NHAI.
Mr. Bhagvan Swaroop Shukla, CGSC and Mr. Sarvan Kumar, Adv. for UOI/R-2.

CORAM:

HON'BLE MR. JUSTICE SACHIN DATTA

ORDER

27.03.2025

%

CM APPL. 17804/2025 – Exemption

1. Allowed, subject to all just exceptions.
2. Application stands disposed of.

W.P.(C) 3821/2025

3. The present petition has been filed by the petitioner seeking that respondent no.1 be directed to forthwith return the following bank guarantees of the petitioners:-

- (i) Performance Bank Guarantee dated 01.07.2021, bearing No. 0504IPEBG210014, for an amount of Rs. 4,69,80,916/-.
- (ii) Additional Bank Guarantee dated 14.07.2021 bearing No. 0504IPEBG210015 (Part I), for an amount of Rs. 1,86,62,686/-
- (iii) Additional Bank Guarantee dated 14.07.2021, bearing No.



0504IPEBG210016 (Part II), for an amount of Rs. 1,68,341/-

(iv) Additional Bank Guarantee dated 15.07.2021, bearing No. 12001/110/5136/04/10/29 (Part III), for an amount of Rs. 2,81,49,889/-

(v) Mobilization Bank Guarantee bearing No. 111/5136/12001/4/15/BG-0/15, dated 31.12.2021, for an amount of Rs. 5 crores.

4. Learned senior counsel for the petitioner submits that the petitioner along with its Joint Venture partner (M/s ATS Housing Pvt. Ltd.) participated in a tender dated 19.02.2021 issued by the respondent no.1. On 22.07.2021, the petitioner was awarded a contract for upgradation of a '75 km stretch of highway located in the state of Maharashtra from km 88.400 (Savali Vihir) to km 163.400 (start of Ahmednagar bypass)'. However, *vide* letter dated 13.07.2022 issued by the General Manager (Tech), Maharashtra Division, National Highways Authority of India, a decision was taken to foreclose the contract. It is submitted that after foreclosure, *vide* LOA dated 22.02.2023 while a contract was awarded to another contractor, [Rudranee Infrastructure Ltd.-Manisha Construction Co. (JV)], subsequently, the said contract also came to be terminated and project was awarded to yet another contractor [M/s Bharat Constructions (India) Pvt. Ltd.] on 04.02.2025.

5. It is submitted by the learned senior counsel for the petitioner that during the conciliation proceedings between the parties herein, an unequivocal understanding emerged between the parties that the contract would be foreclosed without cost on either party. In this regard, attention has been drawn to the proceedings dated 20.09.2024 before the Conciliation Committee of Independent Engineers(CCIE-3) [hereinafter '*the conciliation*']



committee’], which reads as under:-

“Proceedings

Representative of NHAI informs that the Authority is close to finalize their offer basis which the Contract will be foreclosed without cost on either party.

On behalf of the Contractor, it was informed that this may not be acceptable to them but that they would need some more time to discuss this matter further.

Accordingly, the matter will be heard next on 01.10.2024 @15:00 hrs. via video conferencing.”

6. However, subsequently, it is submitted that in view of a CAG “audit para”, NHAI sought to resile from the aforesaid understanding of the parties that the contract between the petitioner and the respondent no.2 be foreclosed without any costs to either party. As a consequence thereof, the conciliation proceedings could not fructify. Subsequently, *vide* proceedings dated 28.01.2025 before the Conciliation Committee, it was noted as under:-

“Proceedings

Representative of NHAI informs that a proposal has been sent to the Contractor seeking his consent for settlement. NHAI has meanwhile received a CAG Audit Para. This has necessitated a review within NHAI basis which a decision has been taken not to proceed with the proposed settlement. Accordingly, it was requested that the further proceedings be stayed and the case closed undecided.

Representative of Contractor apprised of this development concurs.

The matter for conciliation is therefore closed. Should both parties at a later stage desire to seek conciliation once again, a fresh case may be filed for this purpose.

7. Learned counsel for the respondent no.1 and 3 strenuously opposes the release of the bank guarantees to the petitioner. It is submitted that the bank guarantees have been retained by the respondent no.1 for a valid reason



and the respondent no.1 is considering invocation of the said bank guarantees in question. He submits that a proposal for invocation of the said bank guarantees is under consideration of the competent authority.

8. Learned senior counsel for the petitioner submits that the invocation of the bank guarantees at this stage would be fraudulent and would also result in irretrievable injustice to the petitioner inasmuch as the contract has been foreclosed with the consent of the parties. It is also submitted that no communication whatsoever has been sent by the respondent since the date of foreclosure, seeking to fasten any liability to the petitioner. Further, it is emphasised that the stand of the respondents is in contravention of the understanding as noted by the Conciliation Committee in its order dated 20.09.2024.

9. In the opinion of this Court, the disputes between the parties are contractual in nature and given that there is a dispute resolution clause contained in Clause 26 of the contract dated 22.07.2021, which contemplates adjudication of the disputes between the parties through arbitration, it would be apposite for this Court to relegate the parties to arbitration in terms of the dispute resolution clause in the contract. This would be in line with the view expressed by the Supreme Court in a catena of judgments.¹

10. Accordingly, the present petition is disposed of with liberty to the petitioner to invoke arbitration seeking appropriate reliefs as regards the bank guarantee/s in question, and/ or such other further relief as may be deemed appropriate. The petitioner would also be at liberty to move an appropriate

¹*Empire Jute Co. Ltd. v. Jute Corpn. of India Ltd.*, (2007) 14 SCC 680; *Radha Krishna Industries vs State of Himachal Pradesh*, 2021 SCC OnLine Sc 334; *Gail (India) limited v. Gujarat State Petroleum Corporation Limited*, (2014) 1 SCC 329, *Nirmal Software Services Private Limited v. Dr. Babasaheb Ambedkar Marathwada University*, (2019) 7 SCC 356



application under Section 9 and/ or Section 17 of the Arbitration and Conciliation Act, 1996 seeking appropriate interim measures.

11. At this stage, learned counsel for the petitioner submits that the petitioner shall be taking appropriate steps, as directed above, but expresses the apprehension that precipitative steps shall be taken by the respondent/s in the intervening period ; he seeks that some protection be afforded to the petitioner for a few days to enable the petitioners to take avail appropriate legal recourse. In the circumstances, it is directed that no precipitative steps shall be taken by the respondent/s for a period of 10 working days from date.

12. The present petition stands disposed of in the above terms.

13. It is made clear that this order shall not be construed as an expression of opinion of this Court as regards the merits of the respective case of the parties.

SACHIN DATTA, J

MARCH 27, 2025/at