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\* **IN THE HIGH COURT OF DELHI AT NEW DELHI**  
+ LPA 787/2025, CM APPL. 81558/2025, CM APPL. 81559/2025 & CM APPL. 81560/2025

NATIONAL HIGHWAYS AUTHORITY OF INDIA .....Appellant  
Through: Mr. Santosh Kumar, Standing Counsel  
with Ms. Nidhi Rani, Mr. Ritik Dwivedi  
and Mr. Deansh Malhotra, Advocates

versus

MS ASHOKA BUILDCON LTD .....Respondent  
Through: Mr. Dayan Krishnan, Sr. Advocate with  
Mr. Soayib Qureshi, Mr. Nitesh Jain,  
Mr. Nishant Bhargava, Mr. Vatsal  
Chandra, Ms. Dishti Yadav and Mr.  
Shridhar, Advocates

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*Date of Decision: 23.12.2025*

**CORAM:**  
**HON'BLE THE CHIEF JUSTICE**  
**HON'BLE MR. JUSTICE TUSHAR RAO GEDELA**

### **J U D G E M E N T**

#### **DEVENDRA KUMAR UPADHYAYA, CJ: (ORAL)**

1. Heard the learned counsel for the parties.
2. This intra-Court appeal challenges the judgment and order dated 08.12.2025 passed by learned Single Judge, whereby W.P.(C) 18578/2025, filed by the petitioner-respondent, has been disposed of with certain directions.
3. At this juncture itself, we may note that the proceedings of W.P.(C) 18578/2025 before learned Single Judge were instituted challenging the Show Cause Notice-cum-Suspension order dated 26.11.2025, whereby the respondent has been issued a notice requiring it to show cause as to why action



for debarment upto three years or till completion of the ongoing work may not be taken. Simultaneously, by the said notice/order dated 26.11.2025, the appellant has restrained the respondent from participating in the ongoing/future bids for a period of one month or till completion of investigation by the Expert Committee, whichever is later. While communicating the decision to the respondent, the appellant in the notice/order dated 26.11.2025, relies upon the Circular dated 06.10.2021 issued by the Ministry of Road Transport and Highways. It also relies upon a Policy Circular issued by the appellant itself, dated 16.11.2021.

4. Learned Single Judge while disposing of the writ petition filed by the respondent by passing the order under challenge herein, has permitted the respondent to file its response to the Show Cause Notice dated 26.11.2025 within a period of three days and has further directed that a hearing shall be scheduled by the authority concerned to consider whether any suspension against the respondent is warranted or not in the facts and circumstances of the case. Learned Single Judge has also required the authority concerned to pass a reasoned order in case any suspension action is sought to be taken against the respondent. Impugned order further provides that till conclusion of the exercise as enumerated in the said order, the decision contained in para 4 of the order dated 26.11.2025 shall be kept in abeyance, meaning thereby that the suspension as ordered by the order dated 26.11.2025 shall be deferred.

5. It has been argued by learned counsel for the appellant that the power of suspending a contractor is derived by the appellant from the Circular issued by the Ministry, dated 06.10.2021 as reiterated in the Policy Circular issued by the appellant on 16.11.2021 which permits suspension in case any investigation/inquiry is being held for arriving at the conclusion as to whether the contractor is to be debarred or not. He has also argued that such suspension



does not warrant any prior hearing or issuing show cause notice and further that it is not legally incumbent upon the authority passing the suspension order to pass a reasoned order. Thus, the contention is that the direction issued by learned Single Judge, while permitting the respondent to furnish a reply and thereafter holding a hearing and then pass a reasoned order of suspension, are contrary to the Circular issued by the Government of India dated 06.10.2021, as also against the Policy Circular issued by the appellant dated 16.11.2021.

6. Mr. Dayan Krishnan, learned senior counsel representing the respondent, however, has opposed the instant appeal and has submitted that in the facts and circumstances of the case, the order passed by learned Single Judge is justified and does not call for any interference by this Court in this appeal. He has further drawn our attention to Clause 5 of the Circular of the Government of India dated 06.10.2021 and has stated that the suspension can be resorted to only in case of a project where public safety is found to be in danger by the conduct/action of the contractor. He has further stated that even in that circumstance, the suspension can be resorted to only for a period of one month with a further stipulation that during this period of one month, the regular process of debarment shall be concluded. He has thus stated that the order, which was under challenge before learned Single Judge dated 26.11.2025, runs contrary to the said Clause of the Circular.

7. Our attention has also been drawn to a similar Clause available in the Policy Circular issued by the National Highways Authority of India (hereinafter referred to as “NHAI”) dated 26.11.2021. Mr. Krishnan has further stated that any power available to the authority to suspend a contractor has to be understood and exercised in the backdrop of the fact that debarment or suspension of a contractor leads to very adverse and serious consequences, which in some cases has been described by the Hon’ble Supreme Court as



“Civil Death”. It is further the submission that the purpose of mandating the authority concerned to conclude the regular process of debarment within a period of one month is to ensure fair play so far as the rights of contractors are not jeopardized.

8. When we peruse the order passed by learned Single Judge, which is under challenge herein, what we find is that the said order was passed on 08.12.2025 giving only three days' time to the respondents to file the response to the Show Cause Notice dated 26.11.2025. The learned Single Judge has also directed the appellant shall hold a hearing to consider as to whether suspension is called for in the facts of the case or not and thereafter will pass a reasoned order. Instead of acting in terms of order passed by learned Single Judge, the process whereof would have been concluded by now, the appellant has chosen to institute this instant Intra Court appeal.

9. On a query, Mr. Kumar, learned counsel representing the appellant has submitted that the appellant is more concerned with upholding the power of suspension and further that the observations made by learned Single Judge for providing an opportunity of hearing and requirement of passing a reasoned suspension order are against this Circular of the Government of India dated 06.10.2021, as also against the Policy Circular of NHAI dated 16.11.2021. Unless the aforesaid legal aspects are clarified, the right of the appellant shall stand curtailed so far as action of suspension against contractors, even if warranted under law and in the facts and circumstances of a particular case, is concerned.

10. We first proceed to examine as to whether the suspension order is in terms of the Circular of Government of India dated 06.10.2021 and the Policy Circular dated 16.11.2021 issued by NHAI.

11. Clause 5 of the said Circular dated 06.10.2021 and the provisions



contained in Policy Circular dated 16.11.2021 are in *pari materia*, which are extracted herein below:-

Clause 5 of Circular dated 06.10.2021

*“5. Before deciding a contractor/concessionaire as Non-Performer or debarring/penalizing it, the concerned authority shall issue a notice to the contractor/concessionaire by giving 15 days' time to furnish its written reply and allow personal hearing, if so desired by the contractor/ concessionaire, before the competent authority or any person designated for the purpose. Such a notice shall not be issued without the approval of an officer below the rank of Chief Engineer /CGM/ED. In case of projects where public safety is endangered by the behavior/ conduct/ action of the consultant/ contractor/ concessionaire, the authority may temporarily suspend the consultant/ contractor / concessionaire from participating in ongoing/ future bidding upto 1 month period during which the regular process of debarment shall be concluded.”*

Clause 5 of Policy Circular dated 16.11.2021

*“5. Before deciding a contractor/concessionaire as Non-Performer or debarring/penalizing it, the concerned Technical Division shall issue a notice to the contractor/concessionaire by giving 15 days' time to furnish its written reply and allow personal hearing if so desired by the contractor/concessionaire before Member concerned. Such a notice shall not be issued without the approval of an officer not below the rank of Chief General Manager. In case of projects where public safety is endangered by the behavior/conduct/action of the consultant/contractor/concessionaire, the authority may temporarily suspend the consultant/contractor/concessionaire from participating in ongoing/ future bidding upto 1 month period during which the regular process of debarment shall be concluded.”*

12. A perusal of the aforequoted Clauses occurring in the Circular issued by Government of India dated 06.10.2021, as also in the Policy Circular issued by the NHAI, clearly shows that that appellant had been vested with the power to place a contractor under suspension pending inquiry for debarment, however, the Circulars clearly stipulate that such a suspension can be resorted to only for a period of one month, with a further stipulation that within this period of one month the regular inquiry in relation to debarment shall be completed.

13. In our opinion, such a provision has a rationale considering the fact that



any debarment or suspension of a contractor from participation in any contract either ongoing or future, leads to virtually “Civil Death” and therefore the Circulars rightly contemplate and mandate that the inquiry should be completed within a period of one month. Not adhering to such timeline for taking final action in respect of debarment, rather suspending an entity for a period of beyond one month, is not contemplated in the Circulars and therefore, so far as the stipulation in the order of suspension dated 26.11.2025 that it shall operate for a period beyond one month is concerned, we do not find any support to such stipulation from the afore mentioned Circulars.

14. The suspension order was passed on 26.11.2025. Today, almost one month period has elapsed. By 26.12.2025, the appellant is mandated by the aforesaid Circulars to take final decision in respect of debarment, however, instead of proceeding to take a final decision, the instant appeal has been filed challenging the order passed by learned Single Judge.

15. So far as the concern expressed by learned counsel for the appellant that the impugned order passed by the learned Single Judge creates a shadow on the power of suspension of appellant is concerned, such apprehension, in our opinion, is unfounded. It is true that Clause 5 of the Circular issued by the Government of India dated 06.10.2021 and the same Clause occurring in the Policy Circular of the NHAI dated 16.11.2021 do not contemplate issuance of any Show Cause Notice before passing the suspension order. These Circulars also do not require passing any reasoned order, however, in our opinion, the direction by the learned Single Judge permitting the petitioner to file response to the Show Cause Notice-cum-Suspension order dated 26.11.2025 in respect of the suspension has been given in the facts and circumstances of the case. It would mean that in appropriate case, the suspension can be resorted to without issuing the Show Cause Notice.



16. So far as the direction issued by the learned Single Judge requiring the appellant to pass reasoned order is concerned, we may opine that by such direction what is meant is expression of *prima facie* satisfaction leading to suspension in terms of the requirement of Clause 5 of the Circular issued by the Government of India dated 06.10.2021, which specifically provides that suspension can be taken recourse to in case the conduct of the contractor poses any danger to public safety. Therefore, what the learned Single Judge meant by requiring the appellant to pass a reasoned order is that the appellant shall be required to express its *prima facie* opinion that conduct of the Contractor had posed danger to public safety and nothing beyond it.

17. The one month's suspension period in terms of the Circulars dated 06.10.2021 and 16.11.2021 is to come to an end on 26.12.2025. From 08.12.2025, the suspension has remained in abeyance till date and therefore, having regard to the overall facts and circumstances of the case, we do not find appropriate to interfere with the order of the learned Single Judge.

18. Having clarified the legal position as above, we dispose of this appeal with a direction to the appellant to conclude the proceedings of debarment finally within two weeks.

**DEVENDRA KUMAR UPADHYAYA  
(CHIEF JUSTICE)**

**TUSHAR RAO GEDELA  
(JUDGE)**

**DECEMBER 23, 2025**

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