$~40 & 41

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

\+ O.M.P.(I) (COMM.) 101/2026

M/S VASISHTA MANTENA NH JV .....Petitioner

Through: Mr. Jayant Mehta, Sr. Adv. with Mr. Anirudh Bakhru, Mr. D. Pavan Kumar, Mr. Divyam Agarwal, Ms. Shraddha Gupta, Mr. Rohan Chandra, Ms. Ananya Mago, Mr. Siddhant Sekhri, and M.r Om Shelat, Advocates
Mob: 8595047596
Email: divyam@alclegal.in

versus

NATIONAL HIGHWAY AND INFRASTRUCTURE DEVELOPEMENT CORPRATION LIMITED .....Respondent

Through: Mr. Deepak Thukral, Advocate (M:9810019539)
Email: deepakthukral.lawoffice@gmail.com
Mr. Adil Singh, ED(T), NHIDCL
Mob: 8527586333
Email: ed6.nhidcl.com

42

\+ O.M.P.(I) (COMM.) 104/2026

M/S VASISHTHA CONSTRUCTION PRIVATE LIMITED .....Petitioner

Through: Mr. Jayant Mehta, Sr. Adv. with Mr. Anirudh Bakhru, Mr. D. Pavan Kumar, Mr. Divyam Agarwal, Ms.

Shraddha Gupta, Mr. Rohan Chandra, Ms. Ananya Mago, Mr. Siddhant Sekhri, and M.r Om Shelat, Advocates
Mob: 8595047596
Email: divyam@alclegal.in

versus

NATIONAL HIGHWAYS AND INFRASTRUCTURE DEVELOPMENT CORPORATION LIMITED .....Respondent

Through: Mr. Deepak Thukral, Advocate (M:9810019539)
Email: deepakthukral.lawoffice@gmail.com
Mr. Adil Singh, ED(T), NHIDCL
Mob: 8527586333
Email: ed6.nhidcl.com

CORAM:
HON'BLE MS. JUSTICE MINI PUSHKARNA

ORDER

% 18.03.2026

O.M.P.(I) (COMM.) 101/2026 and O.M.P.(I) (COMM.) 104/2026

1. The present petitions have been filed under Section 9 of the Arbitration and Conciliation Act, 1996 ("Arbitration Act") seeking stay on the operation of the Termination Notice dated 10th March, 2026, issued by the respondent, i.e., National Highway and Infrastructure Development Corporation Limited.

2. By the said Termination Notice, the respondent has terminated the Engineering, Procurement and Construction Agreement dated 17th April, 2017 ("EPC Agreement 1"), that had been executed between the petitioner

and the respondent in *O.M.P.(I) (COMM.) 101/2026*, for the *"Rehabilitation and Up-Gradation of Section from Km. 242.0 to Km. 298.0 of NH-223 (New NH-4) to 2-Lane with Hard Shoulder in the Union Territory of Andaman & Nicobar Islands on EPC Basis (Package-II)"*.

3. Further, by way of the said Termination Notice, the respondent also terminated the Engineering, Procurement and Construction Agreement dated 10th April, 2018 ("EPC Agreement 2"), that had been executed between the petitioner and the respondent in *O.M.P.(I) (COMM.) 104/2026*, for the *"Rehabilitation and Up-Gradation of Section from Km 206.000 to Km. 239.445 of NH-4 (Old NH-223) to 2-Lane with Hard Shoulder in the Union Territory of Andaman & Nicobar Islands on EPC Basis (Pkg-IV)"*.

4. Thus, both the Agreements in question, i.e., EPC Agreement 1 and EPC Agreement 2 had been executed between the respective parties, with respect to construction of roads in the Union Territory of Andaman and Nicobar Islands, India. Under the said Agreements, the petitioners in both *O.M.P.(I) (COMM.) 101/2026* and *O.M.P.(I) (COMM.) 104/2026* submitted irrevocable and unconditional Performance Bank Guarantees as securities to the respondent.

5. Learned Senior Counsel for the petitioners submits that several delays and difficulties were encountered in the execution of the work under the Agreements in question, and the same were attributable to the respondent. He submits that since the respondent failed to make available the contractual Right of Way ("ROW") to the petitioners, the scope of the work had to be changed multiple times. Further, the said changes in the scope of work were material modifications, which affected the timely completion of the works in question.

6. He further submits that the works in question were also delayed due to the ban placed on quarrying by the National Green Tribunal ("NGT"), because of which the petitioners had to adopt new technologies. Despite the fact that delay in this instance was caused by extraneous circumstances, the respondent fastened liability on the petitioners.

7. He further submits that when certain points of distress arose in the works in question, which were beyond the control of the petitioners, the respondent instituted an Expert Technical Committee ("ETC"), whose final report is still awaited.

8. While the final report of the ETC was awaited, the petitioners proposed rectification works for the distress points in the works in question, for an estimated cost of Rs. 6 Crores and Rs. 15 Crores, respectively. However, the respondent floated fresh tenders for the same scope of works for Rs. 56 Crores and Rs. 64 Crores, at the "risk and cost" of the petitioners.

9. He further submits that whilst discussions were on-going between the parties as to the change in scope of works and the rectification works, and the report of ETC was awaited, the respondent unilaterally terminated the Agreements in question, by issuing the Termination Notice dated 10th March, 2026.

10. Learned Senior Counsel appearing for the petitioners submits that the petitioners have already completed 99% of the contractual work in *O.M.P.(I) (COMM.) 101/2026* and 85% of the contractual work in *O.M.P.(I) (COMM.) 104/2026*. He further submits that the respondent has committed material breaches of its reciprocal obligations, thereby leading to delay in execution of works and has arbitrarily terminated the agreements in question.

11. Attention of this Court has been drawn to Article 26 of the Agreement

& Schedules, as attached with EPC Agreement 1, and in particular to Articles 26.2 and 26.3 which pertain to dispute resolution by Arbitration, and read as under:

"xxx xxx xxx

26.2 Conciliation

In the event of any Dispute between the Parties, either Party may call upon the Authority's Engineer, or such other person as the Parties may mutually agree upon (the "**Conciliator**") to mediate and assist the Parties in arriving at an amicable settlement thereof. Failing mediation by the Conciliator or without the intervention of the Conciliator, either Party may require such Dispute to be referred to the Chairman of the Authority and the Chairman of the Board of Directors of the Contractor for amicable settlement, and upon such reference, the said persons shall meet no later than 7 (seven) business days from the date of reference to discuss and attempt to amicably resolve the Dispute. If such meeting does not take place within the 7 (seven) business day period or the Dispute is not amicably settled within 15 (fifteen) days of the meeting or the Dispute is not resolved as evidenced by the signing of written terms of settlement within 30 (thirty) days of the notice in writing referred to in Clause 26.1.1 or such longer period as may be mutually agreed by the Parties, either Party may refer the Dispute to arbitration in accordance with the provisions of Clause 26.3.

26.3 Arbitration

26.3.1 Any Dispute which is not resolved amicably by conciliation, as provided in Clause 26.2, shall be finally finally settled by arbitration in accordance with the rules of arbitration of the SOCIETY FOR AFFORDABLE REDRESSAL OF DISPUTES (SAROD).

26.3.2 Deleted.

26.3.3 The arbitrators shall make a reasoned award (the "**Award**"). Any Award made in any arbitration held pursuant to this Article 26 shall be final and binding on the Parties as from the date it is made, and the Contractor and the Authority agree and undertake to carry out such Award without delay.

26.3.4 The Contractor and the Authority agree that an Award may be enforced against the Contractor and/or the Authority, as the case may be, and their respective assets wherever situated.

26.3.5 This Agreement and the rights and obligations of the Parties shall remain in full force and effect, pending the Award in any arbitration proceedings hereunder.

26.3.6 In the event the Party against whom the Award has been granted challenges the Award for any reason in a court of law, it shall make an interim payment to the other Party for an amount equal to 75% (seventy five per cent) of the Award, pending final settlement of the Dispute. The aforesaid amount shall be paid forthwith upon furnishing an irrevocable Bank Guarantee for a sum equal to 120 % (one hundred and twenty per cent) of the aforesaid amount. Upon final settlement of the Dispute, the aforesaid interim payment shall be adjusted and any balance amount due to be paid or returned, as the case may be, shall be paid or returned with interest calculated at the rate of 10% (ten per cent) per annum from the date of interim payment to the date of final settlement of such balance.

xxx xxx xxx"

12. This Court notes that Articles 26.2 and 26.3, as contained in the Agreement & Schedules to EPC Agreement 1, are in *pari materia* with Article 26 as contained in EPC Agreement 2.

13. Perusal of the aforesaid Articles clearly shows that there exist valid arbitration agreements between the parties in both *O.M.P.(I) (COMM.) 101/2026* and *O.M.P.(I) (COMM.) 104/2026*, which stipulate reference of disputes between the parties to Arbitration.

14. During the course of hearing, on a pointed query, learned Senior Counsel appearing for the petitioners was agreeable if the matter could be referred to arbitration.

15. Learned counsel appearing for the respondent, on instructions,

submits that he does not dispute the arbitration agreements.

16. Further, both the parties are *ad idem* that conciliation process, in terms of the Agreements between the parties, has already failed.

17. This Court is satisfied that there exists disputes between the parties, and there are valid Arbitration Agreements, as per which, the said disputes are to be adjudicated by way of referring the parties to arbitral proceedings.

18. Considering the submissions made before this Court, and the facts and circumstances of the case, including, the fact that the conciliation proceedings between the parties has already failed, this Court is of the view that the matter can be referred to Arbitration. Further, the Arbitration Agreements show that the arbitration is to be conducted under the Society for Affordable Redressal of Disputes ("SAROD").

19. At this stage, learned Senior Counsel appearing for the petitioners submits that the respondent intends to encash the Performance Bank Guarantees submitted under the Agreements in question. He, therefore, submits that in order to protect the interest of the petitioners, limited protection may be granted to the petitioners till the matter is heard by the learned Arbitral Tribunal.

20. Accordingly, considering the submissions made before this Court, the following directions are issued:

i. The matter is referred to SAROD for constitution of an Arbitral Tribunal, in terms of their Rules, expeditiously.

ii. The Arbitral Tribunal is requested to furnish a declaration in terms of Section 12 of the Arbitration Act prior to entering into the reference.

iii. Both the petitioners are granted liberty to file the present petitions, which are under Section 9 of the Arbitration Act, before the Arbitral

Tribunal, which shall treat the same as being applications under Section 17 of the Arbitration Act, and decide the same on merits.

iv. The respondent, i.e., National Highway and Infrastructure Development Corporation Limited is restrained from invoking and encashing the Performance Bank Guarantees, till constitution of, and hearing of the applications before the Arbitral Tribunal.

v. It shall be open to the respondent to raise counter-claims, if any, in the arbitration proceedings.

vi. It is made clear that all the rights and contentions of the parties, including, the arbitrability of any of the claims and/or counter-claims, any other preliminary objection, as well as claims on merits of the dispute of either of the parties, are left open for adjudication by the learned Arbitrator.

21. The petitioners are granted liberty to make appropriate prayer before the Arbitral Tribunal for extension of today's order.

22. Needless to state, nothing in this order shall be construed as an expression of this Court on the merits of the case.

23. The present petitions, along with the pending applications, are disposed of in the aforesaid terms.

24. The Registry is directed to send a copy of this order to the Secretary, SAROD, for information and compliance.

MINI PUSHKARNA, J

MARCH 18, 2026/SK