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

\+ W.P.(C) 7494/2025

M/S HIGHWAY ENGINEERING CONSULTANT
THROUGH ITS AUTHORISED REPRESENTATIVE .....Petitioner

Through: Ms. Nandadevi Deka, Mr. Sudhir Yadav, Mr. Shashwat Pratyush, Ms. Shubhra Sharma and Mr. Rohan Chandra, Advs.

versus

NATIONAL HIGHWAYS AUTHORITY OF INDIA .....Respondent

Through: Mr. Santosh Kumar, SC and Ms. Nidhi Ravi, Adv. for NHAI.

CORAM:
HON'BLE MR. JUSTICE SACHIN DATTA

O R D E R

% 27.05.2025

CM APPL.33531/2025 *(Exemption)*

1. Allowed, subject to all just exceptions.

2. Application stands disposed of.

W.P.(C) 7494/2025 and CM APPL.33530/2025 *(Stay)*

3. The present petition assails a Show Cause Notice (SCN) dated 22.05.2025 issued by the respondent / NHAI against the petitioner to the extent that the same has the effect of debarring (without affording an opportunity of hearing) the petitioner from participating in ongoing and further project of NHAI as well as centrally sponsored projects under the Ministry of Road Transport & Highway (MoRTH).

4. The impugned SCN dated 22.05.2025 reads as under:

"NHAI/12013/Ramnattukara-Valanchery/2022 Date: 22.05.2025

WITHOUT PREJUDICE

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To,

The Authorized signatory of Independent Engineer,
M/s. Highway Engineering Consultant,
JM-89/3C, Behind Panchawati Market,
Saket Nagar, Bhopal (M.).)-462024

Sub: 6- Laning of Ramanattukara to Valanchery section from design Ch.258+818 to design Ch.298+500 of NH-66 in the State of Kerala on Hybrid Annuity Mode: Sliding of RCC wall foundation resulting in failure of RE Wall at Ch. 277+000- Show Cause Notice.

Ref.: -

1. *Concession Agreement dt. 17.06.2021*
2. *Consultancy Agreement dt. 28.02.2022*

Sir,

This is to bring to your immediate attention regarding failure of Main Carriageway & Service Road and associated structures (i.e., Retaining Wall & RE Wall) in the project stretch at Ch. 276+8 to Ch. 277+05 on 19.05.2025. It indicates that the failure of IE in discharging their obligations under Clause 3.1 (i) & (ii) of the Term of Reference contained in the Contract Agreement. An expert team is inspecting and analysing the detailed reasons for the failure that occurred.

2. It is evident that the IE has filed in discharging their obligations to assess the prevailing site conditions and to ensure quality assurance, while reviewing and approving the designs for the project in accordance with IRC and MoRTH's Standards and Specifications and Schedule-D of the Concession Agreement. Further, IE has also failed in supervision of the work during execution, to ensure safety and durability of the executed work.

3. In view of the above prima-facie facts, IE is hereby called upon to show cause within 15 days of this notice as to why penalty of Rs.20 lakhs and debarment for a period of 1 years should not be initiated as per Policy Circular No.RW/NH-33044/76/2021-S &R(P&B) dated 07.10.2021 of MoRTH & 16/12.2022 dt. 18.01.2022 of NHAI for the failure of IE to comply with obligations as stated above. Failure to respond within the stipulated time frame will be constructed as an admission of default, and further actions will be taken accordingly,

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without any further notice.

4. Further, taking cognizance of the above facts wherein Public Safety has been endangered to the failure of IE in discharging its obligations, the Competent Authority of NHAI has decided to suspend IE from participating in ongoing/future bidding for 01 month period or completion of investigation by the expert Committee whichever is later in accordance with Policy Circular No. RW/NH-33044/76/2021-S&R(P&B) dt. 06.10.2021 of MoRTH & dt. 16.11.2021 of NHAI.

5. This notice is being issued without prejudice to the Authority's other rights/remedies available the Contract Agreement and the Applicable Laws.

This is issued with the approval of the Competent Authority of NHAI.

Thanking you

Yours faithfully,

-sd-
(W. Blah)
I/c CGM (T)-Kerala"

5. In the present petition, the grievance of the petitioner is confined to paragraph 4 of the aforesaid impugned SCN, whereby the respondent has decided to suspend the petitioner "from participating in ongoing/future bidding for 01 month period or completion of investigation by the expert Committee whichever is later in accordance with Policy Circular No. RW/NH-33044/76/2021-S&R(P&B) dt. 06.10.2021 of MoRTH & dt. 16.11.2021 of NHAI".

6. The only ground urged by learned counsel for the petitioner is that the said suspension is essentially in the nature of debarring, and has been done without affording any opportunity of hearing to the petitioner or even awaiting petitioner's response to the said SCN.

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7. After some hearing, with the consent of the learned counsel for the respondent, it is directed that since the petitioner has already responded to the said SCN dated 22.05.2025, paragraph 4 thereof shall be kept in abeyance, subject to the right of the respondent to pass a reasoned order suspending business dealings with the petitioner, if so warranted in the facts and circumstances of the case and considering the reply already submitted by the petitioner. Further, the respondent shall grant an opportunity of hearing to the petitioner within a period of 3 days from today, prior to passing the said order. The same shall be subject to the final adjudication of the SCN dated 22.05.2025.

8. Learned counsel for the petitioner assures and undertakes that no adjournment/deferment of the hearing/s that may be scheduled, shall be sought by the petitioner under any circumstance. The said statement is taken on record.

9. The petition is disposed of in the above terms.

SACHIN DATTA, J

MAY 27, 2025/cl

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