



\$~45

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

+ O.M.P.(I) (COMM.) 194/2026, I.A. 12538/2026 (Seeking permission to place on record CD as document), I.A. 12539/2026 (Seeking permission to file lengthy list and dates and synopsis) & I.A. 12540/2026 (EX.)

VADODARA MUMBAI EXPRESSWAY PKG 10 PVT. LTD.

.....Petitioner

Through: Mr. Gopal Jain & Mr. G. Saikumar, Mr. Ravi Prakash, Sr. Advs. with Mr. Samir Malik, Mr. Varun Kalra & Mr. Krishan Kumar, Advs.

versus

NATIONAL HIGHWAYS AUTHORITY OF INDIA

.....Respondent

Through: Mr. Ankur Mittal, Mr. Abhay Gupta & Ms. Ipshita Dutta, Advs.

CORAM:

HON'BLE MR. JUSTICE HARISH VAIDYANATHAN SHANKAR

ORDER

07.05.2026

%

1. The present Petition has been instituted under Section 9 of the Arbitration and Conciliation Act, 1996 [**“Act”**] seeking the following reliefs:

“a. Direct the Respondent to ensure that all project receivables, including the Termination Payment amounting to Rs. 613.12 Crores, is deposited into the Escrow Account, and are dealt with strictly in accordance with the terms of the Concession Agreement including Clause 25.4.1 and read with Clause 3.2 of Schedule O; and/or

b. Restrain the Respondent, its officers, agents and



representatives from permitting any withdrawal or diversion from the Escrow Account except in accordance with the Concession Agreement; and/or

c. Pass an order directing that no withdrawal, diversion or appropriation from the Escrow Account shall be permitted prior to full discharge of statutory dues and debt obligations in accordance with the prescribed escrow waterfall under Clause 25.4.1 of Concession Agreement; and/or

d. Restrain the Respondent from invoking, encashing, or otherwise acting upon the Bank Guarantees dated 20.05.2022 and 19.07.2022 furnished by the Petitioner under the Concession Agreement; and/or

e. Pass the above orders ex-parte; and/or

f. Pass such other or further orders as this Hon'ble Court may deem fit and proper in the facts and circumstances of the present case.”

2. Material on record indicates that the Concession Agreement dated 22.06.2021 contemplated arbitration between the Petitioner and the Respondent, containing arbitration clause being clause 38.3, which reads as under:

“38.3 Arbitration

38.3.1 Any Dispute which is not resolved amicably by conciliation, as provided in Clause 38.2, shall be finally decided by reference to arbitration by an arbitral tribunal constituted in accordance with Clause 38.3.2. Such arbitration shall be held in accordance with the Rules of Society for Affordable Redressal of Disputes ("SAROD"), New Delhi (the [SEP] "Rules"), or such other rules as may be mutually agreed by the Parties, and shall be subject to the provisions of the Arbitration and Conciliation Act, 1996. The place of such arbitration shall be the [Delhi] and the language of arbitration proceedings shall be English.

38.3.2 There shall be an arbitral tribunal comprising three arbitrators, of whom each Party shall select one, and the third arbitrator shall be appointed by the two arbitrators so selected and in the event of disagreement between the two arbitrators, the appointment shall be made in accordance with the Rules.

38.3.3 The arbitral tribunal shall make a reasoned award (the "Award"). Any Award made in any arbitration held pursuant to this



Article 38 shall be final and binding on the Parties as from the date it is made, and the Concessionaire and the Authority agree and undertake to carry out such Award without delay.

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

38.3.5 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.

38.4 Adjudication by a tribunal

In the event of constitution of a statutory tribunal or other forum with powers to adjudicate upon disputes between the Concessionaire and the Authority, all Disputes arising after such constitution shall, instead of reference to arbitration under Clause 38.3, be adjudicated upon by such tribunal or other forum in accordance with Applicable Laws and all references to Dispute Resolution Procedure shall be construed accordingly.”

3. After addressing the Court at length on the reliefs sought, learned counsel appearing for the parties are *ad idem* that instead of adjudication of the present Petition on merit, the disputes *inter se* the parties can be referred to arbitration by an Arbitral Tribunal.

4. In view of the aforesaid consensus and in terms of the Agreement, it is directed that the disputes *inter se* the parties be referred to arbitration to be adjudicated by an Arbitral Tribunal comprising of three (03) arbitrators, with each party nominating one arbitrator, and the third arbitrator being nominated by the two arbitrators so appointed.

5. Learned Senior Counsel appearing on behalf of the Petitioner proposes the name of **Mr. Pankaj Jaiswal, (Retd.) Hon'ble Judge of High Court of Allahabad** as the nominee Arbitrator on behalf of the Petitioner. Learned Senior Counsel appearing on behalf of the Respondent proposes the name of **Mr. Sanjiv Khanna, (Retd.)**



Hon'ble Chief Justice of India as the nominee Arbitrator on behalf of the Respondent.

6. Accordingly, this Court hereby requests the learned nominee Arbitrators to ensure that the Presiding Arbitrator be nominated within a period of one (01) week from the date of receipt of this Order. Parties are directed to communicate this Order to the learned Arbitrators.

7. Since the parties have mutually consented to adjudication of their disputes by way of Arbitration, this Court is of the view that the commencement of arbitral proceedings to adjudicate the disputes between the parties should not be unduly delayed. Accordingly, in the peculiar facts of the present case, the requirement of Section 21 Notice and initiation of separate proceedings under Section 11 of the Act are dispensed with.

8. In terms of the undertaking by the respective counsels, the parties are requested to take appropriate steps for the constitution of the learned Arbitral Tribunal in the given period.

9. Once the learned Arbitral Tribunal is constituted, it is requested to enter upon the reference and adjudicate the disputes *inter se* the parties.

10. The learned Arbitrators may proceed with the arbitration proceedings, subject to furnishing to the parties the requisite disclosures as required under Section 12(2) of the Act within a week of entering into the reference.

11. The respective costs of arbitration shall be borne equally by the parties.

12. All rights and contentions of the parties are kept open, to be decided by the learned Tribunal on their merits, in accordance with



law.

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

14. Accordingly, the present Petition under Section 9 of the Act shall be treated as an Application under Section 17 of the Act, and appropriate directions may be passed by the learned Tribunal after entering upon the reference.

15. The learned Arbitral Tribunal is requested to accord their consideration to Section 17 Application as expeditiously as possible.

16. The Registry is directed to send a copy of this order to the parties as also the nominated Arbitrators through all permissible modes, including through e-mail.

17. The parties are at liberty to communicate this Order to the learned Arbitrators expeditiously.

18. The present Petition, along with pending Application(s), if any, stands disposed of in the aforesaid terms.

HARISH VAIDYANATHAN SHANKAR, J.
MAY 07, 2026/ v/kr/kv/ma