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

Date of Decision: 25.02.2026

+ O.M.P.(I) (COMM.) 379/2025, I.A. 26430/2025 (Delay of 11 days in filing the reply to the petition) & I.A. 5279/2026 (For filing of Addl. Documents)

M/S EDAPALLY TO KODUNGALLUR HIGHWAY
PRIVATE LIMITED & ANR.Petitioners

Through: Mr. Anil K. Airi, Senior
Advocate along with Mr. Ravi
Krishan Chandna and Mr.
Harsh Gautam, Advocates
along with Mr. Biswarup
Chanda, AR.

versus

NATIONAL HIGHWAY AUTHORITY OF INDIA

.....Respondent

Through: Mr. Santosh Kumar, Standing
Counsel and Mr. Adithya
Ramani, Advocate for
Respondent No. 1.

CORAM:
HON'BLE MR. JUSTICE HARISH VAIDYANATHAN
SHANKAR

% **JUDGEMENT (ORAL)**

HARISH VAIDYANATHAN SHANKAR, J.

1. The present Petition has been filed under Section 9 of **the Arbitration and Conciliation Act, 1996¹**, seeking, *inter alia*, the following reliefs:-

“a. Pass an order staying/quashing/setting aside the impugned letter dated 25.08.2025 issued by the Respondent debaring the

¹ Act



Petitioner no. 1 and 2 and from acting in any manner on the said letter.

- b. Pass an order restraining the Respondent from in any manner treating the Petitioner No.1 and 2 as debarred entity and from posting any such declaration on the website of the Respondent.
- c. Pass any other order or orders that this Hon'ble Court may deem fit and appropriate in the given facts and circumstances of the case and in the interest of justice, may also kindly be granted."

2. Learned counsel for the Respondent has taken a preliminary objection that the present Petition is not maintainable since the aspect of debarment *qua* the **Debarment Letter dated 25.08.2025²**, in respect of which reliefs have been sought, is not an arbitrable dispute. He would submit that keeping in view the judgment of the Hon'ble Supreme Court in *Patel Engg. Ltd. v. Union of India*³, the power to debar is an inherent power which was in an authority and therefore the same need not necessarily be provided for in the **Concession Agreement dated 12.03.2022⁴** itself.

3. He would further submit that the appropriate course of action for canvassing the present reliefs would be to prefer a writ petition. He would further contend that the Petition in the present form is not maintainable since the Respondent has privity of contract only with Petitioner No. 1, and not with Petitioner No. 2. He would submit that reliefs, if any, that could be sought can therefore only be with respect to Petitioner No. 1.

4. **Per contra**, learned counsel for the Petitioners would submit that a perusal of the **Show Cause Notice dated 25.06.2025⁵** and the

² Debarment letter

³ (2012) 11 SCC 257

⁴ Agreement

⁵ SCN



Debarment letter would make it apparent that the harsh step of debarment is stated to be a consequence of the alleged non-performance or faulty performance done by the Petitioners herein and therefore in terms of the Arbitration Clause being Clause 38.1 of the Agreement, the question of debarment would necessarily fall within the confines of an arbitration proceedings.

5. He would further contend that the question of the issue of debarment being non-arbitrable has been raised for the first time only after the learned **Dispute Resolution Board**⁶ has rendered its position and recommendation. He would submit that the learned DRB, in fact, has given its recommendation in favour of the Petitioners and has disapproved the debarment. He would further submit that the same is evident from a perusal of the Reply as preferred by the Respondent before the Engineer as well as before the DRB, the said replies are completely silent as to this aspect. He would thus reiterate that since the debarment is stated to be a direct consequence of the manner in which contract was performed, the arbitration clause would squarely apply to any disputes or issues with respect to the performance of the contract and therefore the present petition is clearly maintainable.

6. **In rejoinder**, learned counsel for the Respondent would submit that in terms of Clause 41.1.2 of the Concession Agreement, the contract is limited only to the parties to the Agreement and therefore, it is incorrect to contend that Petitioner No. 2 is a proper party to the present proceedings. He would once again reiterate the principles as set out in **Patel Engg. Ltd (supra)** and in particular Paras 22 to 24 thereof to contend that debarring is a possible consequence of and

⁶ DRB



which has been held as such in the said judgment. He would further contend that the pleadings before the DRB were filed by the officer who does not have knowledge of law and therefore the same cannot act as estoppel.

7. The relevant dispute resolution clauses are set out as follows:-

“38.1 Dispute Resolution

38.1.1. In the event of any dispute, difference or controversy of whatever nature howsoever arising under or out of or in relation to this Agreement (including its interpretation) between the Parties, and so notified in writing by either Party to the other Party (the "Dispute") either Party may call upon the Independent Engineer, to mediate and assist the Parties in arriving at an amicable settlement thereof.

38.1.2. The Parties agree to use their best efforts for resolving all Disputes arising under or in respect of this Agreement promptly, equitably and in good faith, and further agree to provide each other with reasonable access during normal business hours to all nonprivileged records, information and data pertaining to any Dispute.

38.1.3. Dispute Resolution Board (DRB):

Failing mediation by the Independent Engineer or without the intervention of the Independent Engineer, either Party may require such Dispute to be referred to the Dispute Resolution Board ("DRB") in accordance with the procedure set forth in Schedule-S to the Concession Agreement. The decision(s) of the Dispute Resolution Board shall be binding on both parties who shall promptly give effect to unless and until the same is revised/modified, as hereinafter provided, in a Conciliation/ Arbitral Tribunal.”

8. We have heard learned counsel for the parties and have also perused the record with their able assistance. We are of the considered view that the present petition, as filed, is clearly maintainable. The reliefs as sought are in respect of what the Respondent itself has termed as a direct consequence of the performance of the contract.

9. It is also the understanding of the parties that the issue with respect to debarment is one which is subject to the dispute resolution clause and the same is apparent from the fact that during the



proceedings before the Independent Engineer as well as before the learned DRB, no such issue was raised and it is probably the ingenuity of the counsel appearing for the Respondent which has led to this objection being raised. As is apparent, what is relevant is the understanding of the parties, and if, in the understanding of the parties, the issue of debarment was an issue which would form the subject matter of the arbitration, then the objection raised today, for the first time and without having been urged earlier, cannot now be permitted to defeat the arbitral process.

10. This Court is also of the view that the petition is maintainable by Petitioner No. 2 as well.

11. It is also of import to take note of the fact that by virtue of various clauses as set out in the Agreement as between the parties and, in particular, the representations and warranties which are enshrined in Clause 7.1 of the Agreement, Petitioner No. 2 was also required to make numerous representations and warranties.

12. This Court also take conscious note of both the SCN as well as the Debarment Notice and by which both Petitioners are sought to be put to notice and debarred. It is obvious that the Respondent has treated both the Petitioners herein to be intrinsically interconnected and thereby passed an order for debarment naming both the parties therein.

13. Further, it is also noted that the recitals in the Agreement and in particular recitals D, E and F, which clearly set out the role of the bidder. The said recitals also set out that the bidder, though it succeeds in being awarded the contract, the contract itself is to be signed by the Concessionaire, which came to be incorporated by the bidder.

14. This Court also takes note of the fact that Petitioner No. 2,

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which is the bidder, is also a shareholder in the concession. Thus, this Court is of the view that in view of the aforementioned, there is no impediment in entertaining the present matter.

15. On merits, learned counsel for the Respondent would seek to rely upon the various documents filed in support of the Reply. These include certain pictures and letters issued by the Respondent Authority. Learned counsel for the Respondent would submit that these clearly evidence the unsafe manner in which the construction is being carried out and how the same constitutes public safety issues and is therefore deserving of the decision taken for debarment. He would therefore submit that the Debarment letter itself is well substantiated and there is absolutely no requirement for this Court to interdict the same or to stay the effect of it.

16. This Court is of the opinion that while deciding a Petition under Section 9 of the Act, there arises no occasion to conduct a mini trial and to examine each and every contention raised in support of any directions that are passed.

17. This Court further believes that these are aspects which would necessarily and properly have to be examined by the learned arbitral tribunal which may come to be constituted.

18. Learned counsel for the Respondent would also submit that though there are numerous steps that can be taken as under the agreement, however, he would once again reiterate ***Patel Engg. Ltd*** (*supra*) to state that debarment is an option which is always open.

19. In view thereof, this Court is of the view that the prayers as sought would need to be granted and in consequence thereof, the operation of the impugned letter dated 25.08.2025 is hereby stayed and, consequentially, neither of the Petitioners would be treated as a



debarred entity by the Respondent Authority .

20. It is also directed that Respondents shall not post any declaration on its website to the effect that the Petitioners stands debarred.

21. The present Petition, along with pending application(s), if any, is disposed of in the aforesaid terms.

HARISH VAIDYANATHAN SHANKAR, J.
FEBRUARY 25, 2026/nd/va

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