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

CNR No. DLHC010413682026

+ **O.M.P.(I) (COMM.) 385/2026**

**D P JAIN BANGALORE CHENNAI
EXPRESSWAYS PRIVATE LIMITED**

.....Petitioner

Through: Mr. Akhil Sibal, Sr. Adv. along with
Mr. Salim Ambar Inamdar, Mr. Vikas
Mishra, Mr. Kartik Nagarkatti, Mr.
Mukesh Choudhary, Dr. Alok
Lakhanpal, Mr. Gautam Sharma, Mr.
Sanchit Gawri, Mr. Krishna Dev
Yadav, Ms. Jahnvi Sandhu, Mr.
Mridul Tiwari, Mr. Nilay Kaushal,
Mr. Keshav Sharma, Mr. Lalitendra
Gulani, Mr. Madhur Deo, Mr.
Kaushik Saha, Mr. Dhananjay Mittal,
Advs.

versus

NATIONAL HIGHWAYS AUTHORITY OF INDIA & ORS.

.....Respondents

Through: Mr. Tushar Mehta (SG) along with
Mr. Nishant Awana, Ms. Tanupriya
Gupta, Ms. Nitya Sharma, Ms. Ekta
Kundu, Ms. Apoorva Singh, Ms.
Khushi Sharma, Ms. Aadyaa Katiyar,
Advs. for R1
Mr. Saran Suri, Mr. Namit Suri, Ms.
Pepakayala Geetanjali, Ms. Tanya
Sharma, Ms. Aditi Sharma, Advs. for
R2 to R4.

**CORAM:
HON'BLE MR. JUSTICE SACHIN DATTA**

**ORDER
10.09.2026**

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1. The present petition under Section 9 of the Arbitration and Conciliation Act, 1996 (hereafter “the A&C Act”) has been filed seeking interim measures of protection in the context of the Termination Notice dated 01.09.2026 (hereafter “the impugned Termination Notice”) issued by the respondent no.1/National Highways Authority of India (hereafter “NHAI”), whereby the Concession Agreement dated 04.02.2022 (hereafter “the Concession Agreement”) executed between the petitioner and NHAI, for the construction of the four-lane Bangalore-Chennai Expressway from Km 204.500 to Km 230.000 (Arakkonam to Kancheepuram Section) in the State of Tamil Nadu (hereafter “the Project”), has been terminated with immediate effect. The petitioner seeks, *inter alia*, stay of the impugned Termination Notice; a restraint against NHAI taking over the Project site, appointing a replacement agency or creating third-party rights; a restraint against the invocation/encashment of the bank guarantees and other securities furnished in connection with the Concession Agreement, including those issued by the respondent nos.2 to 4; and a direction to the respondent nos.2 to 4 not to adversely reclassify the petitioner’s accounts on account of the termination.

2. The disputes between the parties arise, in substance, from the petitioner’s claim that NHAI was obliged to supply fly ash, free of cost and with free transportation, for the Project, and that NHAI’s failure to do so compelled the petitioner to procure borrow earth at substantial additional cost. The said claim, having been rejected by the Dispute Resolution Board (hereafter “DRB”), was carried by the petitioner before the High Court of Judicature at Madras, where the petitioner’s writ petition was dismissed on 15.10.2025 and W.A. No.3215 of 2025 was preferred thereagainst. During



the pendency of the writ appeal, NHAI issued a Notice of Intention to Terminate dated 10.11.2025. By an interim order dated 23.01.2026, the Division Bench directed NHAI to maintain status quo insofar as the termination of the contract was concerned, till the hearing of the appeals.

3. Vide judgment dated 20.08.2026, the Division Bench partly allowed W.A. No.3215 of 2025, declared the Project to be eligible for free fly ash with free transportation, and relegated the petitioner's monetary claim, including the sum of Rs.1,80,16,79,436/-, to the DRB/Arbitral Tribunal under Article 38 of the Concession Agreement for quantification. The petitioner's subsequent requests for implementation of the said judgment were declined by NHAI on 31.08.2026, and the impugned Termination Notice was issued on the following day. The impugned Termination Notice, *inter alia*, states that NHAI shall be deemed to have taken possession and control of the Project forthwith, that NHAI shall be entitled to encash the Performance Security and other securities, and that the balance works shall be completed through another agency at the risk and cost of the petitioner.

4. The petitioner contends that the termination is a counter-blast to the judgment dated 20.08.2026; that the alleged defaults are a consequence of NHAI's own failure to supply fly ash, and therefore cannot constitute a "Concessionaire Default" in terms of Clause 31.1.1 of the Concession Agreement; and that, unless interim protection is granted, the petitioner would suffer irreversible consequences. NHAI, on the other hand, maintains, as set out in the impugned Termination Notice, that the termination is founded on the petitioner's persistent contractual defaults, including the non-achievement of milestones and the complete cessation of work at site since 16.05.2025, which have no nexus with the fly ash issue; that the



interim order dated 23.01.2026 worked itself out upon the disposal of the writ appeal; and that the judgment dated 20.08.2026 does not restrain the termination process.

5. It may also be noted that a separate petition filed by the petitioner, being O.M.P.(I) (COMM.) 310/2026, concerning the invocation of the mobilisation advance bank guarantees issued by the respondent no.2, is pending before this Court, wherein an order dated 31.07.2026 has been passed. The said petition is next listed on 08.10.2026.

6. Article 38 of the Concession Agreement provides for a tiered dispute resolution mechanism, envisaging mediation by the Independent Engineer, reference to the DRB and conciliation, before recourse to arbitration. The arbitration agreement between the parties is contained in Clause 38.3 of the Concession Agreement, which reads as under:-

“38.3 Arbitration

38.3.1 Any Dispute which is not resolved amicably by conciliation as provided in Clause 26.2 shall be finally settled by arbitration as set forth below:

- i. The Dispute shall be finally referred to Society for Affordable Resolution of Disputes (hereinafter called as SAROD), a Society registered under Society's Act, 1860 vide Registration no. S/RS/SW1049/2013 duly represented by Authority and National Highways Builders Federation (NHBF). The dispute shall be dealt with in terms of Rules of SAROD. The detailed procedure for conducting Arbitration shall be governed by the Rules of SAROD and provisions of Arbitration & Conciliation Act, 1996, as amended from time to time. The Dispute shall be governed by Substantive Law of India.*
- ii. The appointment of Tribunal, Code of conduct for Arbitrators and fees and expenses of SAROD and Arbitral Tribunal shall also be governed by the Rules of SAROD as amended from time to time.*
- iii. Subject to the provisions of THE LIMITATION ACT, 1963, as*



amended from time to time, Arbitration may be commenced during or after the Concession Period, provided that the obligations of Authority and the Concessionaire shall not be altered by reason of the Arbitration being conducted during the Concession Period.

- iv. The venue of Arbitration shall be New Delhi or a place selected by governing body of SAROD and the language for all documents and communications between the parties shall be English.*
- v. The expenses incurred by each party in connection with the preparation, presentation, etc., of arbitral proceedings shall be shared by each party itself.*

38.3.2 The arbitrators 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.

38.3.3 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.

38.3.4 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. Further, the parties unconditionally acknowledge and agree that notwithstanding any dispute between them, each party shall proceed with the performance of its respective obligations, pending resolution of Dispute in accordance with this Article.”

7. Considering the nature of the disputes between the parties and the necessity to adjudicate the same urgently, respective counsel for the petitioner and respondent no.1 jointly request that, notwithstanding the procedure envisaged under Clause 38.3.1 of the Concession Agreement, an Arbitral Tribunal be constituted in these proceedings itself. Learned counsel for the petitioner and respondent no.1 state that the parties have identified their respective nominee arbitrators. It is the common case of the respective



counsel that a three-member Arbitral Tribunal is required to be constituted.

8. The stipulation in an arbitration agreement as to the institution under whose aegis the arbitration is to be conducted, and as to the manner in which the Arbitral Tribunal is to be constituted, is a matter of contract between the parties and is always open to variation by mutual consent. Where such consent is arrived at in the course of hearing and is recorded in the order of the Court, the arbitration agreement stands modified *pro tanto*. In ***Shaf Broadcast (P) Ltd. v. Doordarshan***, (2019) 10 SCC 447, the Supreme Court, at the request of counsel for all the parties made at the time of hearing, appointed a Sole Arbitrator in modification of an arbitration clause which stipulated a three-member Arbitral Tribunal. The present case also entails a consensual departure from the procedure contemplated under Clause 38.3.1 of the Concession Agreement, limited to the manner in which the Arbitral Tribunal is to be constituted and the institutional mechanism contemplated thereunder. The remaining terms of the arbitration agreement shall remain unaffected, save to the extent necessarily modified by the constitution of the Arbitral Tribunal in terms of the present order.

9. In the circumstances, with the consent of and at the joint request of the petitioner and respondent no.1, the following three-member Arbitral Tribunal is constituted to adjudicate the disputes between the parties:-

- i. Mr. Justice (Retd.) S. Ravindra Bhat, Former Judge, Supreme Court of India [Presiding Arbitrator];
- ii. Mr. Justice (Retd.) Ramayyagari Subhash Reddy, Former Judge, Supreme Court of India [Nominee Arbitrator of the respondent no.1/NHAI]; and
- iii. Mr. Justice (Retd.) J.K. Maheshwari, Former Judge, Supreme Court of India [Nominee Arbitrator of the petitioner].



10. Further, with the consent of the parties, the following directions are issued:

- i. Respondent no.1/NHAI shall be entitled to raise preliminary objections as regards jurisdiction/arbitrability, which shall be decided by the Arbitral Tribunal, in accordance with law.
- ii. The Arbitral Tribunal may proceed with the arbitral proceedings, subject to the learned Arbitrators furnishing to the parties the requisite disclosures as required under Section 12 of the A&C Act.
- iii. The learned Arbitrators shall be entitled to fees in accordance with the Fourth Schedule to the A&C Act, or as may otherwise be agreed between the parties and the Arbitral Tribunal.
- iv. The petitioner and respondent no.1 shall share the fees of the Arbitral Tribunal and the arbitral costs equally.
- v. All rights and contentions of the parties in relation to the claims/counter-claims are kept open, to be decided by the Arbitral Tribunal on their merits, in accordance with law.

11. Learned senior counsel for the petitioner submits that urgent *ad interim* orders are required to be passed to ensure that the subject matter of the arbitration is not dissipated and/or to ensure that the relief/s sought to be claimed are not rendered infructuous on account of any precipitative steps.

12. In the circumstances, it is directed that the present petition under Section 9 of the A&C Act shall be treated as an application under Section 17 of the A&C Act, and the Arbitral Tribunal shall pass appropriate orders thereon.

13. In view of the urgency emphasised, liberty is granted to the petitioner



and respondent no.1 to request the Arbitral Tribunal to convene at an early date to consider the aforesaid request.

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

15. The present petition stands disposed of in the above terms. Pending application(s), if any, also stand disposed of.

16. Order *dasti*.

SACHIN DATTA, J

SEPTEMBER 10, 2026/sd