



2025:DHC:8974



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* IN THE HIGH COURT OF DELHI AT NEW DELHI

% Judgment pronounced on: 09.10.2025

+ **W.P.(C) 12165/2025 and CM APPL.49629/2025**

IRB WESTCOAST TOLLWAY LTD. & ORS.Petitioners

Through: Mr. Vikrant Nankani, Sr. Advocate
along with Mr. Karan Bharihoke and
Mr. Alam Bir Singh, Advocates.

versus

NATIONAL HIGHWAYS AUTHORITY OF INDIARespondent

Through: Mr. Tushar Mehta, Solicitor General
along with Mr. Ankur Mittal,
Mr. Abhay Gupta, Ms. Jutirani
Talukdar and Mr. Praveen Kushwaha,
Advocates.**CORAM:****HON'BLE MR. JUSTICE SACHIN DATTA****JUDGMENT****CM APPLs.49630/2025 (Exemption from filing certified copies etc. of annexures) and 49631/2025 (seeking permission to file lengthy synopsis and list of dates)**

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

W.P.(C) 12165/2025

3. The present petition has been filed by the petitioners seeking the following prayers:

“(i) Grant an appropriate writ, order or declaration, inter alia, declaring the actions of NHAI that have led to the order dated 16.07.2025 passed by the Hon’ble Arbitral Tribunal consisting of Hon’ble Justice Krishna Murari, Hon’ble Justice V. Ramasubramaniam, and Hon’ble Justice P.N. Deshmukh, as arbitrary and clarifying that



Schedule IV of the Arbitration & Conciliation Act, 1996, does not bar an Arbitral Tribunal, to separately fix fee (in terms of Schedule IV), for fresh claims / disputes that may arise and are added to already initiated arbitration proceedings before the same Tribunal instead of appointing a fresh Tribunal;

(ii) Grant an appropriate writ, order or direction, permitting the Petitioners herein, to re-approach the Arbitral Tribunal consisting of Hon'ble Justice Krishna Murari, Hon'ble Justice V. Ramasubramaniam, and Hon'ble Justice P.N. Deshmukh, for refixation of Arbitral Fee, separately for each Set of Claims in terms of Schedule IV of the Arbitration & Conciliation Act, 1996, and to pronounce separate Awards on each set of Claims after conduct of arbitration proceedings in accordance with the law laid down by this Hon'ble Court in Gammon India Ltd. v. NHAI – 2020 SCC OnLine (Del) 659;

(iii) Grant an appropriate order declaring the Respondent's letters dated 21.05.2025, nominating a new nominee arbitrator for deciding further claims under the same contract, as illegal, non- est, void ab initio being in teeth of the law laid down by this Hon'ble Court in Gammon India Ltd. v. NHAI – 2020 SCC OnLine (Del) 659;

(iv) Grant an appropriate order declaring the Respondent's letters dated 19.07.2025 and amended letter dated 21.07.2025 (12:00 PM), nominating a new nominee arbitrator, even before issuance of the Procedural Order No. 6 by the Ld. Arbitral Tribunal on 21.07.2025 (8:27 PM), as illegal, non-est, void ab initio;"

4. The present petition is in the context of a 'concession agreement' dated 25.03.2013, executed between the petitioner no.1 and the respondent/National Highways Authority of India ('NHAI'), in relation to the project regarding four laning of Goa/Karnataka Border-Kundapur Section of NH-66 (formerly NH-17) under NHDP Phase IV on Design, Build, Finance, Operate Transfer (DBFOT) Toll Basis.

5. Disputes arose between parties pursuant to the said agreement and an Arbitral Tribunal came to be constituted to adjudicate the same. Consequently, the following four sets of claims came to be referred to the same Arbitral Tribunal: (i) On 08.01.2024, petitioner no.1 raised claims



against the respondent seeking interim compensation for damages and losses due to overstay at site beyond the scheduled four-laning completion date. (ii) On 27.09.2024, petitioner no.1 invoked arbitration in respect of disputes relating to the Old Kali Bridge and raised certain claims with regard thereto. (iii) Petitioner no.1 raised grievance regarding the basis of the Cure Period Notice dated 13.01.2025 issued by the respondent, and the resulting disputes were referred to Arbitration. (iv) Upon failure of conciliation for disputes concerning deemed modification of the Concession Period under Article 29 of the Concession Agreement, arbitration was invoked on 21.05.2025.

6. It is stated that a consolidated Statement of Claims, encompassing the aforesaid four sets of claims, was filed by the petitioners before the Arbitral Tribunal in accordance with the judgment of this Court in **Gammon India Ltd. v. NHAI**, 2020 SCC OnLine Del 659.

7. During the course of proceedings, the Arbitral Tribunal, in view of the voluminous nature of the record and the valuation of claims amounting to Rs.3515 Crores, suggested that its fee be finalized and consulted with the parties for the same. The proposed/contemplated fee was at variance with the prescription under Schedule IV of the A&C Act. However, the respondent/NHAI objected and insisted that the fee be fixed strictly in accordance with the said Schedule.

8. As a result, there was an impasse, and the members of the Arbitral Tribunal ultimately recused themselves in the matter. The order dated 16.07.2025, circulated by the Arbitral Tribunal on 21.07.2025, *inter alia*, reads as follows:

“2. During the course of the hearing, owing to the voluminous nature of the record, particularly the Statement of Claims comprising more than 1,38,000 pages with annexures and the valuation being nearly Rs. 3515



Cr. (Three Thousand Five Hundred Fifteen Crores only), the Arbitral Tribunal suggested that its fee may be finalised in consultation with the parties.

3. However, the Respondent objected to this and requested that the fee may be fixed strictly as per the Fourth Schedule of the Arbitration and Conciliation Act, 1996.

4. In view of the above circumstances, the Presiding Arbitrator, along with the Co-Arbitrators, have decided to recuse themselves from further proceedings in the matter under the provisions of the Arbitration and Conciliation Act, 1996”

9. Thereafter, the respondent/NHAI took steps to reconstitute the Arbitral Tribunal, and nominated a new Arbitrator to adjudicate the same disputes.

10. It is the case of the petitioner that it was on account of the manifestly unreasonable conduct of the NHAI, that the previous members of the Arbitral Tribunal were constrained to recuse themselves.

11. It is in the aforesaid background, that the present petition has been filed. Essentially, the petitioner seeks that the same Arbitral Tribunal be reinstated.

12. It is not within the province of this Court in the present proceedings to “issue a writ permitting the petitioners to re-approach the previous Arbitral Tribunal”. The same is also even otherwise unfeasible given that the said Arbitral Tribunal has already recused.

13. The scope of jurisdiction of this Court in the context of arbitral proceedings is extremely circumscribed as held in the catena of cases¹ and

¹ *Bhaven Constructions vs Executive Engineer, Sardar Sarovar Narmada Nigam Limited and Anr.*, (2022) 1 SCC 75; *Sadbhav Engineering Ltd. vs Micro and Small Enterprises Facilitation Council and Ors.*, 2025 SCC OnLine Del 319; *Surender Kumar Singhal and Ors. vs Arun Kumar Bhalotia and Ors.*, 2021 SCC OnLine Del 3708.



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in the context of the relief, as framed in the present petition, the same is clearly precluded.

14. Further, considering that the members of the Arbitral Tribunal have already recused themselves, the controversy regarding fixation of fees in the present case has also become moot.

15. The re-constitution of the Arbitral Tribunal is necessarily required to be in consonance with the provisions of the A&C Act, which provides a statutory mechanism for the said purpose. The parties are at liberty to take steps in this regard.

16. Consequently, the present petition is dismissed. Pending application also stands disposed of.

SACHIN DATTA, J

OCTOBER 09, 2025/r, ss