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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**% ***Date of Decision: October 9th, 2026***# **CNR No. DLHC010490482026**+ **W.P.(C) 15036/2026 & CM APPL. 70571/2026, CM APPL. 70572/2026****KAUSHAL SHARMA**

.....Petitioner

Through: Mr. Manish Gupta, Mr. Pratik Gupta, Mr. Manaswee Gupta, Mr. Amit Mishra, Ms. Shivani Tripathi & Ms. Shipra Bhardwaj, Advs.

versus

NATIONAL HIGHWAY AND INFRASTRUCTURE**DEVELOPMENT CORPORATIONS NHIDCL**Respondent

Through: Mr. Deepak Thukral, SC with Mr. Shashvat Dwivedi & Mr. Ansh Dua, Advs.

CORAM:**HON'BLE MR. JUSTICE AMIT MAHAJAN****AMIT MAHAJAN, J. (Oral)**

1. By way of the present petition, the petitioner seeks the following prayers:

a) *Issue an appropriate writ, order or direction restraining Respondent, its officers, agents, representatives and all persons acting on its behalf from taking any coercive or consequential action pursuant to the impugned Counter-Notice of Intention to Terminate dated 25.09.2026;*

b) *Issue an appropriate writ, order or direction directing the Respondent to restore the Bank Guarantee, with a further direction that the Bank Guarantee shall be kept alive and operative until the claims and disputes arising out of the termination are adjudicated and finally determined by the learned Arbitral Tribunal;*

c) *Issue an appropriate writ, order or direction restraining the*



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Respondent, its officers, agents, representatives and all persons acting on its behalf from appointing, engaging or placing any other contractor in respect of the works covered under the Agreement, or from creating any third-party rights in respect thereof, until the termination payment/dues payable to the Petitioner are determined and finally settled;

d) Pass such other order(s) as this Hon'ble Court may deem fit and proper in the facts and circumstances of the present case and in the interest of justice.

2. It is the petitioner's case that the respondent has issued a Notice to terminate dated 25.09.2026 to the petitioner under clause 23.1(ii) of the EPC contract, despite the petitioner having already terminated the aforesaid contract, pursuant to issuing a Notice of intention to terminate on 15.09.2026. It is the grievance of the petitioner that it apprehends that the respondent will invoke and encash the Performance Bank Guarantee of the petitioner, which ought to have been returned to the petitioner, in terms of Clause 13.5 of the contract.

3. The learned counsel for the respondent, at the outset, submits that the disputes raised by the petitioner fall within the scope of the arbitration clause present in the contract between the parties. He submits that having accepted the contractual dispute resolution mechanism, the petitioner cannot bypass arbitration and invoke the writ jurisdiction of this Court.

4. The dispute between the parties essentially revolves around whether the petitioner had validly terminated the contract between the parties in terms of Clause 23.3(ii) of the EPC contract before the impugned Notice to terminate. The same is hence, evidently, a contractual dispute. It is also not disputed by the parties that the said issues are arbitrable.

5. The contract between the parties provides for an arbitration



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clause, which is reproduced as under:

“26.1 Dispute Resolution

(i) 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") shall, in the first instance, be attempted to be resolved amicably in accordance with the conciliation procedure set forth in Clause 26.2.

(ii) 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.”

6. Thus, evidently, the petitioner has an alternate efficacious remedy available to it under the Arbitration and Conciliation Act, 1996, including an appropriate application under Section 9 thereof, if so advised. The interim relief sought by the petitioner, in regard to the encashment of Performance Bank Guarantees, can also be considered in the said proceedings.

7. It is well settled that where a dispute arises out of contractual obligations and the contract provides for a specific mechanism for resolution of disputes, particularly through arbitration, the High Court would ordinarily decline to exercise its discretionary jurisdiction under Article 226 of the Constitution of India and relegate the parties to the agreed remedy. Reliance in this regard is placed upon the judgment of the Hon’ble Supreme Court in ***Joshi Technologies International Inc. v. Union of India : (2015) 7 SCC 728***, wherein it was held as under:

“69. The position thus summarised in the aforesaid principles has to be understood in the context of discussion that preceded which we have pointed out above. As per this, no doubt, there is no absolute bar to the maintainability of the writ petition even in contractual matters or where there are disputed questions of fact or even when



monetary claim is raised. At the same time, discretion lies with the High Court which under certain circumstances, it can refuse to exercise. It also follows that under the following circumstances, “normally”, the Court would not exercise such a discretion:

69.1. The Court may not examine the issue unless the action has some public law character attached to it.

69.2. Whenever a particular mode of settlement of dispute is provided in the contract, the High Court would refuse to exercise its discretion under Article 226 of the Constitution and relegate the party to the said mode of settlement, particularly when settlement of disputes is to be resorted to through the means of arbitration.

69.3. If there are very serious disputed questions of fact which are of complex nature and require oral evidence for their determination.

69.4. Money claims per se particularly arising out of contractual obligations are normally not to be entertained except in exceptional circumstances.

70. Further, the legal position which emerges from various judgments of this Court dealing with different situations/aspects relating to contracts entered into by the State/public authority with private parties, can be summarised as under:

70.1. At the stage of entering into a contract, the State acts purely in its executive capacity and is bound by the obligations of fairness.

70.2. State in its executive capacity, even in the contractual field, is under obligation to act fairly and cannot practise some discriminations.

70.3. Even in cases where question is of choice or consideration of competing claims before entering into the field of contract, facts have to be investigated and found before the question of a violation of Article 14 of the Constitution could arise. If those facts are disputed and require assessment of evidence the correctness of which can only be tested satisfactorily by taking detailed evidence, involving examination and cross-examination of witnesses, the case could not be conveniently or satisfactorily decided in proceedings under Article 226 of the Constitution. In such cases the Court can direct the aggrieved party to resort to alternate remedy of civil suit, etc.

70.4. Writ jurisdiction of the High Court under Article 226 of the Constitution was not intended to facilitate avoidance of obligation voluntarily incurred.

70.5. Writ petition was not maintainable to avoid contractual obligation. Occurrence of commercial difficulty, inconvenience or hardship in performance of the conditions agreed to in the contract can provide no justification in not complying with the terms of contract which the parties had accepted with open eyes. It cannot ever be that a licensee can work out the licence if he finds it profitable to do so : and he can challenge the conditions under



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which he agreed to take the licence, if he finds it commercially inexpedient to conduct his business.

70.6. Ordinarily, where a breach of contract is complained of, the party complaining of such breach may sue for specific performance of the contract, if contract is capable of being specifically performed. Otherwise, the party may sue for damages.

70.7. Writ can be issued where there is executive action unsupported by law or even in respect of a corporation there is denial of equality before law or equal protection of law or if it can be shown that action of the public authorities was without giving any hearing and violation of principles of natural justice after holding that action could not have been taken without observing principles of natural justice.

70.8. If the contract between private party and the State/instrumentality and/or agency of the State is under the realm of a private law and there is no element of public law, the normal course for the aggrieved party, is to invoke the remedies provided under ordinary civil law rather than approaching the High Court under Article 226 of the Constitution of India and invoking its extraordinary jurisdiction.

70.9. The distinction between public law and private law element in the contract with the State is getting blurred. However, it has not been totally obliterated and where the matter falls purely in private field of contract, this Court has maintained the position that writ petition is not maintainable. The dichotomy between public law and private law rights and remedies would depend on the factual matrix of each case and the distinction between the public law remedies and private law field, cannot be demarcated with precision. In fact, each case has to be examined, on its facts whether the contractual relations between the parties bear insignia of public element. Once on the facts of a particular case it is found that nature of the activity or controversy involves public law element, then the matter can be examined by the High Court in writ petitions under Article 226 of the Constitution of India to see whether action of the State and/or instrumentality or agency of the State is fair, just and equitable or that relevant factors are taken into consideration and irrelevant factors have not gone into the decision-making process or that the decision is not arbitrary.

70.10. Mere reasonable or legitimate expectation of a citizen, in such a situation, may not by itself be a distinct enforceable right, but failure to consider and give due weight to it may render the decision arbitrary, and this is how the requirements of due consideration of a legitimate expectation forms part of the principle of non-arbitrariness.

70.11. The scope of judicial review in respect of disputes falling within the domain of contractual obligations may be more limited



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and in doubtful cases the parties may be relegated to adjudication of their rights by resort to remedies provided for adjudication of purely contractual disputes.

71. Keeping in mind the aforesaid principles and after considering the arguments of the respective parties, we are of the view that on the facts of the present case, it is not a fit case where the High Court should have exercised discretionary jurisdiction under Article 226 of the Constitution. First, the matter is in the realm of pure contract. It is not a case where any statutory contract is awarded.”

8. In the absence of any exceptional circumstances warranting interference by this Court in the exercise of its extraordinary writ jurisdiction, and considering the efficacious alternative remedy available to the petitioner, this Court finds no reason to exercise its discretionary jurisdiction under Article 226 of the Constitution of India

9. The petitioner is left at liberty to avail of the remedies available to it in accordance with law.

10. The present petition is disposed of in the aforesaid terms.

AMIT MAHAJAN, J

OCTOBER 9, 2026

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