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

% *Date of Decision : 13th January, 2026*

+ **FAO(OS) (COMM) 4/2026**

NATIONAL HIGHWAYS AUTHORITY OF INDIA NHAI

.....Appellant

Through: Mr. Tushar Mehta, SG, Mr. Ankur Mittal, Mr. Abhay Gupta and Ms. Sucharu Garg, Advs.

versus

ROADWAY SOLUTIONS INDIA INFRA LIMITED

.....Respondent

Through: Mr. Rajiv Nayyar and Mr. Gopal Jain, Sr. Advs. with Mr. Samir Mahk, Mr. Varun Kalra and Mr. Krishan Kumar, Advs.

CORAM:

HON'BLE MR. JUSTICE DINESH MEHTA

HON'BLE MR. JUSTICE VINOD KUMAR

J U D G M E N T

REPORTABLE

DINESH MEHTA, J. (Oral)

CM APPL. 1612/2026 (Exemption)

1. Exemption allowed, subject to all just exceptions.
2. The application is disposed of.

FAO(OS) (COMM) 4/2026, CM APPL. 1611/2026 (Stay), CM APPL. 1613/2026 (Permission to file lengthy list of dates)

3. Mr. Tushar Mehta, learned Solicitor General of India appearing for the appellant submitted that package No. VIII *qua* which the dispute has arisen is a part of Delhi-Mumbai National Expressway which is not only an



ambitious project of the National Highways Authority of India (*hereinafter referred to as 'NHAI'*) but will also serve the purpose of infrastructure development and increasing the connectivity between the two metropolitan cities.

4. Apprising the Court about the requisite facts, he submitted that the appellant has preferred the present appeal under Section 37(1)(b) of the Arbitration and Conciliation Act, 1996 (*hereinafter referred to as the 'Act of 1996'*), assailing the order dated 02.01.2026 (*hereinafter referred to as 'impugned order'*) passed by learned Single Judge while hearing application under Section 9 of the Act of 1996.

5. While reserving his right to support the legality and propriety of the notice of intention to terminate contract dated 23.12.2025 (*hereinafter referred to as 'Subject notice'*) and unravel the conduct of the respondent-contractor, to cut the long story short, he at the outset submitted that while keeping in mind the scope of interference by this Court against an interlocutory order, he would confine his arguments to the legality of the impugned order dated 02.01.2026, whereby, as an interim relief, the court has restrained the appellant-NHAI from acting upon the subject notice till the next date of hearing.

6. For the aforesaid purpose, he invited court's attention towards para 10 of the order under consideration and underscored that even the respondent-contractor itself has issued a notice of intention to terminate the contract dated 18.12.2025 alleging that the NHAI has failed to make contiguous land available for construction of road and argued that when the respondent-contractor itself wanted to get the contract terminated, the court ought not to have enjoined the present appellant from proceeding in furtherance of the



subject notice dated 23.12.2025.

7. He submitted that if the interim order continues and the appellant-NHAI is restrained from terminating the contract, the appellant would be deprived from engaging any other contractor to complete the work and such position would be against the national interest as the ambitious infrastructure project would not be completed within the scheduled timeline.

8. While pointing out that out of the entire road of 794 kilometres, most of the road (about 700 kilometres) has been constructed, he gave an alternative suggestion that till the application under Section 9 of the Act of 1996 is decided, the encashment of surety bonds and bank guarantees be stayed, so that the rights of the respondent-contractor are protected.

9. Mr. Gopal Jain, learned senior counsel appearing on behalf of the respondent-contractor [(applicant) in the application under section 9 of the Act of 1996] advanced elaborate arguments and contended that the subject notice issued by the NHAI on 23.12.2025 is illegal and arbitrary. While accepting the fact that the contractor had also issued a notice of termination dated 18.12.2025, he argued that the subject notice issued by NHAI is a counterblast to the notice, which the contractor had issued. He read the subject notice issued by NHAI particularly para 57 thereof, and submitted that the NHAI has stated that the respondent-contractor has failed to discharge the obligation under the contract while ignoring the third settlement agreement (SA-3) executed between the parties on 12.08.2025, whereby the NHAI had revised the project milestone.

10. He navigated the Court through the relevant clauses of SA-3 to canvass that the terms of the contract stood superseded by the settlement agreement as has been clearly indicated in clause (viii) of para 3.1 of SA-3.



He stressed over clause (viii) and argued that the provisions of SA-3 shall prevail. He added that as per para 3.1 of SA-3, the parties have agreed to revise the project milestone and accordingly by 25.11.2025, the contractor was supposed to achieve first milestone of 10% of the expenditure/progress.

11. He submitted that by virtue of SA-3, the earlier criteria for achieving first milestone being “percentage of physical progress” has been changed to “percentage of expenditure/progress” and further submitted that since the respondent-contractor has spent 19.34% of the project cost as is evident from certificates issued by Chartered Accountants (at page 106 of the note of arguments handed over by respondent in Court which is taken on record), he argued that allegation of not achieving the 1st milestone is *per-se* contrary to facts.

12. It was contended with all vehemence that according to SA-3, the NHAI was required to complete the land acquisition proceedings and hand over the possession of the entire land of package No.VIII to the contractor and it had failed to do so. He argued that it was only because of the fault of the NHAI that the project could not be completed or could not see the desired progress.

13. While maintaining that the respondent-contractor has a strong *prima-facie* case which can be discerned from the facts obtaining in the case, he submitted that even balance of convenience lies entirely in favour of the respondent inasmuch as if the contract is terminated, the respondent who has spent substantial amount (approx. Rs.237 crores) and has mobilized all its resources, would be put to great financial loss and such termination would entail automatic blacklisting, due to which, the respondent would be deprived from taking part in the future Notice Inviting Tenders (NITs) to be



issued by NHAI.

14. He invited court's attention towards the letter of authorized engineer written to the project director on 08.12.2025 and submitted that the engineering consultant company itself has recommended that as the completion date is 13.12.2027, the NHAI in the best interest of the project should enter into another settlement agreement in light of the subsequent development.

15. Mr. Jain argued that awarding a fresh contract will at least take three months' time and in such time since the contractor has mobilised all its resources, the requisite progress shall be carried out and it is in that background the Court has passed interim order restraining NHAI from terminating the contract. He contended that such injunction is necessary for the preservation of the subject matter in dispute as mandated by Clause (ii)(c) of sub-section (1) of Section 9 of the Act of 1996.

16. He lastly argued that as the matter is coming up for hearing before the Learned Single Judge on 09.02.2026, this court should not interfere in the matter or modify an otherwise interlocutory order, as the NHAI is yet to file its counter affidavit to the application under Section 9 of the Act of 1996.

17. Mr. Tushar Mehta, learned Solicitor General submitted that though he has given a fair proposal which would safeguard the interest of both the parties, more particularly of the respondent-contractor, but since Mr. Jain has made submission on merits, he has to respond and bring to fore the lapses on the part of the contractor and show that the NHAI is justified in issuing the subject notice as the respondent-contractor's conduct has invited such action.

18. He argued that Mr. Jain's contention that the NHAI, while issuing the



subject notice has relied upon the terms of settlement agreement no.1 and settlement agreement no.2 without making any whisper of settlement agreement no.3, is factually incorrect and untenable. In a bid to substantiate this plea, Mr. Mehta took the Court minutely through the subject notice and submitted that the NHAI has not only made reference of SA-3 but as a matter of fact has considered respondent's case in light of the SA-3. In this regard, he read para No. 33, 34 & 39(4) of the subject notice.

19. He argued that before issuing the subject notice, the NHAI has taken stock of progress of the work and ground situation and objectively considered all the relevant aspects and even recorded a finding that the contractor's plea of claiming that 19.34% progress has been achieved by it is baseless and *mala fide*. While taking the court through para 44 of the subject notice, he submitted that in para 50 of the subject notice a finding has been recorded that the contractor has miserably failed to achieve the milestone in terms of SA-3, which was entered into between the parties on 12.08.2025.

20. He argued with a surprise that Mr. Jain has conveniently read para 57 of the subject notice and reference made to all the settlement agreements (settlement agreement nos. 1, 2 & 3) to sway the equity in his favour whereas the fact of the matter is that the NHAI has tested contractor's performance on the anvil of terms of the Contract Agreement dated 19.01.2024 and settlement agreement (SA-3) dated 12.08.2025.

21. He submitted that the respondent who has been awarded contract for package 8, 9 and 10 has failed to complete the work due to which out of the total highway spanning 794 kms (splitted in length), 87 kms retaining package 8, 9 & 10 is incomplete and all the passengers travelling on the newly constructed expressway are required to take a detour.



22. While informing that the entire acquisition proceedings have been completed and a sum of approximately Rs.914 crores has been paid/deposited in the account of the land-losers, Mr. Tushar Mehta invited court's attention towards letter dated 20.08.2025, whereby contractor was asked to submit its program chainage-wise, village-wise, taluqa-wise and furnish details of machinery and manpower to facilitate clearance of the affected stretches and to deploy the manpower so that the possession of the land can be taken and be handed over to the contractor, else the same would again be taken in possession by the land-losers.

23. He invited court's attention towards Inspection Report dated 24.11.2025, more particularly page 1586 and 1588 of the paper book and submitted that in the aforesaid report, the engineer has clearly reported that earth work and structure work has not been done; shifting of LT lines has not been carried out even after joint inspection dated 22.10.2024 and instructions given in this regard, the earth soil has not been arranged in spite of the fact that substantial quantity of earth soil about 1.02 crore cubic meters would be required for the earth work.

24. Heard learned counsel for the parties and perused the record.

25. In regard to the contention raised by learned counsel for the respondent concerning land acquisition proceedings, we find that the same are over and possession of most of the land has been taken, the plea taken by the contractor that NHAI has not made the land available is unsustainable. When the NHAI itself has written letters to the contractor on 23.08.2025 and 14.10.2025 that it should mobilize the labour and machinery on or near the spot so that the possession of the land (if not taken) can be taken with the aid of the police and handed over to the contractor, it does not behove the



contractor to take a lame excuse that the land has not been made available.

26. The argument of the contractor that the notice issued by NHAI being subject matter of the present dispute is a counterblast to the notice of termination, which the contractor had issued on 18.12.2025 is untenable. Such plea can be taken both ways. The notice issued by the contractor can well be construed to be an attempt to ward off or protract the proceedings for termination of the contract.

27. Be that as it may. There is enough material to show that the NHAI had valid and legit reasons to issue the subject notice. The same cannot be said to be without authority or even arbitrary or actuated by extraneous considerations. It is pertinent to note that despite receiving the notice of termination, the contractor has not cared to file reply or tried to satisfy the authorities or prayed for extension of time within which it would achieve milestone. The court or for that matter the Appellate Court cannot consider the justification of the contractor or the subject notice unless it has been issued arbitrarily or the same is without authority.

28. The mere fact that three settlement agreements including SA-3 had taken place is enough to indicate that NHAI has given sufficient leeway and indulgence to the contractor, maybe because the acquisition could not be completed or to ignore the lapse(s) of the contractor but in infrastructural projects like highways, the court cannot take unto itself, the authority or power of granting unwarranted indulgence to a contractor. It should best be left to the authorities. In the facts of the present case, when the contractor itself wanted the contract to be terminated, one cannot conclude at this stage as to whether the contractor really wanted to work or it simply wants to wriggle out of the contractual obligations or escape the consequences



entailing the termination of contract.

29. In the extant facts, it was incumbent upon the contractor to exhibit some progress in the work, at least after four months of the SA-3 which was executed on 12.08.2025.

30. The report of Lea Associates South Asia Private Limited dated 16.12.2025 (which was given after SA-3), clearly shows that the contractor was in hibernation even after four months of execution of SA-3. When it comes to development of infrastructure projects, Clause (ha) of Section 41 inserted vide Amendment Act No.18 of 2018, in Specific Relief Act, 1963 (*hereinafter referred to as the 'Act of 1963'*), creates a clear embargo or fetters on the powers of the court to grant injunction. It will not be out of place to reproduce clause (ha) of section 41 which reads thus:

“41. Injunction when refused. — An injunction cannot be granted—

(a).....

(b).....

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[(ha) if it would impede or delay the progress or completion of any infrastructure project or interfere with the continued provision of relevant facility related thereto or services being the subject matter of such project.].....”

31. Furthermore, Section 20A of the Specific Relief Act, 1963 provides that an injunction cannot be granted, if the same would cause delay in the progress of infrastructural development. The schedule appended with the Act of 1963 clearly classifies the construction of roads and bridges as infrastructure under the category of “transport”. It would be apt to reproduce Section 20(A) of the Act of 1963, which reads as under:

“20A. Special provisions for contract relating to infrastructure project.—(1) No injunction shall be granted by a court in a suit under



this Act involving a contract relating to an infrastructure project specified in the Schedule, where granting injunction would cause impediment or delay in the progress or completion of such infrastructure project....”

32. We are not much convinced with the contention of Mr. Jain that awarding of fresh contract will take at least three months’ time and in such time the respondent, who has spent approximately Rs.237 crores and mobilized its resources would show the requisite progress and that it would be in the best interest of the project that the respondent be allowed to complete the work.

33. Such contention of the respondent at the first blush, appears to be attractive, but if the principles governing contracts in this regard are examined, it turns out to be a settled position of law that the terms of commercial contract are to be strictly adhered to. In case it is found that the contract was wrongly terminated, the contractor can be compensated by way of award to be passed by the Arbitrator or by the competent Civil Court, as the case may be. But while hearing application under Section 9 of the Act of 1996, by an interim order, the termination of the contract should normally not be stayed. Because, ultimately, it is within the domain of and discretion of the awarder of the contract to continue with the contract or to terminate.

34. Regardless of rival contentions even if for the sake of argument, it is presumed that the contractor-respondent has some *prima-facie* case, then also, according to us, the injunction as granted (restraining NHAI from proceedings in furtherance of the notice of termination), should not have been granted, as the same would result in delay in the project and it will be a national loss inasmuch as citizens undertaking their journey are required to take a detour for the stretch of 87 kilometres road, which is incomplete or



going at a snail's pace due to the fault of either of the parties who is the party at fault can be decided by the Arbitrator and not by the Court.

35. So far as the contention of Mr. Jain that sub-section (1) of section 9 particularly clause (ii)(c) of which requires the Court to preserve any property or thing which is the subject matter of the dispute in arbitration is concerned, we are of the considered opinion that he has picked first two lines of clause (ii)(c) of sub-section (1) of section 9 in order to suit the cause of the contractor. If the entire clause (c) is taken into consideration, it is clear that the Court should preserve or ensure “detention of the property or thing being subject matter of the dispute, but only if the same is necessary for the purpose of authorising any sample to be taken, any preservation to be made or experiment to be tried which may be necessary or expedient for the purpose of obtaining full information or evidence”.

36. It cannot be the contractor's case that the contract be kept alive for the purposes mentioned in Clause (ii)(c) of sub-section (1) of Section 9. If that be so, he could perhaps pray that whatever little work he has done be preserved, so that he can claim cost of the work done by him.

37. In the instant case, if the contract is terminated, the rights of either of the parties will not be adversely affected inasmuch as in case the contractor approaches an Arbitrator and claims any damage or cost of construction etc. the requisite evidence can be led by way of documentary or oral evidence or by way of photographs or videography etc. However, the expression “preservation” of the property or thing which is subject matter of the dispute in arbitration cannot be given an interpretation *dehors* the complete provision or being oblivious to the fact situation and against the interest of parties to the contract.



38. We feel that the balance of convenience entirely lies in the favour of the nation and citizen of India and in turn NHAI and not in favour of the contractor. Because the citizenry cannot be deprived of a well constructed highway to ensure smooth and free movement.

39. We have no hesitation in holding that in light of the discussion made hereinabove, the appellant NHAI ought not to have been restrained from proceeding in furtherance of notice of intent to terminate contract dated 23.12.2025. We find the proposal given by learned Solicitor General to be fair and just, that NHAI would not encash the bank guarantee or surety until application under section 9 of the Act of 1996 is decided. Para 21 of the impugned order dated 02.01.2026 passed by learned Single Judge is therefore set aside. The appeal is allowed, however, with the following directions:

- (i) The appellant-NHAI shall stand restrained from encashing insurance surety bond(s) and bank guarantee(s) or surety furnished by respondent-contractor until disposal of the application under section 9 of the Act of 1996, which is pending before the learned Single Judge.
- (ii) NHAI shall, however, be free to pass appropriate order pursuant to the notice of intent to terminate the contract dated 23.12.2025 and if deemed expedient, to issue fresh NIT in relation to package no.VIII and engage any other agency/entity to complete construction of road covered by package no.VIII of Delhi-Mumbai Expressway.
- (iii) NHAI shall also stand restrained from passing any final order of recovery of the cost from the respondent-contractor, consequent to



termination of the contract, till the disposal of application under section 9 of the Act of 1996.

40. All pending applications so also the appeal stand disposed of in aforesaid terms.

41. Needless to clarify that each finding recorded or observation made herein shall be construed to be a *prima-facie* observation/opinion of this Court and the same shall not be treated to be binding in any manner upon the court, deciding the application.

**DINESH MEHTA
(JUDGE)**

**VINOD KUMAR
(JUDGE)**

JANUARY 13, 2026/ck