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

+ **OMP (I) (COMM.) 235/2025**

M/S SHINDE DEVELOPERS PVT. LTD.Petitioner

Through: Mr. Sandeep Sethi, Sr. Adv with Mr.
Mahip Singh, Ms. Ruchi Agnihotri, Mr. Krishan
Kumar, Ms. Ayushi Pandey, Advs.

versus

THE NATIONAL HIGHWAYS AUTHORITY OF INDIA

.....Respondent

Through: Ms. Dharitry Phookan, Mr. Devansh
Malhotra, Ms. Nidhi Rani, Mr. Aditya, Advs.

CORAM:

HON'BLE MR. JUSTICE JASMEET SINGH

ORDER

% **01.07.2025**

1. This is petition filed under Section 9 of the Arbitration and Conciliation Act, 1996 seeking an injunction restraining the respondent, its principal officers, servants, agents, and all others acting on its behalf from invoking and encashing the bank guarantees submitted by the petitioner namely:-

(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.

2. In the present case, the petitioner entered into a contract dated 22.07.2021 with the respondent for upgradation of a 75 kms stretch of highway located in the State of Maharashtra from kms 88.400 (Savali Vihir) to kms 163.400 (start of Ahmednagar bypass).

3. On 13.07.2022, due to certain circumstances, the petitioner foreclosed the contract, which was accepted by the respondent. Thereafter, the contract was awarded to another party. The letter dated 13.07.2022 is reproduced below:



भारतीय राष्ट्रीय राजमार्ग प्राधिकरण

(सड़क परिवहन और राजमार्ग मंत्रालय, भारत सरकार)

National Highways Authority of India

(Ministry of Road Transport and Highways, Government of India)

जी-5 एवं 6, सेक्टर-10, द्वारका, नई दिल्ली - 110 075 • G-5 & 6, Sector-10, Dwarka, New Delhi-110075
दूरभाष/Phone : 91-11-25074100 / 25074200



NHAI/MH/TECH/NH-160SavaliVihirFakeBG (E-120712)/1331

13.07.2022

To,

Regional Officer - Mumbai,
National Highways Authority of India
4th Floor, MTNL Telephone Exchange
Building, Opp. CBD Belapur Railway
Station, CBD-Belapur,
Navi Mumbai - 400 614
Tel.: (022) 27564100, 27564200, 27568200

Sub: Up-gradation to four lane with paved shoulder configuration of the Highway Starting from existing Km 88.400 (Savali Vihir) to Km 163.400 (Start of Ahmednagar Bypass) Design Length - 75.000 Km) Section of NH-160 in the State of Maharashtra Under Bharatmala Pariyojana on EPC Mode.

Ref: RO- Mumbai e-file bearing Computer No.149942.

Sir,

Please refer above mentioned e-file vide which you have requested approval of competent authority for the following:-

- i. To refer the matter of termination of the contract or mutual foreclosure to Conciliation committee subject to condition that contractor will keep the performance security valid till the acceptance of decision of conciliation committee by NHAI.
 - ii. Approval for fresh bidding for completing the balance work on EPC mode with the NOC for fresh bidding from contractor.
2. In this regard, it is to inform that competent authority has accorded in-principal approval for;
 - (i) Foreclosure of the subject contract agreement by mutual consent and to refer the matter to conciliation committee subject to condition that contractor will keep the performance security valid till the acceptance of decision of conciliation committee by NHAI.
 - (ii) Fresh bidding for completing the balance work on EPC mode after getting NOC from the contractor.
 3. Further, RO-Mumbai is requested for the following:-
 - (i) To get the NOC for fresh bidding to complete the balance work from the contractor.
 - (ii) To submit the updated bidding document for taking up the balance works of this subject project on priority bases
 - (iii) To submit the proposal of termination of the contract or mutual foreclosure to be referred to conciliation committee of Independent Engineers.

(Anoop Gahra)
General Manager (Tech)
Maharashtra Division

Copy to: PD Ahmednagar - for information



4. The bank guarantee(s) furnished by the petitioner are 4 Performance bank guarantees along with 1 Mobilisation bank guarantee.
5. Mr. Sethi, learned senior counsel for the petitioner states that while accepting foreclosure *vide* letter dated 13.07.2022, the respondent had linked the return of the bank guarantee with the decision of the Conciliation Committee and the acceptance of that decision by the respondent.
6. The Conciliation Committee was disbanded by the respondent on 28.01.2025. It is the case of the petitioner that since the foreclosure was accepted by the respondent, there was no requirement for encashment of performance bank guarantees and substantial portion of the mobilisation advance has already been recovered by the respondent.
7. Hence, the Performance bank guarantee as well as the Mobilisation bank guarantee cannot be encashed.
8. Ms. Phookan, learned counsel for the respondent disputes the proposition and states that the foreclosure was conditional subject to the decision of the Conciliation Committee and subject to the petitioner keeping the bank guarantee alive.
9. She further states that the respondent does not wish to file a reply in the present petition and will file a detailed reply before the learned Arbitral tribunal.
10. However, she states that since the Arbitral tribunal has already been constituted, the present petition may be treated as a Section 17 application and be decided by the Arbitral tribunal.
11. A perusal of the letter dated 13.07.2022 shows that the foreclosure was accepted by the respondent subject to referring the matter to the Conciliation Committee and the petitioner giving an NoC to the respondent



for completion of the balance work.

12. Pursuant thereto, the petitioner has already given an NoC to the respondent and based on the NoC, the respondent has re-tendered the work. Further, the Conciliation Committee has been disbanded by the respondent themselves.

13. From the aforesaid facts, it is clear that the foreclosure was accepted by the respondent and hence, *prima facie*, the invocation of Performance bank guarantee(s) and the Mobilisation bank guarantee may not be appropriate.

14. In addition, on 20.09.2024, the minutes of the meeting records that the contract would be foreclosed “without cost on either party”. Once the respondent is foreclosing the contract without any cost on either parties, *prima facie*, the encashment of the bank guarantee(s) is not in accordance with the understating arrived at between the parties.

15. However, since the arbitral tribunal is already seized of the matter and the bank guarantee(s) have not been encashed for a period of 4 years from the date of foreclosure, it is directed that the Arbitral tribunal shall treat the present petition as a Section 17 application and adjudicate the same in accordance with law expeditiously and in any case, not later than 8 weeks from today.

16. Till the Arbitral tribunal decides the Section 17 application, the encashment of the 4 Performance bank guarantee(s) and 1 Mobilization bank guarantee are stayed, subject to the petitioner keeping all the bank guarantees alive.

17. The Arbitral tribunal shall adjudicate the section 17 application without being influenced by any of the observations made in this order.



18. The present petition is disposed of in the aforesaid terms.
19. *Dasti* under the signature of the Court Master.

JULY 1, 2025 / (MS)

JASMEET SINGH, J

Click here to check corrigendum, if any