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

% **Date of Decision: 20th April, 2026**

+ O.M.P.(I) (COMM.) 133/2026, I.A. 8558/2026, I.A. 8559/2026, I.A. 8560/2026 & I.A. 9167/2026

**M S LAKSHMI INFRASTRUCTURE AND DEVELOPERS INDIA
PRIVATE LIMITED**Petitioner

Through: Mr. Anil K. Airi, Sr. Adv. with Mr. Abhimanyu Kumar, Ms. Bindiya L. Airi, Mr. Vishal Tyagi, Ms. Riya Sagar, Ms. Jasmin Sokhi and Mr. Harsh Gautam, Advs.
M: 9870584901
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versus

NATIONAL HIGHWAYS AUTHORITY OF INDIARespondent

Through: Ms. Tanu Priya Gupta and Ms. Khushi Sharma, Advs.
M: 9205944009

CORAM:

HON'BLE MS. JUSTICE MINI PUSHKARNA

MINI PUSHKARNA, J. (ORAL):

1. The present petition has been filed under Section 9 of the Arbitration and Conciliation Act, 1996 ("Arbitration Act") seeking stay of the Notice of Intention to Terminate dated 10th March, 2026, issued by the respondent with respect to the Engineering, Procurement and Construction Contract ("EPC Contract") dated 27th October, 2022.
2. There is a further prayer for seeking stay on the invocation of two Bank Guarantees for performance security dated 14th October, 2022 for an



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amount of Rs. 16,00,03,841/- and Rs. 2,61,05,730/- respectively, as well as a Surety Bond issued on an amount of Rs. 29,33,40,375/-, submitted by the petitioner to the respondent.

3. The aforementioned EPC Contract had been executed between the parties with respect to “6 laning of the existing 4 lane stretch from Kalkallu at Km. 454.000 to Gundla Pochanpally at Km. 471.000 on Nagpur-Hyderabad Section of NH-44 in the State of Telangana under Bharatmala Pariyojana”. As per the petition, the work under the said EPC Contract could not be completed in time due to defaults attributable to the respondent, such as, non-availability of vacant access to the Right of Way (“ROW”), non-handing over of balance lands, encumbrances in handed over lands, change of scope in the work, delay in permission for tree felling from the Forest Authorities, etc.

4. Pursuant to these disputes, the petitioner and the respondent entered into multiple settlement agreements. However, despite the settlement agreements, the respondent insisted the petitioner to open an Escrow Account with respect to the project in question, which resulted in delay of nearly two months in completion of the project.

5. Thereafter, as per the case of the petitioner, the respondent suddenly issued the aforesaid Notice of Intention to Terminate the EPC Contract between the parties, thereby, frustrating the efforts of the petitioner to expedite the project. Thus, disputes have arisen between the parties.

6. This Court further notes that during the pendency of the present petition, an application being *I.A. 9167/2026* was moved on behalf of the petitioner, wherein, it sought stay on the invocation of the Bank Guarantees



and the Surety Bond by the respondent *vide* letter dated 01st April, 2026.

7. This Court *vide* order dated 01st April, 2026, i.e., the first day on which the present matter was heard, had recorded the statement of the learned counsel appearing for the respondent that no steps had been taken by the respondent for invocation of the Bank Guarantees or the Surety Bond, as on date.

8. Subsequently, the petitioner received a letter dated 01st April, 2026 from the respondent, wherein, the respondent indicated its intention to invoke the Bank Guarantees.

9. This Court notes that *vide* order dated 06th April, 2026, this Court had recorded the statement made by learned counsel appearing for the respondent that only a letter had been written to the petitioner with respect to intention of the respondent to invoke the Bank Guarantees, however, no letter had been written to the bank to invoke the said Bank Guarantees.

10. Today, learned counsel appearing for the respondent confirms that no letter as such, has been written by the respondent to the bank for invocation of Bank Guarantees in question, till date. She submits that this course of action was taken by the respondent in view of the matter being *sub judice* before this Court.

11. At this stage, learned Senior Counsel appearing for the petitioner submits that after receipt of the letter from the respondent, the petitioner had already started removing the plant and machinery from the site in question.

12. He further submits that joint measurement of the work is being carried out by the parties, and in view of the same, the petitioner shall not remove any further plant and machinery from the site in question.



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13. Learned Senior Counsel appearing for the petitioner further submits that the Bank Guarantees have been extended till 13th July, 2026, while the Surety Bond is valid till 25th June, 2026.

14. He further submits that in view of the Arbitration Clause between the parties, the petitioner as well as the respondent, have already nominated their nominee Arbitrators.

15. Learned counsel appearing for the respondent confirms the said fact.

16. This Court notes that in the present case, the Arbitration Clause, i.e., Clause 26.3 as contained in the EPC Contract, along with Clause 26.2 therein, read as under:

“xxx xxx xxx

26.2 Conciliation

If either the Authority or the Contractor is dissatisfied with any decision of the DRB, and/ or if the DRB is unable to resolve the dispute, either Party may refer the Dispute to arbitration in accordance with the provisions of Clause 26.3 but before resorting to such arbitration, the parties agree to explore conciliation by the Conciliation Committees of Independent Experts set up by the Authority in accordance with the procedure decided by the panel of such experts and notified by the Authority on its website including its subsequent amendments. In the event of the conciliation proceedings being successful, the parties to the dispute would sign the written settlement agreement and the conciliators would authenticate the same. Such settlement agreement would then be binding on the parties in terms of Section 73 of the Arbitration Act. In case of failure of the conciliation process even at the level of the Conciliation Committee, either party may refer the Dispute to arbitration in accordance with the provisions of Clause 26.3.

26.3 Arbitration

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:





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- 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/RŠ/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 Contract Period, provided that the obligations of Authority and the Contractor shall not be altered by reason of the Arbitration being conducted during the Contract 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.

26.3.2 The arbitrators shall make a reasoned award (the "Award"). Any Award made in any arbitration held pursuant to this Article 26 shall be final and binding on the Parties as from the date it is made, and the Contractor and the Authority agree and undertake to carry out such Award without delay.

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

26.3.4 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.

xxx xxx xxx”

17. Perusal of the aforesaid Clause shows that there exists a valid Arbitration Agreement between the parties, which stipulates that the arbitration is to be conducted under the aegis of the Society for Affordable Resolution of Disputes (“SAROD”). Further, the venue of arbitration shall be Delhi or a place selected by the governing body of SAROD. The



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arbitration is to be conducted by an Arbitral Tribunal consisting of three Arbitrators.

18. In view of the aforesaid, this Court is satisfied that there are disputes between the parties and there is a valid Arbitration Clause, and accordingly, the disputes are to be adjudicated by way of referring parties to arbitral proceedings.

19. Accordingly, in view of the consent of the parties and submissions made before this Court, the following directions are issued:

- i. Since the petitioner and the respondent have nominated their nominee Arbitrators, the said nominee Arbitrators are requested to nominate the third Arbitrator who shall act as a Presiding Arbitrator.
- ii. The Arbitral Tribunal is requested to furnish a declaration in terms of Section 12 of the Arbitration Act prior to entering into the reference.
- iii. The arbitration proceedings shall be conducted under the aegis and Rules of SAROD.
- iv. It shall be open to the respondent to raise counter-claims, if any, in arbitration proceedings.
- v. It is made clear that all the rights and contentions of the parties, including, as to the arbitrability of any of the claim, any other preliminary objection, as well as claims/counter-claims and merits of the dispute of either of the parties, are left open for adjudication by the learned Arbitral Tribunal.
- vi. Considering the fact that the nominee Arbitrators have already been nominated by both the parties and the arbitration process has been set into motion, this Court is of the view that the present petition under Section 9 of



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the Arbitration Act can be converted into an application under Section 17 of the Arbitration Act, to be taken up and decided by the learned Arbitral Tribunal on merits.

vii. Further, considering the facts and circumstances of the present case, it is directed that the respondent shall not encash the Bank Guarantees as well as the Surety Bond for a period of six weeks, so that the application of the petitioner under Section 17 of the Arbitration Act, can be considered by the learned Arbitral Tribunal.

viii. The petitioner shall continue to keep Bank Guarantee/Surety Bond alive till the application under Section 17 of the Arbitration Act is finally decided by the learned Arbitral Tribunal.

ix. The petitioner shall not remove the plant and machinery from the site in question.

20. It is further clarified that this Court has not expressed any opinion on the merits of the case, which shall be decided by the learned Arbitral Tribunal.

21. With the aforesaid directions, the present petition, along with the pending applications, stand disposed of.

22. *Dasti* under signatures of Court Master.

MINI PUSHKARNA, J

APRIL 20, 2026/KR