



2026:DHC:4488-DB



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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
Date of decision: 19th May, 2026

+ FAO(OS) (COMM) 83/2026, CM APPL. 21826/2026, CM APPL. 21827/2026, CM APPL. 21828/2026, CM APPL. 21829/2026 & CM APPL. 28908/2026

NATIONAL HIGHWAYS INFRASTRUCTURE DEVELOPMENT CORPORATION LTDAppellant

Through: Mr. Rajshekhar Rao, Sr. Adv. (through VC) with Mr. Gopal Singh, Mr. Subham Janghu, Mr. Yoshit Jain & Ms. Ananya Diya, Advs.

versus

SADGURU ENGINEERS AND ALLIED SERVICES PVT LTD & ORS.Respondents

Through: Mr. Amarjit Singh Chandhiok, Sr. Adv. with Mr. Srisatya Mohanty & Ms. Purva Kohli, Advs. for R-1. Mr. Jatin Sehgal, Mr. Ashish Garg & Mr. Shubham Aggarwal, Advs. for R-4.

CORAM:
HON'BLE MR. JUSTICE DINESH MEHTA
HON'BLE MR. JUSTICE VINOD KUMAR

J U D G M E N T

DINESH MEHTA, J. (ORAL)

1. Instant appeal has been preferred under Section 37(1)(b) of the Arbitration and Conciliation Act, 1996 (*hereinafter referred to as the 'Act of 1996'*) against judgement dated 24.02.2026 passed by the learned Single



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Judge, pursuant to an application under Section 9 of the Act of 1996 filed by the respondent.

2. The facts in detail have been noted by the learned Single Judge in the impugned order, hence, we are refraining from narrating those facts in detail.

3. The facts for the present purposes, briefly stated, are that the respondent emerged as the successful bidder and was awarded a contract for execution of balance work of four-laning of National Highway No.37 (Old), Jorhat-Jhanji stretch, under the EPC mode for Package-I (consisting the Road Works) and Package-IV (consisting the Structures & Toll Plaza).

4. On issuance of Letter of Acceptance (LoA) dated 15.01.2024, a Contract Agreement dated 07.02.2024 came to be executed between the parties and as per the terms of the contract/LoA, the respondent furnished two performance bank guarantees and a mobilization bank guarantee drawn on State Bank of India, SME AT Road Branch, Guwahati to the tune of Rs.8,63,46,694/-.

5. According to the appellant, the respondent-contractor was lax in performing the contractual obligations and despite all support including financial support and accommodation given by the appellant (NHIDCL), the respondent could not complete the work within time.

6. Various correspondences took place between the appellant and the respondent, out of which the letter dated 14.01.2026 propelled the respondent to approach the court under Section 9 of the Act of 1996. By said letter/notice, the appellant had asked the respondent-contractor to comply with the directions given therein, failing which the appellant would encash the bank guarantees for recovery of the amount of Rs.8.496 crores, being the amount claimed under the said notice.



7. Feeling aggrieved of the said notice and proposed action of invocation of the bank guarantees (as indicated in the notice), the respondent filed an application under Section 9 of the Act of 1996 and prayed that the NHIDCL be restrained from invoking/encashing following bank guarantees:

- i. Performance Bank Guarantee No. 0151824BG0000014 for Rs.3,24,00,324/- dated 20.01.2024;
- ii. Mobilization Bank Guarantee No. 0151824BG0000057 for Rs.3,50,46,351/- dated 04.03.2024; and
- iii. Performance Bank Guarantee No. 0151824BG0000016 for Rs.1,89,00,019/- dated 20.01.2024.

8. The application so filed by the respondent was heard by learned Single Judge and after hearing rival counsel, he came to a conclusion vide the impugned order dated 24.02.2026 that the bank guarantees in question were conditional bank guarantees and the same could be invoked only upon fulfilment of pre-defined contingencies linked to contractual performance or compliances.

9. Having found so, the learned Single Judge stayed the encashment of the above referred three bank guarantees.

10. The appellant has called in question the said order of learned Single Judge dated 24.02.2026 by way of instant appeal.

11. Mr. Rajshekhar Rao, learned senior counsel assisted by Mr. Subham Janghu, learned counsel for the appellant argued that learned Single Judge has erred in interdicting the appellant from encashing/invoking bank guarantees while holding the bank guarantees to be conditional bank guarantees whereas they were not.



12. He read the contents of bank guarantee and emphasised that the same is undoubtedly an unconditional bank guarantees.

13. The relevant clause of the bank guarantee on the basis whereof he contended that the bank guarantees are unconditional is reproduced hereinfra:

“NOW, THEREFORE, the Bank hereby, unconditionally and irrevocably, guarantees and affirms as follows:

The Bank hereby unconditionally and irrevocably guarantees the due and faithful performance of the Contractor's obligations during the {Construction Period/ Defects Liability Period and Maintenance Period} under and in accordance with the Contract, and agrees and undertakes to pay to the Authority, upon its mere first written demand, and without any demur, reservation, recourse, contest or protest, and without any reference to the Contractor, such sum or sums up to an aggregate sum of the Guarantee Amount as the Authority shall claim, without the Authority being required to prove or to show grounds or reasons for its demand and/or for the sum specified therein.”

14. He argued that the finding of learned Single Judge is contrary to facts and law. He argued that since the very premise on which the order impugned is based, is faulty, the order is liable to be quashed and set aside.

15. Learned counsel for the appellant submitted that the respondent-contractor has neither performed the contract upto the satisfaction of the appellant, nor has it shown any improvement, for which, the NHIDCL has issued a notice for termination dated 31.01.2026.

16. Learned counsel submitted that since the appellant has taken steps as contemplated under the agreement, learned Single Judge ought not to have stayed the encashment of bank guarantees.



17. Mr. Chandhiok, learned senior counsel for respondent no.1, on the other hand, submitted that order impugned was passed on 24.02.2026 and that the injunction granted by the learned Single Judge has continued for almost three months. He argued that the fact that a dispute has arisen between the parties is undeniable and therefore, rather than interfering with the order under the appeal, the Court may appoint an Arbitrator and leave the parties to pursue their remedies before the Arbitrator, including interim relief as per Section 17 of the Act of 1996. He added that an Arbitrator will be in a better position to decide the requirement of granting appropriate interim relief, as he will have a better grip over the facts and dispute because of the relevant material and pleadings before him.

18. Without prejudice to the above submissions, Mr. Chandhiok, learned senior counsel argued that a perusal of the impugned communication dated 14.01.2026 shows that the appellant has sought to invoke the bank guarantees for the reasons which do not relate to the contract - its performance or any obligation thereunder. In this regard, he referred to paragraph no.7 of the notice dated 14.01.2026 and pointed out that the respondents have sought to recover a purported claim of Rs.8.496 crore comprising of Rs.2.28 crore towards undisputed vendor dues and Rs.6.216 crore towards recovery of funds released on assurance which were not honoured by the contractor.

19. Learned senior counsel argued that the amount of Rs.2.28 crore claimed by the appellant is in relation to dues of the respondents' vendors, qua which the appellant could not have issued notice as it was a matter between the contractor and its vendors. He further submitted that the amount of Rs.6.216 crore claimed by the appellant indicated in the said notice relates to the fund which the NHIDCL had released to the respondents on the assurance



of mobilizing material and expediting the work. He argued that both the amounts and the purported claim in this regard cannot entail invocation of bank guarantees. He added that neither the terms of the contract nor does the terms of performance guarantee permit the appellant to encash the bank guarantees, in furtherance of letter dated 14.01.2026.

20. Heard learned counsel for the parties.
21. The basic issues which require consideration and determination are:-
 - (i) What is the nature of subject bank guarantees?
 - (ii) Whether the same can be invoked at the wish of the appellant or certain conditions are required to be met, before doing so?
22. It will be gainful to reproduce relevant para of the Bank Guarantee.

“A letter from the Authority, under the hand of an officer not below the rank of [General Manager of National Highways & Infrastructure Development Corporation Limited], that the Contractor has committed default in the due and faithful performance of all or any of its obligations under and in accordance with the Contract shall be conclusive, final and binding on the Bank. The Bank further agrees that the Authority shall be the sole judge as to whether the Contractor is in default in due and faithful performance of its obligations during and under the Contract and its decision that the Contractor is in default shall be final and binding on the Bank, notwithstanding any differences between the Authority and the Contractor, or any dispute between them pending before any court, tribunal, arbitrators or any other authority or body, or by the discharge of the Contractor for any reason whatsoever.”

emphasis supplied.

23. A simple look at the above clause of the bank guarantees, clearly shows that the appellant can seek invocation of the bank guarantees, in case the



contractor has committed default in the due and faithful performance of all or any of its obligations under and in accordance with the contract.

24. The opening part of the bank guarantees in question may give an impression that the same are unconditional but if we peruse the complete guarantees, it clearly suggests that such unconditional bank guarantees can be invoked only in existence of certain situations or contingencies. According to us, unless the pre-defined contingencies in the bank guarantees are in existence, the appellant cannot justifiably invoke the bank guarantees.

25. If the impugned letter/communication dated 14.01.2026 is taken into consideration, the entire gamut of the letter pertains to two claims surrounding the vendor's use and recovery of the fund which was released by the appellant in order to ensure that the work will be done at the requisite pace. It will not be out of place to reproduce the reason given in the letter dated 14.01.2026 for intention to invoke bank guarantees as contained in paragraph no.7:-

"7. Accordingly, the total amount presently claimed as payable by the EPCC to NHIDCL stands at Rs. 8.496 Crore (Rs. 2.28 Crore towards undisputed vendor dues, as set out above, and Rs. 6.216 Crore towards recovery of funds released on assurances which have not been honoured). The EPCC is hereby directed to forthwith remit the entire amount of Rs. 8.496 Crore to NHIDCL by 17.01.2026, without any demur or adjustment. Further, the EPCC shall furnish in favour of NHIDCL an unconditional and irrevocable BG of Rs. 2.50 Crore securing any potential exposure of NHIDCL arising out of the comfort letters, which amount is disputed by the EPCC and may, subject to the outcome of the ongoing litigation between the EPCC and the concerned vendor, be determined as payable by the EPCC. The BG, so submitted, shall be encashed only after a valid demand



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is raised against NHIDCL by the vendor; until such time, the BG is to be always kept renewed and valid by the EPCC at all times. The Account details for depositing the above-mentioned amounts are as follows:

Bank Name: Canara Bank

Branch: Specialised Govt Business Branch, Guwahati

A/c Name: RO NHIDGL PROJECTS”

26. We have no hesitation in holding that both the purported claims are not relatable to the failure to perform contractual obligations or default. Therefore, the contingencies encompassed in the bank guarantees do not exist.

27. Furthermore, the obligations or purported dues do not directly relate to obligations under and in accordance with the contract, which is a precursor for invocation of bank guarantees.

28. Even if there is some scope for argument, equity and balance of convenience warrant that unless the present and incidental dispute(s) between the parties, which have escalated to the extent of issuing notice of termination of the contract, is settled while keeping the relevant material in mind, invocation of bank guarantees would not be justified.

29. We, therefore, do not find any error in the judgment of the learned Single Judge. The appeal is, therefore, dismissed. All pending applications are also disposed of.

30. During the course of submissions, both the parties agreed that a sole arbitrator (preferably a former Judge of the Supreme Court) be appointed so that the time and energy in moving an application under Section 11 of the Act of 1996, seeking appointment of an Arbitrator be saved. They further submitted that once an Arbitrator is appointed, the respondent-claimant be



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allowed to file an application under Section 17 of the Act of 1996.

31. While rejecting the appeal and upholding the judgment dated 24.02.2026 passed by the learned Single Judge, we appoint Hon'ble Mr. Justice Arun Mishra (former Judge of the Supreme Court) (Mobile No. +91 7042963344), as the sole Arbitrator to adjudicate upon the disputes which have arisen or likely to arise between the parties, including the claim & counter-claim (if any).

32. Needless to mention that the learned Arbitrator will comply with Section 12 of the Act of 1996. The sole Arbitrator shall be entitled for applicable fee in accordance with the *Fourth Schedule* of the Act of 1996.

33. It will be open for the parties to file their respective claims/counter claims before the learned Arbitrator which will be decided in accordance with law.

34. We make it clear that the finding we have recorded and observation we have made hereunder are our prima-facie opinion. Learned Arbitrator shall not be bound by any of our observation while deciding the claim or appreciation under Section 17 of the Act of 1996.

**(DINESH MEHTA)
JUDGE**

**(VINOD KUMAR)
JUDGE**

MAY 19, 2026/ck/kk