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

Date of Decision: 19.05.2026

+ O.M.P.(I) (COMM.) 217/2026 & I.A. 14049/2026 (Ex. From filing certified/original copies of document no.3)

VIVA INFRAVENTURE PRIVATE LIMITEDPetitioner

Through: Mr. Shashank Garg, Senior Advocate along with Mr. Kumar Deepraj and Mr. Prithviraj Oberoi, Advocates.

versus

NATIONAL HIGHWAY 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 the following reliefs:-

- “a) Pass an *ad-interim ex parte* order and thereafter confirm the same, thereby restraining the Respondent, its officers, servants, agents, representatives, assigns, or any person acting on its behalf, from giving effect to, acting pursuant to, or taking any coercive steps pursuant to the Notice of Intention to

¹ The Act



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Terminate dated 04.05.2026 issued under Clause 23.1(i) of the EPC Agreement dated 09.02.2022;

- b) Restrain the Respondent from terminating and/ or giving effect to termination of the EPC Agreement dated 09.02.2022 executed between the Petitioner and the Respondent in relation to the Project namely "*Four Laning of Honnavar Port Connectivity Road from Km 0.00 (Kasarkod side of Honnavar Port) to Km 2.58 (towards NH-66) connecting Honnavar Port with NH-66 at Km 196.00 and improvement of NH-66 from Km 195.00 to Km 197.00 under EPC Mode under Bharatmala Phase-I, Karnataka*", during pendency of the arbitral proceedings;
- c) Restrain the Respondent from invoking, encashing, appropriating, acting upon, or otherwise giving effect to the Performance Bank Guarantees and/ or any other Bank Guarantees furnished by the Petitioner in connection with the EPC Agreement and the subject Project;
- d) Restrain the Respondent from initiating or taking any coercive or prejudicial action against the Petitioner including blacklisting, debarment, risk-and-cost action, suspension, or disqualification of the Petitioner pursuant to or arising out of the impugned Notice dated 04.05.2026 and/ or the subject EPC Agreement;
- e) Direct the Respondent to maintain *status quo* with respect to the EPC Agreement, contractual relationship, Project Site, and subject matter of disputes pending commencement and conclusion of arbitral proceedings;
- f) Direct the Respondent to participate in a joint physical survey/ drone survey of the Project Site along with representatives of the Petitioner and the Authority Engineer for ascertaining the actual extent of encumbrance-free and workable Right of Way available at site;
- g) Direct the Respondent to disclose and place on record the actual and updated status of land acquisition, encumbrance-free ROW, revised alignment, statutory clearances, CRZ approvals, and removal of obstructions/hindrances pertaining to the Project Site;
- h) Appoint a Local Commissioner and/or any independent technical expert for conducting inspection/survey of the Project Site and for submitting a report before this Hon'ble Court regarding actual availability of executable and encumbrance-free ROW under the revised alignment;



- i) pass any other or further order(s) as this Hon'ble Court may deem fit and proper in the facts and circumstances of the present case.”

2. The material on record indicates that the **Engineering Procurement and Construction Agreement dated 09.02.2022²**, entered into between the parties, contemplates for a dispute resolution mechanism envisaged in Article 26 of the Agreement, particularly **Article 26.3 of the Agreement³**, which stipulates adjudication of any disputes, *inter se* the parties to the said Agreement, by way of Arbitration. The relevant portion of Article 26 is reproduced herein under for ready reference:

“Article 26

Dispute Resolution

26.1 Dispute Resolution

26.1.1 In the event of 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") either Party may call upon the Authority Engineer, to mediate and assist the Parties in arriving at an amicable settlement thereof.

26.1.2 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 non-privileged records, information and data pertaining to any Dispute.

26.1.3 Dispute Resolution Board (DRB):

26.2 Failing mediation by the Authority's Engineer or without the intervention of the Authority's Engineer, either Party may require such Dispute to be referred to the Dispute Resolution Board ("ORB") in accordance with the procedure set forth in Schedule-S to the Contract Agreement. The decision(s) of the Dispute Resolution Board shall be binding on both parties who shall promptly give effect to unless and until the same is

² Agreement

³ Arbitration clause



revised/modified, as hereinafter provided, in a Conciliation/ Arbitral Tribunal.

Conciliation
If either the employer (i.e. Authority) or the Contractor is dissatisfied with any decision of the DRB, and/ or if the ORB 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

26.3.1 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 SARDO), 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 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”

3. After addressing submissions for some time, the learned counsel appearing on behalf of the parties are *ad idem* that the disputes, that are stated to have arisen *inter se* the parties, may be referred to Arbitration in terms of the aforestated Arbitration clause.

4. Further, learned counsel for the parties are also *ad idem* to forego all of the pre-arbitration dispute resolution mechanism, which have not been resorted to, if any, as provided for in the aforestated Arbitration clause, and therefore request for reference of the disputes *inter se* the parties directly to Arbitration.

5. In view of the foregoing, this Court is of the considered opinion, since the parties are *ad idem* in regards to being referred to Arbitration, the adjudication of disputes must not be unduly delayed.

6. Accordingly, the statutory requirement of addressing a Legal



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Notice under Section 21 of the Act for invoking the Arbitration clause and the subsequent requirement of filing a Petition under Section 11 of the Act for constitution of an Arbitral Tribunal are hereby waived of.

7. At this juncture, learned counsel appearing on behalf of the parties submit that in terms of the aforesaid Arbitration clause each of the parties is to nominate a learned Arbitrator, respectively, who in turn would nominate a Presiding Arbitrator, thereby constituting an Arbitral Tribunal, in terms of the Arbitration clause.

8. In this regard, both the parties have agreed to communicate the name of their respective nominated Arbitrator, to the other party, within a period of one (01) week from today.

9. The learned Arbitrators, so nominated, are requested to nominate the Presiding Arbitrator within a period of ten (10) days thereafter.

10. The learned Arbitral Tribunal, so constituted, 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 one (01) week of entering upon the reference.

11. The learned Arbitrators shall be entitled to a fee as may be agreed between the parties and the learned Arbitrators.

12. All rights, contentions and averments of the parties are kept open, to be raised before and decided by the learned Arbitral Tribunal on merits, in accordance with law.

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

14. Accordingly, the present Petition, along with pending



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Application(s), if any, stands disposed of in the aforesaid terms.

HARISH VAIDYANATHAN SHANKAR, J.
MAY 19, 2026/nd/tk/DJ