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

Date of Decision: 10.03.2026

+ O.M.P.(I) (COMM.) 84/2026, I.A. 5963/2026 (For Exemption)
& I.A. 5964/2026 (For permission to filed lengthy list of dates
and synopsis)

IGATPURI HIGHWAY PRIVATE LIMITEDPetitioner
Through: Mr. Parag P. Tripathi, Senior
Advocate along with Ms.
Rimali Batra, Mr. Abhishek
Lalwani, Mr. Krishan Kumar,
Ms. Sanika Dalvi and Mr.
Shivang Gupta, Advocates.

versus

NATIONAL HIGHWAYS AUTHORITY OF INDIA
.....Respondent
Through: Mr. Santosh Kumar, Standing
Counsel along with Mr.
Adithya Ramani, Advocate.

**CORAM:
HON'BLE MR. JUSTICE HARISH VAIDYANATHAN
SHANKAR**

% **JUDGEMENT (ORAL)**

HARISH VAIDYANATHAN SHANKAR, J.

1. The present petition, filed under Section 9 of the **Arbitration and Conciliation Act, 1996**¹, seeks interdiction of the **Cure Period Notice dated 11.02.2026**². The Petitioner also seeks directions restraining the Respondent from suspending any of the Petitioner's rights, *inter alia*, the right to collect toll under the **Concession Agreement dated 14.10.2005**³.

¹ Act

² CPN

³ Agreement



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2. Learned Senior Counsel appearing on behalf of the Petitioner submits that the CPN appears to be actuated by malice. He submits that the period of the Agreement is to expire in less than two months from today *i.e.*, on 05.05.2026.

3. He further submits that a perusal of the CPN makes it apparent that four of the reasons specified therein by the Respondent for termination of the Agreement are already subject matter of proceedings before the **Conciliation Committee of Independent Experts**⁴.

4. Learned senior counsel further submits that, in respect of certain prior disputes relating to the same Agreement, an Award had been passed against the Respondent. It is submitted that during the pendency of the proceedings under Section 34 of the Act initiated by the Respondent against the said Award, the Respondent had suggested that the disputes be referred to the CCIE.

5. Learned Senior Counsel therefore submits that the present CPN is in the nature of a counterblast to the aforesaid Award suffered by the Respondent and seeks to advance his argument *qua* the malice underlying the issuance of the CPN. He further submits that all of the reasons set out in CPN are such which either relates to an interpretation of the contractual conditions or are perhaps factually incorrect.

6. Learned Senior Counsel, in particular, draws the attention of this Court to the principal grievance that is raised in the CPN relating to the contractual requirement for carrying out **Periodical Renewals**⁵. He submits that the concessionaire is carrying out the PR in respect of

⁴CPIE

⁵PR



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at least two of the three stretches of the road, which are likely to conclude before 05.05.2026.

7. Learned Senior Counsel, in respect of the remaining one stretch of the road, submits that there exists a variance between the parties as to the manner in which the said PR is to be conducted. Learned Senior Counsel submits that, as per the Agreement, the PR needs to be carried out every five years as well as in the last year of the concession period. He submits that since the PR, in respect of the said stretch of road, has already been conducted in the last year, which overlaps with the five year period, within which they were supposed to carry out the same, there arises no occasion for any further CPN to be conducted.

8. *Per contra*, Mr. Santosh Kumar, learned Standing Counsel appearing on behalf of the Respondent, at the outset, submits that the Agreement is clearly in nature of a terminable contract and therefore, there is no question of any interference or interdiction by this Court at this stage.

9. Learned counsel, with respect to PR of one stretch of road which the Petitioner is refusing to carry out, further submits that such refusal would cause serious difficulties to the public at large and in the event that the Petitioner still refuses to do so, the Respondent would be constrained to seek the help of third parties to try and conclude the same.

10. Learned counsel for the Respondent submits that there is no *prima facie* case made out, the balance of convenience, if any, is in fact in favour of the Respondent and that there is no irreparable damage which is not compensable that would occur to the Petitioner.



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Therefore, there is no ground necessitating any interference by this Court.

11. Heard the learned counsel appearing for both the parties and with their able assistance, perused the material on record.

12. This Court is of the view that the submissions and contentions put forth by the learned Senior Counsel for the Petitioner holds substance.

13. This Court is of the considered view that at this stage, when less than two months remain for the Agreement period to conclude, and when the reasons canvassed in the CPN *prima facie* appear to relate to issues concerning the interpretation of the Agreement itself, it would be in the interest of justice to stay the operation of the said CPN until such time as the same is considered by an Arbitral Tribunal that may be constituted in terms of the Agreement between the parties.

14. Furthermore, at this stage, the balance of convenience also lies in favour of the Petitioner since the present project is one which involves foreign investment and a statutory body under the Government of India. The same can be substantiated by the judgement of the Hon'ble Supreme Court in *Subodh Kumar Singh Rathour v. The Chief Executive Officer & Ors.*⁶, wherein it was held that the sanctity of contracts is a fundamental principle and there should be fairness in contracts where public authorities or the State is involved, as the lack of such dissuade parties from participating in the public procurement process.

15. Furthermore, this Court is also of the view that the Petitioner would suffer irreparable loss in the event the CPN is permitted to

⁶2024 SCC OnLine SC 1682



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operate during the pendency of any proceeding with respect to the disputes between the parties. The consequences flowing therefrom would not only disrupt the ongoing contractual arrangement but may also have a bearing on the commercial viability of the project, since the Agreement primarily entails the collection of toll fees on such highway by the Petitioner. Accordingly, the element of irreparable harm also weighs in favour of the Petitioner. It is apparent that the toll collection forms the subject matter of the Agreement and the same can be protected by exercise of jurisdiction under Section 9 of the Act.

16. In view of the foregoing and at this stage, the learned counsel for the parties is *ad idem* regarding the appointment of an Arbitrator for adjudication of disputes as between the parties. Therefore, the parties expressly waive the requirement of issuance of a formal notice under Section 21 of the Act, as well as the necessity of filing a Petition under Section 11 of the Act.

17. In view thereof, the matter is referred to arbitration for the purpose of the resolution of disputes between the parties.

18. Consequently, the learned counsel appearing on behalf of the parties undertake to nominate their respective Arbitrators within a period of one week from today and the parties also undertake that they would request that their concerned nominated Arbitrators to appoint the third Arbitrator within a period of one week thereafter.

19. In view of the foregoing, the present Petition under Section 9 of the Act shall be treated as an Application under Section 17 of the Act, and appropriate directions may be passed by the Arbitral Tribunal after entering upon the reference.



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20. The effect and operation of the CPN is thereby stayed till the first date of hearing of the Section 17 Application by the Arbitral tribunal.

21. This Court is also mindful of the submission advanced on behalf of the Respondent that the Agreement is terminable in nature. However, the relief sought in the present proceedings is not in the nature of specific enforcement of the contract but only seeks to preserve the existing contractual framework until the disputes between the parties are examined by the Arbitral Tribunal. The interim protection granted herein is therefore only to maintain the *status quo* for a limited duration so that the arbitral process is not rendered nugatory.

22. Learned Senior Counsel appearing on behalf of the Petitioner, on instructions, undertakes that no steps would be taken for withdrawal of the amount of Rs. 94 crores which is lying in Escrow Bank till the first date of hearing of the Section 17 Application.

23. The Arbitral Tribunal may proceed with the arbitration proceedings, subject to furnishing to the parties the requisite disclosures as required under Section 12(2) of the Act within a week of entering the reference.

24. The Arbitrators, so nominated, shall be entitled to fees in accordance with the Fourth Schedule of the Act or as may otherwise be agreed to between the parties and the learned Arbitrators.

25. The parties shall share the learned Arbitrators' fees and arbitral costs equally.

26. All rights and contentions of the parties are kept open, to be decided by the Arbitral tribunal so constituted on their merits, in



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accordance with law.

27. Needless to state, nothing in this order shall be construed as an expression of opinion of this Court on the merits of the controversy.

28. The parties are at liberty to raise all objections, including with respect to the jurisdiction before the learned Arbitral Tribunal.

29. The present Petition, along with pending Application(s), if any, stands disposed of in the aforesaid terms.

HARISH VAIDYANATHAN SHANKAR, J.
MARCH 10, 2026/tk/dj