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

Date of decision: 14.10.2025

+ **O.M.P.(I) (COMM.) 308/2025 & I.A. 18686/2025**

KOLLAM HIGHWAYS PRIVATE LIMITED

.....Petitioner

Through: Ms. Kiran Suri, Sr. Adv with Mr.
Sidhant Dwibedi, Adv, Mr. Manoj Kumar, Adv,
Ms. Aiswarya Kumar, Adv with Mr. Audhesh
Kumar Tiwari, AR

versus

NATIONAL HIGHWAYS AUTHORITY OF INDIARespondent

Through: Ms. Tanu Priya Gupta, Ms. Khushi
Sharma, Advs.

CORAM:

HON'BLE MR. JUSTICE JASMEET SINGH

: **JASMEET SINGH, J (ORAL)**

1. This is a petition filed under Section 9 of the Arbitration and Conciliation Act, 1996 to restrain the respondent from recovering the damages imposed by the respondent and to not take any coercive action against the petitioner for execution of Six Laning of NH-66 (OLD NH-47) from Kollam bypass to Kadambattukonam from Km 486.000 to Km 517.250 (approx. 31.25 Km design length) in the state of Kerala on Hybrid Annuity Mode (“**HAM**”) under Bharatmala Priyojana (“**work**”).

2. The brief facts of the case are that the respondent issued a Letter of Award (“**LoA**”) dated 14.09.2021 in furtherance of the bid made by the petitioner for work. Thereafter, the petitioner and the respondent entered



into a Concession Agreement on 08.11.2021.

3. The respondent *vide* letter dated 17.10.2022, notified availability of 80% of the encumbrance free right of way of linear length of Project Highway and accordingly the appointment date was fixed as 01.10.2022.

4. A Settlement Agreement dated 11.08.2023, was signed wherein the change of scope payments were to be released and it was agreed that damages for delay in achieving Milestone-I would be waived off. Subsequently, the petitioner *vide* letter dated 20.03.2024 requested for interim extension to the Engineer as per Clause 12.3.2 of the said Concession Agreement for completing the work. *Vide* letter dated 30.05.2024, the Independent Engineer determined the extension period of 199 days. Subsequently, *vide* another letter dated 15.07.2024, the petitioner sought further extension and was granted extension of 178 days by the independent engineer.

5. On 25.02.2025, the independent engineer reviewed the time extended earlier and reduced the same to 0 days from 178 days.

6. *Vide* letter dated 25.03.2025, the respondent directed for imposition of damages for delay from 22.08.2024 to 25.03.2025 and the independent engineer recommended ad hoc payments of bills but decided to deduct damages to the tune of Rs. 8,93,32,500 from the two bills.

7. The petitioner moved another application for extension of time for 1093 days *vide* letter dated 13.03.2025 to the Independent Engineer. Thereafter, *vide* letter dated 10.06.2025 petitioner issued notice of dispute to independent engineer and NHAI under Clause 38.1 and 38.2 which reads as under:

“38.1 Dispute resolution



38.1.1 In the event of any dispute, difference or controversy of whatever nature howsoever arising under or out of or in relation to this Agreement (including its interpretation) between the Parties, and so notified in writing by either Party to the other Party (the "Dispute") either Party may call upon the Independent Engineer, to mediate and assist the Parties in arriving at an amicable settlement thereof.

38.1.2 The Parties agree to use their best efforts for resolving all Disputes arising under or in respect of this Agreement promptly, equitably and in good faith, and further agree to provide each other with reasonable access during normal business hours to all non-privileged records, information and data pertaining to any Dispute.

38.1.3 Dispute Resolution Board (DRB): Failing mediation by the Independent Engineer or without the intervention of the Independent Engineer, either Party may require such Dispute to be referred to the Dispute Resolution Board ("DRB") in accordance with the procedure set forth in Schedule-S to the Concession Agreement. The decision(s) of the Dispute Resolution Board shall be binding on both parties who shall promptly give effect to unless and until the same is revised/modified, as hereinafter provided, in a Conciliation/Arbitral Tribunal."

8. Since there was no amicable settlement, the petitioner referred the matter to Dispute Resolution Board ("**DRB**"). After hearing the parties, the DRB passed a detailed Order on 04.10.2025 wherein the operative portions



read as under:

“7.6.4.6

Since the Authority has failed to fulfil their contractual obligations, it cannot justify the imposition of unilateral damages. Liquidated damages cannot be mechanically imposed if delays stem from factors beyond the Concessionaire's control. By its unilateral action of imposing liquidated damages, Authority has sought to unjustly enrich itself at the expense of the Concessionaire.

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7.18.4

As the non-working season from June 2025 to August of 2025 (92 days) falls within the extended time, these 92 (ninety two) days also have to be added to 373 days to compensate the Concessionaire with clear 373 days of working time and it works out to 465 days.

7.18.5

The Time Extension shall be applicable to Project Milestones and Scheduled Completion Date. As Project Milestone-II was achieved by the Concession within Milestone date, extension to this Milestone is not required. Accordingly, the Dispute Resolution Board recommends for revised Project Milestone-III (21.08.2024) and Completion Date (28.02.2025) with extension of time of 465 days shall be 29.11.2025 and 08.06.2026 respectively.

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7.19.8 DECISION OF DISPUTE RESOLUTION BOARD

As per analysis and findings hereinabove, the Dispute Resolution Board decides as under:

i) That the Concessionaire is entitled to Extension of Time due to delays attributable to the Authority and Force majeure events.

(ii) Further, no damages should be imposed, if the Concessionaire is able to complete the work by the extended date as decided above.

(iii) In addition, the Concessionaire is entitled for release of all damages levied and deducted so far along with interest as per provisions of Clause 41.4 'Delayed payments' of the Concession Agreement."

9. Ms. Suri, learned senior counsel for the respondent states that there is a valid dispute related to extension of time which needs to be adjudicated before any recovery or imposition of liquidated damages. The Independent Engineer had recommended 178 days extension as the delays were not attributable to the petitioner. Subsequently, the respondent unilaterally refused to the extension.

10. Ms. Gupta, learned counsel for the respondent, states that the prayers of the petitioner are beyond the purview of the Section 9 of the Arbitration and Conciliation Act, 1996. She further states that there are numerous letters by the petitioner showing that it is the petitioner who was responsible for the delay and the Order of the DRB is subject to challenge under Clause 38.

11. I have heard the learned counsel of the parties and perused the material on record.



12. I am unable to agree with the contentions of Ms. Gupta. As regards the first aspect is concerned, it is already settled that the Court can pass mandatory injunctions in cases where the circumstances so warrant. As regards to the second aspect, letters written by the petitioner have been considered by the DRB and thereafter the Order has been passed. Since, that aspect has already been considered by the DRB, no interference is warranted at this stage.

13. It is pertinent to mention that DRB is an independent body appointed under Clause 38.1.3 and from a perusal of above findings, it is clear that DRB has already come to *prima facie* conclusion that:

- (a) The petitioner is entitled to extension of time due to delays attributable to the respondent and *force majeure* events;
- (b) No damages could be imposed and;
- (c) That the petitioner is entitled to release of all damages levied and deducted so far for delay payments.

14. For the said reasons, *prima facie* the petitioner has satisfied the Court that the damages levied and deducted by the respondent, have been done so incorrectly as the petitioner was not at fault for the delays.

15. There is no doubt that the observations of the DRB are *prima facie* and subject to challenge in accordance with law but the fact remains that at the stage of petition under Section 9 of the 1996 Act, the Court is required to preserve the subject matter of the arbitral dispute.

16. I am of the view that in case the amounts deducted are permitted to be retained by the respondent, the petitioner will be unable to carry out its contractual obligations which may ultimately lead to adverse effect on the petitioner's financial condition. The petitioner has taken loans to carry out



its contractual obligations and needs to service the said loans.

17. The Court under Section 9 of the Arbitration and Conciliation Act, 1996 is required to mould the relief having regard to the facts and circumstances of the case to meet the ends of justice. Accordingly, though Section 9 of the 1996 Act confers power upon the Court to grant mandatory injunctions, such discretion may be exercised only in the presence of exceptional circumstances, and must be governed by the golden trinity of 3 elements i.e. *prima facie* case being made out, balance of convenience in the favour of party pleading the relief, irreparable harm if the relief is denied.

18. I have already discussed in ***M/S ND Info Systems Pvt. Ltd. v Rehabilitation Council of India passed in O.M.P.(I) (COMM.) 382/2025***, the scope of jurisdiction Court with regards to mandatory injunction as an interim measure (even though in the facts of that case, the mandatory injunction was not granted). The relevant paragraph of has been reproduced below:

“ 32. From the aforesaid judgments, it is well settled that the Court is vested with wide powers to grant interim measures, including the grant of mandatory injunctions, if the facts and circumstances so demand. The legislative intent behind section 9 is to enable the Court to preserve the subject matter of the arbitral dispute, and therefore its scope cannot be narrowly confined to prohibitory injunctions alone. At the same time, the grant of a mandatory injunction is an extraordinary relief which cannot be exercised in a routine manner. It is consistently held that such relief can only be granted when a strong prima facie case is made out, where withholding would result in greater injustice than granting. Thus,



while section 9 empowers the Court to issue mandatory injunctions, the exercise of such discretion is conditioned upon clear, compelling, and exceptional circumstances, guided by the principles of balance of convenience, irreparable harm, and the requirement of what is “just and convenient.”

19. In the present case if a mandatory injunction is not granted in favour of the petitioner, the petitioner will suffer irreparable loss and injury which may include closing down of its business operations which is a loss that cannot be compensated in terms of money. The independent body named under the said Concession Agreement after examining the matter in detail, has already come to a finding that the petitioner is not responsible for delay and consequently no liquidated damages could be imposed. For the said reasons, the petitioner has already satisfied the trinity test. Therefore, I am of the view that petitioner has made out a case for mandatory injunction. Hence, till the time Arbitral Tribunal is constituted and passes an Award, it is directed that the respondent will give effect to the decision of the DRB contained in paragraph 7.19.8.

20. With the above directions the petition is disposed of.

JASMEET SINGH, J

OCTOBER 14, 2025/AS

(Corrected and released on 23.10.2025)