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

+ W.P.(C) 9806/2025 and CM APPL.40993/2025 (Stay)
SA INFRASTRUCTURE CONSULTANTS PVT LTD.....Petitioner
Through: Mr. Dayan Krishnan, Mr. Anirban
Bhattacharya, Ms. Prachi, Mr.
Apoorv Agarwal, Mr. Vaibhav Manu
Srivastava, Mr. Rajeev Chaudhary
and Ms. Saloni Singh, Advs.

versus

NATIONAL HIGHWAY AUTHORITY OF INDIA.....Respondent
Through: Mr. Santosh Kumar, SC and Mr.
Devansh Malhotra, Adv. for NHAI.

CORAM:
HON'BLE MR. JUSTICE SACHIN DATTA

ORDER
14.07.2025

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CM APPLs. 40994/2025 (seeking permission to file lengthy list of dates and synopsis) and 40995/2025 (exemption from filing certified copies of orders/original documents and annexures)

1. Allowed, subject to all just exceptions.
2. Applications stand disposed of.

W.P.(C) 9806/2025 and CM APPL.40993/2025 (Stay)

3. The present petition assails a communication / Show Cause Notice (SCN) bearing no. NHAI/AJ-RGBS-754A/Pkg-04/EPC/2024/E-200059 dated 02.07.2025 issued by the respondent to the petitioner. The same has been issued in the backdrop of the petitioner being appointed as 'Authority's Engineer' for providing consultancy services with regard to the construction of 6-lane access-controlled Greenfield Highway from km 99.000 to km 130.073 of Rajasthan/Gujarat Border to Santalpur Section of NH-754K as a



part of Amritsar-Jamnagar Economic Corridor in the State of Gujarat on EPC mode under Bharatmala Pariyojana (Phase-I). The said communication / SCN reads as under:



NHAI/AJ-RGBS-754A/Pkg-04/EPC/2024/E- 200059

Date: 02.07.2025

WITHOUT PREJUDICE

To,

The Authorised signatory of Authority's Engineer,
M/s. SA Infrastructure Consultants Pvt Ltd, in association with
M/s Upham International Corporation,
1101A, 11th Floor, Tower A - II
Corporate Park, Plot No. 7A/1
Sector 142, Noida - 201 301

Sub: Construction of 6-lane access-controlled Greenfield Highway from km 99.000 to km 130.073 of Rajasthan/Gujarat Border to Santalpur section of NH-754K as a part of Amritsar-Jamnagar Economic corridor in the State of Gujarat on EPC mode under Bharatmala Pariyojana (Phase-I), - Show Cause Notice - Reg.

Ref: -

1. EPC Contract Agreement dated. 10.02.2021
2. Contract Agreement for Consultancy Services of Authority's Engineer dated 12.03.2021
3. Social media post dated 22.06.2025 & 27.06.2025
<https://www.instagram.com/reel/DLXSVTT1BCF/?igsh=b21stmmiedndkkljFu> and
<https://www.instagram.com/reel/DLMJGUpInad/?igsh=M3EDZ1HnRb31W214Yg-->
4. VC meeting held on 25.06.2025 under the chairmanship of Chairman, NHAI

Sir,

This is to bring to your immediate attention that an inspection was carried out primarily to evaluate the pavement distresses by the experts in presence the of RO - Gandhinagar and PD - Palanpur. Wherein, following has been observed:

- (i) Deformations of major and minor severity (in 15 patches -1350 m (approx.) on LHS and 1360 m (approx.) on RHS) were observed at different locations of the main carriageway in both directions. The depressions at some stretches were measured even up to 300 - 400 mm. The depressions at some locations are spread over the entire width of the carriage way.
- (ii) Rutting has been observed at number of places
- (iii) Various Pot holes (with varying depth - 60 to 100 mm and width - 0.75 m to 1.2 m) have been formed at several locations on both sides of the carriageways.
- (iv) Alligator cracks exist at various locations on carriageway and width of Alligator cracks is varying from 5 mm to 20 mm.
- (v) Slippage of BC layer was noticed at places where repair has been done in patches by BC. It appears that repairs to previously distressed locations are improper and cosmetic in nature.
- (vi) Cross slope of the hard shoulder is not maintained properly. Also, at few locations, level of hard shoulder is higher than the adjacent main carriageway



(vii) AIL layer thickness is found to be varying across carriageway width. In addition, presence of plastic fines within AIL have also been observed. CTB - poor quality and poor curing were observed in CTB layer

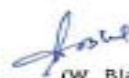
2. It is evident that the AE has failed in discharging their obligations to assess the prevailing site conditions and to ensure quality assurance, while reviewing and approving the designs for the project in accordance with IRC and MoRTH's Standards and Specifications and Schedule-D of the Contract Agreement.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

3. In view of the above prima-facie facts, AE is hereby called upon to show cause within 15 days of this notice as to why debarment for a period of 2 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 AE to comply with obligations as stated above. Failure to respond within the stipulated time frame will be construed as an admission of default, and further actions will be taken accordingly, without any further notice.

4. Further, taking cognizance of the above facts wherein Public Safety has been endangered due to the failure of AE in discharging its obligations, the Competent Authority of NHAI has decided to suspend AE from participating in ongoing/future bidding for 01-month period or rectification of defects and deficiencies, whichever is later in accordance with Policy Circular No. RW/NH-33044/76/2021-S&R(P&B) dt. 07.10.2021 & 04.01.2022 of MoRTH & dt. 18.01.2022 of NHAI.

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

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


(W. Blah)
I/c CGM (T) -Gujarat

Copy to:

1. The Regional Officer, RO-Gandhinagar/NHAI - for information
2. Project Director, PIU-Palanpur

4. The grievance canvassed by learned senior counsel for the petitioner is that the paragraph 4 of the aforesaid SCN virtually debars the petitioner even without awaiting the reply of the petitioner to the aforesaid SCN.

5. It is submitted that in essence, the petitioner has been condemned even without being given an opportunity to present its version of the factual position as regards the highlighted condition of the highway in question. Secondly, it is contended that the aforementioned paragraph 4 discloses no cogent reasons as to why was it necessary to suspend the petitioner with immediate effect without even awaiting the petitioner's reply to the said SCN. It is submitted that this is conspicuous, considering that correspondence between the petitioner and the respondent (as well as the



concerned Contractor tasked with constructing the highway in question) has been going on since March, 2025 as regards the condition of the concerned highway in question.

6. It is submitted that since the petitioner has in effect been debarred without being given an opportunity to file a reply to the SCN and without even being heard, the same is in violation of the judgment of the Supreme Court in ***Gorkha Security Services v. Government (NCT of Delhi) & Ors. (2014) 9 SCC 105.***

7. Learned counsel for the respondent, who appears on advance notice, submits that the impugned action has been taken in the interest of public safety in view of the evident lapses on the part of the ‘Authority’s Engineer’ in taking preventive / remedial measures despite the deplorable condition of the highway in question.

8. A perusal of the impugned suspension order reveals that the same does not disclose any cogent reasons as to why the extreme step of suspending the petitioner has taken, without even awaiting the petitioner’s reply to the SCN.

9. Further, the action taken against the petitioner even though described as a ‘suspension’, is in the nature of a debarment, and ought to have been preceded by compliance with the principles of natural justice. It has been observed by the Supreme Court in ***Gorkha Security Services*** (supra) as under:-

“21. The central issue, however, pertains to the requirement of stating the action which is proposed to be taken. The fundamental purpose behind the serving of show-cause notice is to make the noticee understand the precise case set up against him which he has to meet. This would require the statement of imputations detailing out the alleged breaches and defaults he has committed, so that he gets an opportunity to rebut the same. Another



requirement, according to us, is the nature of action which is proposed to be taken for such a breach. That should also be stated so that the noticee is able to point out that proposed action is not warranted in the given case, even if the defaults/breaches complained of are not satisfactorily explained. When it comes to blacklisting, this requirement becomes all the more imperative, having regard to the fact that it is harshest possible action.

22. The High Court has simply stated that the purpose of show-cause notice is primarily to enable the noticee to meet the grounds on which the action is proposed against him. No doubt, the High Court is justified to this extent. However, it is equally important to mention as to what would be the consequence if the noticee does not satisfactorily meet the grounds on which an action is proposed. To put it otherwise, we are of the opinion that in order to fulfil the requirements of principles of natural justice, a show-cause notice should meet the following two requirements viz:

(i) The material/grounds to be stated which according to the department necessitates an action;

(ii) Particular penalty/action which is proposed to be taken. It is this second requirement which the High Court has failed to omit.

We may hasten to add that even if it is not specifically mentioned in the show-cause notice but it can clearly and safely be discerned from the reading thereof, that would be sufficient to meet this requirement.

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27. We are, therefore, of the opinion that it was incumbent on the part of the Department to state in the show-cause notice that the competent authority intended to impose such a penalty of blacklisting, so as to provide adequate and meaningful opportunity to the appellant to show cause against the same. However, we may also add that even if it is not mentioned specifically but from the reading of the show-cause notice, it can be clearly inferred that such an action was proposed, that would fulfil this requirement. In the present case, however, reading of the show-cause notice does not suggest that noticee could find out that such an action could also be taken. We say so for the reasons that are recorded hereinafter.

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31. When it comes to the action of blacklisting which is termed as “civil death” it would be difficult to accept the proposition that without even putting the noticee to such a contemplated action and giving him a chance to show cause as to why such an action be not taken, final order can be passed blacklisting such a person only on the premise that this is one of the actions so stated in the provisions of NIT.”

10. Considering the aforesaid circumstances, the suspension of the petitioner, as directed vide paragraph 4 of the aforesaid communication /



SCN dated 02.07.2025, is put in abeyance.

11. With the consent of the petitioner, it is directed that a reply to the aforesaid SCN dated 02.07.2025 shall be submitted by the petitioner on or before Friday, *i.e.* 18.07.2025. Further, in case the respondent seeks to suspend the petitioner pending adjudication of the SCN, it shall be open for the respondent to afford an opportunity of hearing to the petitioner and pass a reasoned order in this regard. Needless to say, the same shall be subject to rights and remedies of the petitioner with regard thereto.

12. In view of the aforesaid order, the petitioner shall stand removed from the list of “CONSULTING FIRMS DEBARRED / BLACKLISTED IN NHAI WORKS” as depicted on the website of the respondent / NHAI and on INFRACON. The same shall, however, be subject to any further action that may be taken by the respondent pursuant to the directions contained hereinabove.

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

14. Order *dasti*.

SACHIN DATTA, J

JULY 14, 2025/cl