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

+ **O.M.P.(I) (COMM.) 200/2025**

**HINDUSTAN CONSTRUCTION COMPANY
LIMITED**

.....Petitioner

Through: Mr. Rajiv Nayar and Mr. Darpan
Wadhwa, Senior Advocates with Mr. Rishi
Agrawala, Ms. Shruti Arora and Mr. Manjira,
Advocates.

versus

**NATIONAL HIGHWAYS AUTHORITY OF
INDIA**

.....Respondent

Through: Mr. Santosh Kumar, Standing
Counsel with Mr. Devansh Malhotra, Advocates.

CORAM:

HON'BLE MS. JUSTICE JYOTI SINGH

ORDER

30.05.2025

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1. This petition is filed on behalf of the Petitioner under Section 9 of the Arbitration and Conciliation Act, 1996 ('1996 Act') for restraining the Respondent from invoking and/or encashing Bank Guarantee No. 0393BG00092016 dated 16.10.2015, as amended on 30.01.2021, valid upto 31.07.2025 issued by ICICI Bank in favour of the Respondent during the pendency of the arbitral proceedings since Petitioner has already invoked Arbitration Clause 26.3 incorporated in the Contract Agreement dated 13.10.2015.

2. Disputes have arisen between the Petitioner and Respondent in respect of a Contract Agreement dated 13.10.2015 for four laning of Ramban to Banihal Section of NH-1A (now NH-44) in the State of Jammu and Kashmir. Petitioner avers that Respondent is liable to pay the outstanding dues of the Petitioner to the extent of Rs. 137.26 crores as per



the certified bills and encashment of the Bank Guarantee would be unjust enrichment as also that parties have been in conciliation before the Conciliation Committee of independent experts between 25.01.2022 and 20.05.2025.

3. During the course of hearing of the petition, learned Senior Counsels for the Petitioner, on instructions, offer to pay a sum of Rs. 53,50,00,000/-, the amount under the Bank Guarantee, without prejudice to the rights and contentions of the Petitioner to raise all its claims, including with respect to this amount in the arbitral proceedings. It is urged that upon the payment being made within ten days from today, Respondent should be restrained from invoking the Bank Guarantee and that Petitioner having invoked Arbitration Clause 26.3 of the Contract Agreement, is willing to nominate its Arbitrator and likewise, Respondent should also nominate its Arbitrator.

4. Mr. Santosh Kumar, learned Standing Counsel for the Respondent does not object to this course of action and submits that Respondent will nominate its Arbitrator within three days after receiving the name of the nominee Arbitrator of the Petitioner as also that if the Petitioner is willing to pay the amount under the Bank Guarantee within ten days, the same will not be invoked/encashed.

5. Indisputably, the Contract Agreement dated 13.10.2015 contains Arbitration Clause 26.3, which provides that any dispute arising out of the Contract shall be settled by arbitration in accordance with 1996 Act by an Arbitral Tribunal, comprising of three Arbitrators, one each to be appointed by NHA and Petitioner and the third Arbitrator to be appointed by the two nominated Arbitrators, who shall be the Presiding Arbitrator. Petitioner has already invoked the Arbitration Clause vide notice dated 20.05.2025 and



since the Arbitration Agreement is not in dispute, this Court finds no impediment in passing the following directions with the consent of the parties:-

- a) Petitioner shall deposit a sum of Rs.53,50,00,000/- with the Respondent within ten days from today, without prejudice to its rights and contentions to raise all its claims before the Arbitral Tribunal, including the claim with respect to the amount under the Bank Guarantee. It is made clear that deposit of this amount will not be construed as if the Petitioner has admitted its liability to pay the said amount.
 - b) If the amount is deposited by the Petitioner within ten days from today, Respondent shall not invoke/encash the Bank Guarantee in question. However, if Petitioner fails to deposit the aforesaid amount within the timeline undertaken, Respondent shall not be precluded to invoke and encash the Bank Guarantee, if so advised, in accordance with law.
 - c) Petitioner shall nominate its Arbitrator within three days from today and sent intimation to this effect to the Respondent. Likewise, Respondent shall nominate its Arbitrator within three days from receipt of intimation from the Petitioner. Both the nominated Arbitrators shall appoint the third and the Presiding Arbitrator.
 - d) This petition will be treated as an application under Section 17 of 1996 Act by the learned Arbitral Tribunal and decide it as expeditiously as possible, as per law.
6. Registry is directed to transmit digitized record of this petition to the



Arbitral Tribunal upon its constitution, for which intimation shall be given by counsel for the Petitioner to the concerned Dealing Assistant.

7. This petition is disposed of in the aforesaid terms, making it clear that this Court has neither entered into nor expressed any opinion on the merits of the case and all rights and contentions of the parties are left open to be raised before the Arbitral Tribunal.

JYOTI SINGH, J

MAY 30, 2025/Shivam /SS