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* IN THE HIGH COURT OF DELHI AT NEW DELHI

Reserved on: 15th May, 2026

Pronounced on: 26th May, 2026

+ ARB.P. 247/2026 & I.A. No. 11845/2026

M/S JIANGXI CONSTRUCTION ENGINEERING GROUP CO
LTD & ANR.Petitioners

Through: Mr. Sanjoy Ghose, Senior Advocate
with Dr. Farrukh Khan, Ms. Vidhi
Jain, Ms. Zainab Khan and Mr. Mohit
Garg, Advocates.
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versus

M/S VARAHA INFRA LTD.Respondent

Through: Mr. Rajeev Sharma, Senior Advocate
with Mr. Abhishek Birthray, Mr.
Paras Choudhary, Mr. Nishant
Kandpal, Ms. Arunima Singh and Mr.
Kartikeya Tripathi, Advocates.
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+ O.M.P.(I) (COMM.) 23/2026 & I.A. Nos. 1536/2026 & 11844/2026

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LTD. & ANR.Petitioners

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CORAM:
HON'BLE MS. JUSTICE MINI PUSHKARNA

JUDGMENT

MINI PUSHKARNA, J.

1. *ARB.P. 247/2026* has been filed under Section 11 of the Arbitration and Conciliation Act, 1996 (“Arbitration Act”) seeking appointment and/or grant of fresh mandate for the earlier Arbitrator, to adjudicate the disputes between the parties, arising out of and in connection with the Settlement Agreement dated 21st December, 2021 (“Settlement Agreement”), as incorporated into the Consent Arbitral Award dated 23rd February, 2022 (“Consent Arbitral Award”) passed by the Arbitral Tribunal, including, disputes arising from the alleged breach, non-compliance, revival of original claims and other consequential and additional claims.

2. *O.M.P.(I) (COMM.) 23/2026* has been filed under Section 9 of the Arbitration Act, seeking interim measures for preservation of the subject matter under the Consent Arbitral Award, read with the Settlement



Agreement, on the premise of the respondent's persistent, wilful and fundamental breach of the Settlement Agreement entered into between the parties.

3. As per the facts, culled out from the pleadings and documents on record, the petitioners entered into a Memorandum of Understanding ("MoU") with the respondent on 31st May, 2017, for the purposes of forming a Joint Venture ("JV") and for participating in tenders for various construction works issued by the National Highways Authority of India ("NHAI") and State Governments.

4. By way of the aforesaid MoU, it was agreed between the parties that the respondent shall arrange only the bid security/earnest money deposit, and upon award of any project to the JV, the petitioners shall arrange the following:

A. Performance Bank Guarantee.

B. Additional Performance Bank Guarantee (if required).

C. Retention Bank Guarantee.

D. Mobilization or Advance Bank Guarantee.

5. It was further agreed upon by the parties that if the petitioners failed to submit the Bank Guarantee in terms of the aforesaid, then it shall not be entitled to receive any fee or compensation.

6. The JV between the petitioners and the respondent was awarded the following three contracts:

“

- a) Upgradation of 6 lane with paved shoulders of Limbdi – Sayla section of NH 8A (New NH 47) from Km. 99+000 to Km. 138+000 on EPC mode in the State of Gujarat ('Project') (*hereinafter referred to as Package 3 of Gujarat Projects*)



- b) Upgradation of 6 lane with paved shoulders of Rajkot - Bamanbore section of NH 8B (New NH 27) from Km. 185+230 to Km. 216+000 on EPC mode in the State of Gujarat ('Project') (*hereinafter referred to as Package 5 of Gujarat Projects*)
- c) Six lanning of existing 4 lane road from Gundugolanu (Design Km 1023.280) to Kalapurru (Design Km 1050.680) of NH – 5 (New NH – 16) (Design lenth = 27.400 km) in the State of Andhra Pradesh under NHDP Phase- V under Bharatmala Pariyojana on EPC (Engineering Procurement and Construction) Mode (*hereinafter referred to as Vijayawada Project*) ..

7. With respect to the aforesaid Engineering, Procurement and Construction Contracts ("EPC Contracts") mentioned at *serial nos. (a) and (b)*, upon issuance of a Letter of Acceptance dated 01st December, 2017 to the JV by the Government of Gujarat, the petitioners and the respondent executed two separate Joint Venture Agreements dated 31st December, 2017, in respect of *Package-3* and *Package-5* of the Gujarat Projects. As per the said JV Agreements, the petitioner no. 1 undertook to furnish the Bank Guarantees, as envisaged in the EPC Contracts between the Joint Venture and Government of Gujarat.

8. With regard to the EPC Contract at *serial no. (c)*, a Letter of Acceptance for the Vijayawada Project was issued on 01st October, 2019. Pursuant thereto, a JV Agreement was executed between the petitioners and respondent on 06th December, 2019. Under this JV Agreement also, petitioner no. 1 undertook to furnish Bank Guarantees, as per the EPC Contract executed between the NHAI and the JV.

9. Since the aforesaid three projects could not be completed within their respective scheduled completion dates, the JV applied for extension of time, which was duly granted by the concerned authorities.

10. During execution of the work, various disputes arose between the



parties to the present petitions, and the said *inter se* disputes were referred to arbitration presided by a Sole Arbitrator, mutually appointed by the parties. During the pendency of the arbitration, the parties resolved their disputes *vide* the Settlement Agreement dated 21st December, 2021.

11. Under the Settlement Agreement, since the petitioners apprehended that the respondent may not be able to complete the respective projects, and the same would result in the encashment of Bank Guarantees submitted by petitioner no. 1, the respondent executed a Mortgage Deed dated 06th May, 2022, in respect of plant and machinery worth Rs. 50 Crores, based on their invoice value as well as a Corporate Guarantee to secure all the Bank Guarantees submitted by the petitioners.

12. Based on the said Settlement Agreement, the Consent Arbitral Award was passed by the learned Sole Arbitrator on 23rd February, 2022.

13. As per Clause 13 of the Settlement Agreement, the respondent had undertaken to complete the Gujarat projects by end of June, 2022 or such other time as may be allowed by the Government of Gujarat. However, due to various factors, the work was delayed beyond June, 2022, and extensions with regard thereto were granted by the Government of Gujarat from time to time.

14. As regards the Vijayawada Project and *Package-3* of Gujarat Project, completion certificates have already been issued, and defect liability period is in operation.

15. As regards *Package-5* of the Gujarat Project, owing to non-availability on the work-front and continuing hindrances, the respondent requested for descoping of the Kuvadava Flyover and Toll Plaza works from the scope of the EPC Contract with respect to *Package-5*. The said request



for descoping is currently the subject matter of a Dispute Resolution Notice dated 12th September, 2023 in terms of Clause 26 of the EPC Contract between the JV and the Government of Gujarat.

16. The respondent has already completed the work under *Package-5* of Gujarat Project, except to the extent of the work descoped. Further, the respondent has applied for provisional completion certificate *vide* letter dated 28th March, 2026.

17. On behalf of the petitioners, it is contended that owing to consistent failure on the part of the respondent to complete the Gujarat project, the Gujarat Authority *vide* Notice dated 31st July, 2025 has invoked Clause 11.13.2 of the EPC Contract, relating to completing the works on risk and cost of the contractor, i.e., the JV between the petitioners and the respondent. Thus, as per the case put forth by the petitioners, the very invocation of the said Clause threatens the invocation of the aforesaid Bank Guarantees, which have been submitted before the concerned Gujarat Authority by the petitioner no. 1, on behalf of the JV.

18. Thus, the petitioners have filed the petition being *O.M.P(I)(COMM.) 23/2026*, thereby, seeking directions to the respondent to furnish its own Bank Guarantees to the concerned Gujarat Authorities, and secure release of the existing Bank Guarantees furnished by the petitioners, which are under imminent threat of invocation.

19. *Per contra*, it is the case of the respondent that till the conciliation and other contractual dispute resolution mechanisms have run their course, there can be no crystalized or enforceable claim that could justify the interim reliefs now sought by the petitioners. Further, no notice of invocation or demand for payment has been issued by the concerned Gujarat Authority to



the petitioners or the respondent in respect of the Bank Guarantees, nor has any quantified risk and cost claim been raised. Thus, as per the respondent, the petition has been founded entirely on speculative apprehensions about what the concerned Gujarat Authority may do at some uncertain future point.

20. It is contended by the respondent that if the concerned Gujarat Authority were to initiate action in future to encash any of the Bank Guarantees, the petitioners would have an adequate and efficacious remedy to challenge such action before the appropriate forum, including, by invoking contractual dispute resolution mechanisms.

21. It is apparent that disputes have arisen between the parties with respect to the execution of the work by the JV. On one hand, the petitioners have alleged that the respondent has failed to honour the terms of the Settlement Agreement and Consent Arbitral Award between the parties, in not completing the work within the stipulated time period.

22. The respondent, on the other hand, has alleged that the petitioners are in breach of their obligations under the Settlement Agreement and related JV arrangements, in as much as they have failed to furnish Retention Bank Guarantees required for release of retention money held by the concerned Authority, despite repeated requests and follow-up by the respondent. It is the case of the respondent that as on date, retention amounts of approximately Rs. 2.62 Crores under *Package-3* and Rs. 10.23 Crores under *Package-5*, aggregating to Rs. 12.85 Crores, remain locked with the concerned Authority, solely because the petitioners have not provided the requisite Retention Bank Guarantees, thereby, aggravating the respondent's cash flow burden.



23. This Court notes the submission of the petitioner that the Gujarat Authority *vide* letter dated 31st July, 2025 and other letters, has already invoked the ‘Risk and Cost’ mechanism under Clause 11.13.1 of the EPC Contract between the JV and the Government of Gujarat. Thus, the petitioners have a genuine grievance that the Bank Guarantees deposited by the petitioners are at an imminent risk of being invoked.

24. This Court also takes note of the submissions made on behalf of the respondent that the petitioners are fully and adequately secured by the Mortgage Deed dated 06th May, 2022 and the Corporate Guarantees. However, it is the case of the petitioners that the live Bank Guarantees as deposited by the petitioners amount to Rs. 106.71 Crores, whereas, the Mortgage Deed secures only to the extent of Rs. 50 Crores. Further, the said mortgage is with respect to plant and machinery, which are inherently depreciating assets.

25. It is to be noted that the JV Agreements between the petitioners and respondent provides for a dispute resolution mechanism through the process of arbitration. The said Arbitration Clause, i.e., Clause 17 of the JV Agreements, is reproduced as under:

“xxx xxx xxx

17. Applicable Law & Dispute Resolution Mechanism

17.1. The formation, validity, interpretation and implementation of this Agreement shall be governed by the laws of India and the courts at New Delhi, India shall have exclusive jurisdiction upon any dispute arising out of or in connection with or incidental to the present Agreement.

17.2. In event of a dispute consultations within sixty (60) days after one Party has served written notice on the other Party for the commencement of such consultations, then any Party may submit the dispute in accordance with the Arbitration and Conciliation Act, 1996 as applicable on date of dispute or any successive legislation being enacted by Parliament of India meant to supplant the said legislation.

xxx xxx xxx”



26. The petitioners *vide* Legal Notice dated 19th December, 2025 have already sent notice to the respondent bringing forth the various material breaches in terms of the Settlement Agreement dated 21st December, 2021 read with the Consent Arbitral Award dated 23rd February, 2022, and for proceeding in accordance with law, including, execution of the Consent Arbitral Award under the Arbitration Act.

27. This Court rejects the submission of the respondent that no notice under Section 21 of the Arbitration Act has been issued by the petitioner. It is to be noted that the petitioner had issued a formal notice of arbitration on 06th August, 2020, pursuant to which the earlier arbitration proceedings were conducted. Hence, a fresh notice under Section 21 of the Arbitration Act is not needed. In this regard reference may be made to the judgment in the case of *Sriram Cables Pvt. Ltd. Versus Union of India, 2024 SCC OnLine Del 5794*, wherein, it has been categorically held that the law does not envisage repeated notices under Section 21 of the Arbitration Act. Thus, it was held as under:

“xxx xxx xxx

14. *There can be no cavil with this proposition as the 1996 Act does not envisage repeated notices under Section 21. In the present case the notice dated 18 May 2017 was clearly a notice under Section 21 of the 1996 Act inviting the respondent to refer the dispute to arbitration. That being so, no fresh notice under Section 21 is required to be issued by the petitioner.*

xxx xxx xxx”

(Emphasis Supplied)

28. In any event, as noted above, a further notice was issued by the petitioners on 19th December, 2025, wherein, the essential elements of notice under Section 21 are fully envisaged and covered. Furthermore, it is to be noted that the Supreme Court in the case of *Bhagheeratha Engineering Ltd.*



Versus State of Kerala, 2026 SCC OnLine SC 5, has held that a notice under Section 21 of Arbitration Act is not a mandatory pre-condition in all arbitration contexts. Thus, it has been held as under:

“xxx xxx xxx

16. Secondly, the object of Section 21 of A&C Act, is only for the purpose of commencement of arbitral proceedings is also well settled. Section 21 is concerned only with determining the commencement of the dispute for the purpose of reckoning limitation. There is no mandatory prerequisite for issuance of a Section 21 notice prior to the commencement of Arbitration. Issuance of a Section 21 notice may come to the aid of parties and the arbitrator in determining the limitation for the claim. Failure to issue a Section 21 notice would not be fatal to a party in Arbitration if the claim is otherwise valid and the disputes arbitrable. ...

xxx xxx xxx”

(Emphasis Supplied)

29. Further, this Court takes note of the submission made on behalf of the respondent that by way of an E-mail dated 06th May, 2026, the respondent has also invoked Clause 12.1 of the Mortgage Deed dated 06th May, 2022, which contains the Arbitration Clause for referring the disputes between the parties for arbitration. The related portions from the reply of the respondent in *O.M.P.(I) (COMM) 23/2026*, are extracted as below:

“xxx xxx xxx

19. Mortgage Deed can be invoked strictly in terms thereof and only when any default on the part of VIL results in encashment of any of the Bank Guarantees. However, contrary to the express agreement between the parties regarding the purpose and scope of mortgage, JCEG vide notices 19.12.2025, 27.03.2026, 08.04.2023, and 17.04.2026 has been wrongfully and illegally threatening to invoke the Mortgage Deed based on incorrect



assertions and making demands contrary to the terms of the said Mortgage Deed, which have given rise to dispute with regard the scope and interpretation of Mortgage Deed. Thus, disputes have arisen between the parties with respect to the Mortgage Deed, which could not be amicably resolved despite mediation.

20. Clause 12.1 of the Mortgage Deed provides that any dispute arising out of or with respect to it shall be determined by arbitrators jointly appointed by both the parties. Accordingly, Respondent vide email dated 06.05.2026 invoked Clause 12.1 of the Mortgage Deed dated 06.05.2022 and referred all disputes arising out of it and with respect to it to arbitration. The Respondent has nominated its arbitrator and called upon the Petitioner to make its nomination.

xxx xxx xxx

46. Moreover, Respondent vide email dated 06.05.2026 invoked Clause 12.1 of the Mortgage Deed dated 06.05.2022 and referred all disputes arising out of it and with respect to it to arbitration. The Respondent has nominated its arbitrator and called upon the Petitioner to make its nomination.

Copy of email dated 06.05.2026 is annexed herewith as **ANNEXURE - R12.**

xxx xxx xxx”

30. Clause 12.1 of the Mortgage Deed dated 06th May, 2022 between the petitioner and respondent containing the Arbitration Clause, is reproduced as under:



“

12. Notices and Governing Laws: All claims regarding these Terms are governed by and construed in accordance with the laws of India, and the courts of New Delhi, India shall have the exclusive jurisdiction for all disputes pertaining to these Terms.

12.1 Any dispute arising out of or with respect to this agreement shall be amicably resolved by and between the Parties within 7 days from the date of dispute, failing which, either Party may seek the issue to be determined by arbitration in New Delhi, India in accordance with the Arbitration and Conciliation Act, 1996 and the amendment thereto before Arbitrators jointly appointed by both the Parties. The language of the arbitration shall be English. The arbitration award shall be final and binding on the Parties hereto. Subject to Arbitration, this agreement shall be subject to the exclusive jurisdiction of the courts in India only.

When any dispute is under arbitration, except for the matters under dispute, the Parties shall continue to exercise their remaining respective rights and fulfill their remaining respective obligations under this agreement.

”

31. Thus, the respondent has already invoked the Arbitration Clause under the Mortgage Deed dated 06th May, 2022 *vide* E-mail dated 06th May, 2026.

32. This Court notes that the parties has initially entered into a Mortgage Deed dated 21st December, 2021, and the same forms an integral part of the Settlement Agreement, and was placed before the earlier Arbitral Tribunal, and expressly recorded as *Annexure-B* to the Settlement Agreement in the Consent Arbitral Award.

33. Reference may be made to the relevant terms of the Mortgage Deed dated 21st December, 2021, executed between petitioner no. 1 and respondent, which read as under:



“xxx xxx xxx

- II. JCEGCL and VIL have agreed to collectively open separate collection bank account for Andhra and Gujarat Projects under an Escrow Mechanism, terms of which are more elaborately mentioned in the Settlement Agreement executed between the parties on 20th day of December 2021 (*hereinafter referred to as “Settlement Agreement”*). The said Escrow Account(s) shall be used to receive all payments from the Projects mentioned above.
- III. All payments released by the respective Authorities in the Collection account shall be automatically transferred through ESCROW Mechanism to the respective accounts of VIL & WKCIPL (On behalf of JCEGCL) in the ratio defined in the Settlement Agreement.
- IV. Under the terms of the Settlement Agreement, VIL has agreed to secure amount being transferred to VIL’s account in relation to Gujarat Projects through mortgage of plant, machineries, equipment, and other construction machinery worth Rs. 50.00 Crore (*hereinafter referred to as the “Property”*) as per the Invoice Value in favour of JCEGCL with valuation to be conducted by an independent valuer.

xxx xxx xxx”

34. Reference is also made to the relevant terms of the Mortgage Deed dated 06th May, 2022, which read as under:

“xxx xxx xxx

- II. JCEGCL and VIL have agreed to collectively open separate collection bank account for Andhra and Gujarat Projects under an Escrow Mechanism, terms of which are more elaborately mentioned in the Settlement Agreement executed between the parties on 20th day of December 2021 (*hereinafter referred to as “Settlement Agreement”*). The said Escrow Account(s) shall be used to receive all payments from the Projects mentioned above.



- III. All payments released by the respective Authorities in the Collection account shall be automatically transferred through ESCROW Mechanism to the respective accounts of VIL & WKCIPL (On behalf of JCEGCL) in the ratio defined in the Settlement Agreement.
- IV. Under the terms of the Settlement Agreement, VIL has agreed to secure amount being transferred to VIL's account in relation to Gujarat Projects through mortgage of plant, machineries, equipment, and other construction machinery worth Rs. 50.00 Crore (*hereinafter referred to as the "Property"*) as per the Invoice Value in favour of JCEGCL with valuation to be conducted by an independent valuer.

xxx xxx xxx''

35. Reference to the aforesaid Mortgage Deeds, makes it evident that the execution of the Mortgage Deed dated 06th May, 2022 was in terms of the earlier Mortgage Deed dated 21st December, 2021, and the former also forms an essential part of the larger settlement between the parties.

36. Thus, the disputes as raised by the petitioners with regard to non-compliance of the terms of the Settlement Agreement and Consent Arbitral Award and the disputes with regard to the Mortgage Deed dated 06th May, 2022, are intertwined.

37. Accordingly, all the disputes raised by the petitioners in terms of the JV Agreements between the parties, for violation of the terms of the Settlement Agreement and Consent Arbitral Award and all the disputes in terms of the Mortgage Deed between the parties, in terms of the invocation of the Arbitration Clause by the respondent, are to be referred for adjudication before an Arbitral Tribunal.

38. While the petitioners seek reference of the disputes to the same Arbitrator as earlier, however, learned Senior Counsel appearing for the respondent has expressed reservations for reference of the disputes to the same arbitrator. Nonetheless, learned Senior Counsel appearing for the respondent submits that all disputes between the parties can be referred to



some other Arbitrator.

39. Though this Court finds no reason to not refer the disputes that have arisen between the parties, to the same Arbitrator who had earlier adjudicated the disputes between them, however, considering the submissions made by learned Senior Counsel appearing for the respondent, this Court proceeds to appoint another Arbitrator.

40. Accordingly, considering the detailed discussion hereinabove, the following directions are issued:

- I. Justice (Retired) Jayant Nath, Former Judge of this Court, (M:8527959494), is appointed as Sole Arbitrator to adjudicate disputes between the parties.
- II. All the disputes between the parties under the JV Agreements, the Mortgage Deed, the Settlement Agreement, and the Consent Arbitral Award, are referred to the learned Arbitrator.
- III. The petition under Section 9 of the Arbitration Act is referred before the learned Arbitrator to be taken up as an application under Section 17 of the Arbitration Act.
- IV. The remuneration of the Arbitrator shall be in terms of Schedule IV of the Arbitration Act.
- V. The Arbitrator is requested to furnish a declaration in terms of Section 12 of the Arbitration Act prior to entering into the reference. In the event there is any impediment to the Arbitrator's appointment on that count, the parties are given liberty to file an appropriate application before this Court.
- VI. It shall be open to the respondent to raise counter-claims, if any, in the arbitration proceedings.



- VII. 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.
- VIII. The parties shall approach the Arbitrator within two (2) weeks from today.
41. It is made clear that this Court has not expressed any opinion on the merits of the case.
42. Accordingly, the present petitions, along with the pending applications, are disposed of in the aforesaid terms.
43. The Registry is directed to send a copy of this order to the learned Arbitrator, for information and compliance.

**MINI PUSHKARNA
(JUDGE)**

MAY 26, 2026/ak