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\* **IN THE HIGH COURT OF DELHI AT NEW DELHI**  
# **CNR No. DLHC010454212026**  
+ **O.M.P.(I) (COMM.) 438/2026, I.A. 26226/2026 & I.A. 26227/2026**

**M S SAHU CONSTRUCTION**

.....Petitioner

Through: Mr. Puneet Taneja, Senior Advocate  
alongwith Mr. Anil Kumar, Mr.  
Manmohan Singh Narula and Mr. Amit  
Yadav, Advocates.

versus

**NATIONAL HIGHWAYS AND INFRASTRUCTURE  
DEVELOPMENT CORPORATION LIMITED**

.....Respondent

Through: Mr. Deepak Thukral, Standing Counsel  
alongwith Mr. A.P. Singh and Mr.  
Shashvat Dwivedi, Advocates.

***Date of Decision: 22<sup>nd</sup> September, 2026***

**CORAM:****HON'BLE MR. JUSTICE TUSHAR RAO GEDELA****J U D G E M E N T****TUSHAR RAO GEDELA, J : (ORAL)****O.M.P.(I) (COMM.) 438/2026, I.A. 26226/2026 & I.A. 26227/2026**

1. This is a petition filed under Section 9 of the Arbitration & Conciliation Act, 1996 (hereinafter referred to as '*the Act*') seeking interim measures of protection against the notice of Intention to Terminate dated 29.08.2026 issued by the respondent in relation to the Engineering Procurement Contract Agreement dated 07.12.2020 (hereinafter referred to as '*EPC Contract Agreement*') for the work of "Improvement and widening to two lane with paved shoulder of road from 21.100 kilometer to 29.200 kilometer, total length 8.100 kilometer i.e. Kailashahar-Futali Section of NH-208 (Package-1)

Signature Not Verified

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By: YASHRAJ  
Signing Date: 25.09.2026  
11:00:36

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in the State of Tripura on EPC mode”.

2. Learned senior counsel contends that even as per the notice impugned before this Court, the petitioner has completed physical progress upto 97.89% and the financial progress upto the extent of 95.62%. He states that in such a situation, the notice displaying the intention to terminate in terms of Clause 23.1(ii) on default of the contractor may not be justified.

3. He also contends that in the order dated 08.09.2026, the High Court of Tripura, Agartala, in *Court on its own motion vs. Union of India & Ors.*, (WP)(C)(PIL)No.6/2026 passed certain directions in view of the poor maintenance of highways, etc., in the State of Tripura, however, the petitioner is not one such contractor enlisted in the said order. He submits that the fault of laying down low quality roads/highways, etc., is attributable to those contractors enlisted in the Public Interest Litigation. Thus, issuing such sweeping impugned notice, despite such physical and financial progress as noted therein would cause immense prejudice and loss to the petitioner.

4. He further submits that the delay in achieving milestones is bogey for the reason that an extension of total time of 1554 days, out of which 1092 days without Liquidated Damages, and 462 days with Liquidated Damages with completion date as 30.09.2026 have been recommended. Thus, the action for initiation of termination notice is premature.

5. Learned senior counsel states that a detailed representation dated 10.09.2026 has been submitted by the petitioner, however, has not yet been considered. The respondent is stated to have also not considered the application for extension of time. Thus, in such circumstances, the action of the respondent is neither called for nor warranted.

6. Issue notice.

7. Mr. Deepak Thukral, learned standing counsel appearing for the



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respondent, accepts notice.

8. Learned standing counsel refers to Clause 23.3 of the EPC Contract Agreement to submit that the respondent is at liberty to even terminate the contract even for convenience which would take effect in 30 days from the notice provided to the petitioner. According to him, the respondent has discretion to terminate the contract under this clause too, for which no explanation would be necessary. He also refers to Section 14(b) of the Specific Relief Act, 1963, to submit that no specific performance of the agreements falling within its ambit can be enforced, performance of which needs continuous monitoring.

9. This Court has perused the judgement of the learned Division Bench of the High Court of Tripura, Agartala, and notes that the petitioner is not included in the list of contractors who are found to be at fault for breach of contractual terms by the learned Division Bench.

10. That apart, it is significant to note that the respondent itself acknowledges that the petitioner has completed physical progress upto the extent of 97.89% and financial progress upto the extent of 95.65%. While the petitioner claims to have achieved 100% completion of the work.

11. The relevant portion of the communication of intention to terminate the contract dated 29.08.2026 is extracted hereunder:

“

3. The status of actual achievements vis-à-vis the Project Milestones stipulated in Schedule-J of the Contract Agreement is tabulated below:

| Sl. No. | Milestone           | Scheduled Date | Date as per last approved EoT | Actual date of achievement of Milestone | Remark |
|---------|---------------------|----------------|-------------------------------|-----------------------------------------|--------|
| 1       | Milestone I (10%)   | 21.02.2021     | 18.12.2021                    | 29.12.2021                              | -      |
| 2       | Milestone II (35%)  | 08.07.2021     | 04.05.2023                    | 18.06.2022                              | -      |
| 3       | Milestone III (70%) | 16.01.2022     | 10.07.2023                    | 28.07.2023                              | -      |

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|   |                                 |            |                                                      |                                                                  |                                                                      |   |
|---|---------------------------------|------------|------------------------------------------------------|------------------------------------------------------------------|----------------------------------------------------------------------|---|
| 4 | Schedule Completion date (100%) | 30.06.2022 | Without LD upto 03.03.2024 & with LD upto 31.03.2025 | Not achieved yet even after a huge delay of more than 17 months. | Present Physical progress is 97.89% & financial progress is 95.64 %. | ” |
|---|---------------------------------|------------|------------------------------------------------------|------------------------------------------------------------------|----------------------------------------------------------------------|---|

12. Thus, even according to the respondent, the petitioner has made substantial progress, *albeit*, with delay and by missing milestones. It is also noted that out of a total extension of 1554 days, 1092 days without Liquidated Damages and 462 days with Liquidated Damages with completion date as 30.09.2026 have also been recommended by the respondent.

13. While the respondent may be empowered to terminate the contract for convenience under Clause 23.3 of the EPC Contract Agreement, however, what has been invoked or sought to be invoked is Clause 23.1 of the EPC Contract Agreement, which refers to default of the contractor. Thus, reference to Clause 23.3 of the EPC Contract Agreement, at this stage may not be relevant.

14. Having heard preliminary submissions of the learned counsel for the parties, and having regard to the admitted progress both physical and financial achieved by the petitioner, it is deemed appropriate at this stage, to grant a short injunction till the next date of hearing to enable the respondent to file its reply.

15. Accordingly, let reply be filed within ten days from date. Rejoinder thereto, if any, be filed within three days thereafter.

16. List for consideration on 13.10.2026.

17. *Dasti* under the signatures of the Court Master.

#### **I.A. 26228/2026 (Exemption)**

18. This is an application under Section 151 of the Code of Civil Procedure, 1908 (hereinafter referred to as ‘CPC’) filed on behalf of the petitioner seeking exemption from filing true/typed/legible copies of the



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illegible/dim document nos.2, 3, 5, 7 & 10.

19. Exemption allowed, subject to just exceptions. However, true typed/translated/clear copies of aforesaid documents with proper margins be filed within four weeks with an advance copy to the respondent.

20. The application stands disposed of.

**I.A. 26229/2026 (Seeking permission to file length synopsis and list of dates)**

21. This is an application under Section 151 of the CPC filed on behalf of the petitioner seeking permission to file lengthy synopsis and list of dates.

22. For the reasons stated therein, the application is allowed.

23. The application is disposed of.

**TUSHAR RAO GEDELA, J  
(JUDGE)**

**SEPTEMBER 22, 2026**

*kct/rl*