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

\+ O.M.P.(I) (COMM.) 299/2026, I.A. 19560/2026, I.A. 19561/2026, I.A. 19562/2026

ROADWAY SOLUTIONS INDIA INFRA LIMITED .....Petitioner

Through: Mr. Dayan Krishnan and Mr. Ravi Prakash, Sr, Adv. with Mr. Sandeep Sharma, Mr. Varun Kalra, Mr. Krishan Kumar and Mr. Akash Malik, Advs.

versus

NATIONAL HIGHWAYS AUTHORITY OF INDIA .....Respondent

Through: Mr. Abhay Gupta, Ms. Simran Goel and Ms. Ipshita Dutta, Advs.

CORAM:
HON'BLE MR. JUSTICE OM PRAKASH SHUKLA

ORDER(ORAL)

% **30.07.2026**

Introduction

1. The present petition has been filed under Section 9 of the Arbitration and Conciliation Act, 1996, seeking interim relief pertaining to disputes arising out of the Engineering, Procurement and Construction Contract dated 17.10.2022 executed between the parties herein for the construction of six-laning of the Kagal Satara section of NH-48, Package-I.[1] The immediate grievance of the Petitioner arises from the Notice of Intention to Terminate dated 16.07.2026 issued by the Respondent.

Facts

2. Briefly stated, the parties entered into a Contract dated 17.10.2022 for execution and completion of the aforementioned highway project. Upon fulfilment of the stipulated conditions precedent, the Respondent declared 13.01.2023 as the Appointed Date, the original Scheduled Completion Date, fell on 12.01.2025. In terms of Clause 7 of the Contract, the Petitioner also allegedly furnished Performance Security Bank Guarantees and Additional Performance Security Bank Guarantees aggregating to Rs. 61,51,20,004/-.

3. During execution of the project, disputes arose between the parties regarding delay and progress of project. According to the Petitioner, the delay was attributable to the Respondent on account of failure to provide Right of Way in terms of Clause 8.1 of the Contract, non-availability of continuous work fronts and delay in obtaining necessary approvals. The Respondent, on the other hand, alleged that the delay was due to Petitioner's failure to deploy adequate resources, maintain the highway stretch and comply with contractual and safety obligations despite repeated communications and meetings.

4. The Petitioner sought extension of time under Clause 10.5(ii) of the Contract. Upon assessment, the Respondent's Engineer recommended extension of 474 days. Consequently, the parties

[1] "EPC" hereafter

entered into a Settlement Agreement dated 25.04.2025, whereby the Scheduled Completion Date was revised to 30.04.2026 and Milestone-III was shifted to 11.01.2026.

5. Despite the Settlement Agreement, disputes continued regarding completion and progress of the project. On 02.01.2026, the Respondent issued a Cure Period Notice alleging various defaults and the Petitioner was called upon to cure the alleged defaults within a period of 60 days. The Petitioner, in its reply to the said notice, disputed the allegations and contended that the Cure Period Notice was premature. It was asserted that the Respondent had failed to account for its own continuing defaults and that the Petitioner's request for further extension of time remained pending consideration.

6. After expiry of the cure period and unsuccessful attempts at resolution, the Respondent issued a Notice of Intention to Terminate dated 16.07.2026 under Clause 23.1(ii) of the Contract. Aggrieved thereby, the Petitioner approached this Court under Section 9 of the Arbitration and Conciliation Act, 1996 seeking restraint against further action pursuant to the said notice.

<u>Submission of the parties</u>

<u>Petitioner's submissions</u>

7. Mr. Dayan Krishnan, learned Senior Counsel appearing for the petitioner submits that the Cure Period Notice dated 02.01.2026 was premature since Milestone-III was due only on 11.01.2026 and, under

Clause 10.3(ii), a further grace period of 30 days was available after expiry of the milestone date. It was contended that any action founded upon non-achievement of Milestone-III could not have been initiated before expiry of such period, including the Notice of Intention to Terminate dated 16.07.2026.

8. Mr. Krishnan further submitted that Clause 3.1(viii) of the Settlement Agreement dated 25.04.2025 reflected an understanding that no coercive action arising from delay would be taken until expiry of the revised Scheduled Completion Date. According to the Petitioner, the Respondent could not have proceeded against it without first deciding its entitlement to further extension of time on account of alleged hindrances attributable to the Respondent. Thus, the Notice of Intention to Termination is premature and contrary to the contractual mechanism governing extension of time and termination.

9. The learned senior counsel for petitioner placed reliance on the judgment of this court in ***Mahajan Imaging Pvt Ltd v. Pushpawati Singhania Research Institute & Anr.***[2] to contend that when a termination procedure is contemplated in the contract, it must be adhered to strictly. It was argued that the present Contract was not determinable in nature since termination was permissible only upon occurrence of specified defaults and compliance with the prescribed cure mechanism. The Petitioner accordingly sought restraint against further action pursuant to the Notice of Intention to Terminate dated 16.07.2026.

[2] **2026: DHC:1735**

<u>Respondent's submissions</u>

10. Mr. Abhay Gupta, learned counsel for the respondent, submitted that reliance on **Mahajan Imaging (supra)** is misplaced since, unlike the facts therein, the Respondent had followed the contractual mechanism by issuing a Cure Period Notice and granting sufficient opportunity to cure the alleged defaults before issuing the Notice of Intention to Terminate.

11. It was submitted that the Petitioner had incorrectly proceeded on the assumption that the Cure Period Notice was issued only in relation to Milestone-III. The notice specifically invoked Contractor Defaults under Clauses 23.1(i)(d), (e), (g) and (q), relating to continuing breaches, including failure to maintain progress, inadequate deployment of resources and safety violations. The question whether such defaults were established was a matter for adjudication by the Arbitral Tribunal.

12. Learned counsel for the Respondent relies upon the judgment in ***National Highways Authority of India v. Panipat Jalandhar Nh-I Tollway Pvt. Ltd***[3] and more particularly, on the Division bench judgment in ***National Highways Authority of India v. Roadway Solutions India Infra Limited,*** to contend that courts should ordinarily not stop termination of highway infrastructure contracts. It is submitted that disputes as to responsibility for delay are arbitrable

[3] **2021 SCC OnLine Del 2632**

and, even if termination is ultimately found to be wrongful, the remedy ordinarily lies in compensation.

13. It is further submitted that the contractual framework adopted by NHAI has repeatedly been examined by this Court and such contracts have been held to be determinable. It was further contended that Sections 20A and 41(ha) of the Specific Relief Act, 1963, restricts grant of injunctions which may impede or delay completion of infrastructure projects.

14. Mr. Gupta further submits, restraining termination would prevent respondent from appointing another contractor and proceeding with completion of the highway project, It was also submitted that the Petitioner has failed to establish a prima facie case, the balance of convenience lies in favour of completion of the public infrastructure project, and the alleged injury is compensable in damages.

Rejoinder by petitioner

15. Mr. Dayan Krishnan in rejoinder submits that the Respondent's attempt to distinguish the Cure Period Notice from Milestone-III default is artificial, since the substance of the notice relates to failure to achieve progress and completion milestones. It is contended that the Cure Period Notice was, in essence, premised upon alleged delay in achieving Milestone-III and therefore could not have been issued before expiry of the milestone date.

16. He further submits that the judgment relied upon by the learned counsel for the respondent on determinability of contracts must now be read in the light of the subsequent judgment in ***Manjunath (***supra). According to him, a contract which permits termination only upon occurrence of specified defaults and after compliance with a prescribed termination procedure cannot be regarded as determinable within the meaning of Section 14(d) of the Specific Relief Act.

17. Lastly, it is submitted that Sections 20A and 41(ha) of the Specific Relief Act do not operate as an absolute bar against interim protection, particularly where the Petitioner is ready and willing to continue execution of the project without delay. It is argued that no prejudice would be caused to the Respondent since no alternative contractor has yet been appointed and continuation of the existing contractor would avoid delay associated with fresh procurement.

Analysis

18. I have heard learned counsel for the parties and perused the material placed on record. At the outset, it is clarified that the relief pressed before this Court is confined to the prayer seeking restraint against the Respondent from proceeding further pursuant to the Notice of Intention to Terminate dated 16.07.2026. The learned Senior Counsel for the Petitioner has fairly submitted that the remaining prayers are consequential to the said principal relief.

19. Before addressing the issues in the present controversy, it is relevant to first delineate the scope of interference under Section 9 of the Arbitration and Conciliation Act, 1996.

20. The jurisdiction under Section 9 is protective in nature and is intended to preserve the subject matter of arbitration and ensure that the arbitral proceedings do not become meaningless. The supreme court in the judgment of ***ArcelorMittal Nippon Steel (India) Ltd. v. Essar Bulk Terminal Ltd.***[4], has explained that interim relief is granted in aid of final relief and that the Court must examine the existence of *prima facie* case, balance of convenience and irreparable injury while considering an application under Section 9. The relevant paragraphs are reproduced:

> *"88. Applications for interim relief are inherently applications which are required to be disposed of urgently. Interim relief is granted in aid of final relief. The object is to ensure protection of the property being the subject-matter of arbitration and/or otherwise ensure that the arbitration proceedings do not become infructuous and the arbitral award does not become an award on paper, of no real value.*
>
> *89. The principles for grant of interim relief are (i) good prima facie case, (ii) balance of convenience in favour of grant of interim relief and (iii) irreparable injury or loss to the applicant for interim relief. Unless applications for interim measures are decided expeditiously, irreparable injury or prejudice may be caused to the party seeking interim relief.*
>
> *90. It could, therefore, never have been the legislative intent that even after an application under Section 9 is finally heard, relief would have to be declined and the parties be remitted to their remedy under Section 17".*

[4] **(2022) 1 SCC 712**

21. Thus, keeping in mind the scope of interference in Section 9 jurisdiction, the principal issue which falls for consideration before this court is whether the petitioner has been able to make out a *prima facie* case warranting restraint against the Respondent, pending arbitration, from acting upon the Notice of Intention to Terminate dated 16.07.2026, in light of the contractual termination mechanism and the provisions of the Specific Relief Act, 1963.

22. The learned senior counsel for the Petitioner contends that the Contract is not determinable in nature since Clause 23 permits termination only upon occurrence of specified defaults and after compliance with the prescribed cure mechanism. The Respondent, however, submits that the existence of a termination clause, even with procedural safeguards, does not alter the determinable nature of the Contract.

23. In order to address these contrasting assertions, it is relevant to address the concerned provisions of Specific Relief Act, 1983. Accordingly, Section 14(d) of the Specific Relief Act, 1963 stipulates that contract determinable in nature cannot be specifically enforced, while Section 41(e) provides that an injunction cannot be granted to prevent breach of a contract that cannot be specifically enforced.

24. Therefore, it is clear that in view of the statuary bar, the nature of the Contract requires examination before considering the grant of interim relief.

25. For this purpose, it is logical to explore the terminating procedure under the subject contract as same would aid this court in identifying whether the contract is determinable or not.

26. In this regard, the relevant clause for termination on account of Contractor's Default is clause 23, the same is reproduce for perusal:

> *"23.1 Termination for Contractor Default Contract Agreement (i) Save as otherwise provided in this Agreement, in the event that any of the defaults specified below shall have occurred, and the Contractor fails to cure the default within the Cure Period set forth below, or where no Cure Period is specified, then within a Cure Period of 60 (sixty) days, the Contractor shall be deemed to be in default of this Agreement (the "Contractor Default"), unless the default has occurred solely as a result of any breach of this Agreement by the Authority or due to Force Majeure. The defaults referred to herein shall include:*
>
> *(a) the Contractor fails to provide, extend or replenish, as the case may be, the Performance Security in accordance with this Agreement;*
>
> *(b) after the replenishment or furnishing of fresh Performance Security in accordance with Clause 7.3, the Contractor fails to cure, within a Cure Period of 30 (thirty) days, the Contractor Default for which the whole or part of the Performance Security was appropriated;*
>
> *(c) <u>the Contractor does not achieve the latest outstanding Project Milestone due in accordance with the provisions of Schedule-}, subject to any Time Extension, and continues to be in default for 45 (forty five) days;</u>*
>
> *(d) the Contractor abandons or manifests intention to abandon the construction or Maintenance of the Project Highway without the prior written consent of the Authority;*
>
> *(e) the Contractor fails to proceed with the Works in accordance with the provisions of Clause 10.1 or stops Works and/or the*

Maintenance for 30 (thirty) days without reflecting the same in the current programme and such stoppage has not been authorised by the Authority's Engineer;

(f) the Project Completion Date does not occur within the period specified in Schedule-I for the Scheduled Completion Date, or any extension thereof;

(g) <u>the Contractor fails to rectify any Defect, the non-rectification of which shall have a Material Adverse Effect on the Project, within the time specified in this Agreement or as directed by the Authority's Engineer;</u>

(h) the Contractor subcontracts the Works or any part thereof in violation of this Agreement or assigns any part of the Works or the Maintenance without the prior approval of the Authority;

(i) the Contractor creates any Encumbrance in breach of this Agreement;

(j) <u>an execution levied on any of the assets of the Contractor has caused a Material Adverse Effect;</u>

(k) the Contractor is adjudged bankrupt or insolvent, or if a trustee or receiver is appointed for the Contractor or for the whole or material part of its assets that has a material bearing on the Project;

(l) the Contractor has been, or is in the process of being liquidated, dissolved, wound-up, amalgamated or reconstituted in a manner that would cause, in the reasonable opinion of the Authority, a Material Adverse Effect;

(m) a resolution for winding up or insolvency of the Contractor is passed, or any petition for winding up or insolvency of the Contractor is admitted by a court of competent jurisdiction and a provisional liquidator or receiver or interim resolution professional, as the case may be, is appointed and such order has not been set aside within 90 (ninety) days of the date thereof or the Contractor is ordered to be wound up by court except for the purpose of amalgamation or reconstruction; provided that, as part of such amalgamation or reconstruction, the entire property, assets and undertaking of the Contractor are transferred to the amalgamated or reconstructed entity and that the amalgamated or reconstructed entity has unconditionally assumed the obligations of the Contractor under this Agreement; and provided that:

i. the amalgamated or reconstructed entity has the capability and experience necessary for the performance of its obligations under this Agreement; and

ii. the amalgamated or reconstructed entity has the financial standing to perform its obligations under this Agreement and has a credit worthiness at least as good as that of the Contractor as at the Appointed Date;

(n) any representation or warranty of the Contractor herein contained which is, as of the date hereof, found to be false or the Contractor is at any time hereafter found to be in breach or non-compliance thereof;

(o) the Contractor submits to the Authority any statement, notice or other document, in written or electronic form, which has a material effect on the Authority's rights, obligations or interests and which is false in material particulars;

(p) the Contractor has failed to fulfil any obligation, for which failure Termination has been specified in this Agreement; or

(q) the Contractor commits a default in complying with any other provision of this Agreement if such a default causes a Material Adverse Effect on the Project or on the Authority.

(r) gives or offers to give (directly or indirectly) to any person any bribe, gift, gratuity, commission or other thing of value, as an inducement or reward:

i. for doing or forbearing to do any action in relation to the Contract, or

ii. for showing or forbearing to show favour or disfavour to any person in relation to the Contract,

or if any of the Contractor's personnel, agents or subcontractors gives or offers to give (directly or indirectly) to any person any such inducement or reward as is described in this sub-paragraph (s). However, lawful inducements and rewards to Contractor's Personnel shall not entitle termination.

(ii) Without prejudice to any other rights or remedies which the Authority may have under this Agreement, upon occurrence of a Contractor Default, the Authority shall be entitled to terminate this Agreement by issuing a Termination Notice to the Contractor; provided that before issuing the Termination Notice, the Authority shall by a notice inform the

Contractor of its intention to issue such Termination Notice and grant 15 (fifteen) days to the Contractor to make a representation, and may after the expiry of such 15 (fifteen) days, whether or not it is in receipt of such representation, issue the Termination Notice.

(iii) The following shall apply in respect of cure of any of the defaults and/ or breaches of the Agreement:

(a) The Cure Period shall commence from the date of the notice by the Authority to the Contractor asking the latter to cure the breach or default specified in such notice;

(b) The Cure Period provided in the Agreement shall not relieve the Contractor from liability for Damages caused by its breach or default;

(c) The Cure Period shall not in any way be extended by any period of suspension under the Agreement;

(d) If the cure of any breach by the Contractor requires any reasonable action by the Contractor that must be approved by the Authority hereunder the applicable Cure Period (and any liability of the Contractor for damages incurred) shall be extended by the period taken by the Authority to accord its required approval.

(iv) After termination of this Agreement for Contractor Default, the Authority may complete the Works and/or arrange for any other entities to do so. The Authority and these entities may then use any Materials, Plant and equipment, Contractor's documents and other design documents made by or on behalf of the Contractor.

27. A plain reading of Clause 23 shows that termination is not an unconditional contractual right exercisable at the discretion of the Respondent in this contractual relationship. Clause 23 provides that where any of the specified defaults occurs i.e. 23.1 (a) to (r), the Contractor must be notified of the alleged default and should be granted the applicable cure period. Only upon failure to cure the default can further action, including issuance of a Notice of Intention

to Terminate, be undertaken. Upon termination, NHAI may complete the balance works itself or through another agency.

28. As per petitioner, since this clause envisage a detailed termination procedure, the present Contract cannot be regarded as determinable, while the respondent maintains a stance that similar highway contracts have been regarded as determinable by various authorities and submits that contractual termination rights, even when coupled with procedural safeguards, do not take the contract outside the scope of Section 14(d) of the Specific Relief Act.

29. This court finds that although, respondent has been able to highlight judgments where contracts with similar framework have been regarded as determinable, however, on the common question of what constitutes a contract in its nature "determinable" under Section 14(d), the Supreme Court's interpretation in ***Manjunath*** (supra) binds all the judgment relied upon by the respondent wherein the court has clarified distinction between contracts which are terminable at will and contracts which can be terminated only upon occurrence of specified events of default.

30. In ***Manjunath***(supra) the Supreme Court, while considering the nature of determinability under Section 14(d), observed that contracts inherently revocable or terminable without cause would fall within the category of determinable contracts. However, contracts which can be terminated only upon breach, after issuance of notice and grant of

opportunity to cure, do not become determinable merely because they contain a termination clause. The relevant observations of the apex court in this regard are reproduced below as the same calls for a read:

> *"64. In this backdrop, it would be useful to advert to the classification set out in A. Murugan (supra), wherein the Madras High Court categorised contracts into five broad classes depending on their ease of determinability. Out of those, the first two i.e., (i) contracts inherently revocable such as licences and partnerships at will, and (ii) contracts terminable unilaterally on a "without-cause" basis, were held to be determinable in nature. The remaining classes, namely, (iii) contracts terminable for cause without provision for cure, (iv) contracts terminable for cause with notice and opportunity to cure, and (v) contracts without a termination clause but terminable only for breach of a condition, were all held not determinable in nature.*
>
> *65. Further, as laid down in DLF Home (supra), the question whether a contract is in its nature determinable lies in ascertaining whether the party against whom specific performance is sought has the right to terminate the contract even when the other party is ready and willing to perform. This means if the contract cannot be terminated so long as the other party stands willing to perform, it is not determinable in its nature and would, in equity, be specifically enforceable. The same reasoning was followed in Affordable Infrastructure (supra), where it was held that a contract terminable for breach cannot merely for that reason be regarded as determinable, otherwise, no contract could ever be specifically enforced.*
>
> *(emphasis supplied)*

31. Applying the principle laid down in ***Manjunath*** (supra), the mere inclusion of Clause 23, which provides for termination upon specified events of default and incorporates a cure and representation mechanism does not, render the EPC Contract inherently determinable within the meaning of Section 14(d) of the Specific Relief Act, 1963. Termination is permissible only upon occurrence of defined causes and after compliance with the prescribed cure and representation

process. The decision in ***Manjunath***(supra) therefore squarely applies to the contract between the parties.

32. Consequently, this Court is of the view that the contract is not determinable in nature.

33. Having said that, according to this Court, the stage is set now for determination of any *prima facie* in favour of Petitioner as the non-determinable nature only removes the statutory objection based on determinability.

34. To decide whether any *prima facie* exists, this Court shall consider Sections 20A and 41(ha) of Specific Relief Act,1963, and whether the Respondent followed the contractual termination mechanism.

35. The Petitioner's principal contention is that the Cure Period Notice dated 02.01.2026 was premature as Milestone-III was schedule for 11.01.2026 under the Settlement Agreement dated 25.04.2025 and the additional grace period under Clause 10.3(ii) had not expired. According to the Petitioner, no breach or default under Clause 23.1(i)(c) could have arisen on 02.01.2026, as the milestone obligation had not yet fallen due.

36. The respondent, however, disputes this contention and submits that the Cure Period Notice was not issued under Clause 23.1(i)(c),

relating to failure to achieve a project milestone, but was based upon independent defaults under Clauses 23.1 (i) (d), (e), (g) & (q), i.e including failure to proceed with the works, inadequate deployment of resources, failure to rectify defects and non-compliance with contractual obligations.

37. The Respondent's case is that the Cure Period Notice dated 02.01.2026 was not issued for failure to achieve Milestone III under Clause 23.1(i)(c), but for separate and already existing defaults covered by Clauses 23.1(i)(d), (e), (g) and (q). Therefore, according to learned counsel for respondent, the fact that Milestone III was due only on 11.01.2026 does not make the Cure Period Notice premature, because respondent was specifically not invoking the milestone provision.

38. It is undisputed that the premise of the Notice of Intention to Terminate rests upon the Cure Period Notice. Clause 23 of the agreement dated 17.10.2022 requires respondent to first notify the contractor of specified defaults and give the applicable cure period. If the Cure Period Notice was itself invalid, the Petitioner's case of pre-mature cure notice strengthens.

39. At this juncture, it would be beneficial, to examine the substance of the Cure Period Notice dated 02.01.2026, as the subsequent Notice of Intention to Terminate must be founded on the

same defaults identified in the Cure Period Notice. The relevant portion of cure period notice is reproduced below for perusal:

> *"Issuance of Cure Period Notice:*
>
> *37. Whereas despite the Authority's constant support and effort, the EPC contractor has consistently been in breach of its various obligations under the Contract Agreement and Settlement Agreement, consequent upon which the NHAI as also the Authority's Engineer had issued letters/notices calling upon the EPC Contractor to remedy the said breaches. It is on record that despite letters/notices having been issued expressly seeking curing of the said defaults, the EPC Contractor has even failed to respond to relevant points and also for taking any remedial action. EPC contractor has delayed the project work inordinately causing inconvenience to the commuters and bad name & lowering the Image of Authority in the eyes of public due to delay in completion of work.*
>
> *38. Whereas the "unprofessional and non-serious attitude" of the EPC Contractor towards the subject Project is not at all acceptable to Authority & Whereas despite the clear and unequivocal terms of the Contract Agreement, the EPC Contractor has failed to perform its obligations under the Contract Agreement including failure to expedite the progress of the work so as to complete the Project within Schedule/Revised Date, default in maintaining the Project stretch, abandonment of the Project site, non provisions of adequate road safety measures etc. thereby causing irreparable loss to the Authority. Whereas the EPC Contractor has consistently failed, despite the Authority's extension of all possible efforts to support the EPC Contractor to improve their cash flow. The Authority had always facilitated the EPC Contractor by providing necessary support. However, the EPC Contractor neither improved the progress of work nor submitted any satisfactory and acceptable justification for slow progress of work, non-maintenance of Project stretch and non-provision of road safety measures.*
>
> *39. In view of above facts and substances, it is apparent that there has been a consistent failure on the part of the EPC Contractor in compliance with the obligations of the Contract Agreement read with the Settlement Agreement & the EPC Contractor has breached on various fronts under the Contract Agreement, resulting into Contractor's defaults under Article 23.1.*

40. Whereas EPC Contractor has not deployed skilled and adequate technical manpower and sufficient resources for execution of work as set forth in the Contract Agreement at Site, improper planning and lack of manpower/equipment, slow progress of work, non-adoption of safety measures and neglect on the part of EPC Contractor in maintaining the project stretch in traffic worthy condition has invited public wrath, complaints from various organizations, bad news in News Media and News Paper about NHAI & slow progress of work, endangering safety of the Public/ Road users had left no other option to the Authority but to notify that EPC Contractor Mis Roadway Solutions India Infra Limited is in default & in breach of the Contract Agreement under Clause 4.1 (i),(ii),(iii),(vii)(c)(g), (viii) & (f),(ix),(xi),(xii), CL 4.4, Cl.4.10(i),Cl.9.1 & Cl.9.2, Cl.10.2, Cl.10.3(ii) & (iv) Cl.10.4(i), Cl.16.1 which have resulted into the Contractor Defaults under Clause 23.1 (i)(d),(e),(g) & (q).

41. Accordingly, the EPC Contractor is hereby called upon for curing the aforesaid defaults and breaches by not later than a period of 60 (Sixty) days of the receipt of this notice, failing which the Authority shall be entitled to take appropriate actions, including but not limited to issuance of "Intention to Issue the Termination notice" under clause 23.1 (ii), penal action as per clause 10.3(ii). 42. This "Cure Period Notice" under Contract Agreement Cl.23.1 (i)&(iii) is issued without prejudice to Authority's any other rights to claim damages for EPC Contractor's failure to comply with the unambiguous obligations cast upon it under the Contract Agreement read with the Settlement Agreement and/or realize any dues, losses and damages whatsoever or to exercise any other remedy, which may be available now or in future under the Contract Agreement or under the applicable laws or otherwise, as the case may be.

40. Upon perusal of the cure notice, this Court cannot accept the contention of the learned senior counsel for the Petitioner that the Cure Period Notice dated 02.01.2026 was necessarily premature merely because Milestone-III was due only on 11.01.2026 and had not expired on 02.01.2026.

41. The validity of the notice must be examined with reference to the defaults expressly invoked therein and not solely on the basis of the milestone provision. The chronology also assumes significance. The Cure Period Notice granted 60 days for curing the alleged defaults. The Notice of Intention to Terminate was issued only on 16.07.2026, after expiry of the said period. *Prima facie*, therefore, the Petitioner has not been able to show that the Respondent curtailed the cure period prescribed under Clause 23.

42. The learned senior counsel for the petitioner has also relied on Settlement Agreement dated 25.04.2025 to contend that the parties had agreed not to take coercive action arising from delay until expiry of the revised completion date. In view thereof, it would be beneficial to go through the settlement agreement dated 25.04.2025, the relevant clauses of the settlement agreement are reproduced below for perusal:

> *"3. TERMS OF SETTLEMENT AND OBLIGATIONS OF AUTHORITY AND CONTRACTOR.*
>
> *3.1. The parties agreed to the followings:*
>
> *(i) Authority shall grant extension of time for completion of project by 474 days from 11.01.2025 to 30.04.2026 and shifting the Project Milestones as under:*

Milestone	Percentage	Scheduled Date	Revised Date as per EOT
Milestone-III	70	24-09-2024	11-01-2026
Scheduled Completion	100	11-01-2025	30-04-2026

> *(ii) Contractor agreed to complete the entire project including COS works (i.e CoS 1&2) by 30.04.2026. Three parties viz Contractor, AE and Authority to expedite and ensure that CoS order is issued within 30 days of this agreement. However,*

Contractor would proceed with CoS works without awaiting CoS order.

(iii) CoS 3 related to Shifting of Water Supply Pipeline and Electrical utility is under consideration of Authority. The Contractor agreed to complete the CoS-3 work within the revised Scheduled Completion date i.e 30.04.2026, if CoS -3 order is issued within 90 days of signing of this Settlement Agreement.

(iv) The Contractor also agreed to complete the work in hindered length of 6.947Km within the extended scheduled date of completion subject to removal of hindrances by the Authority by 15.06.2025.

(v) The Contractor undertakes to submit the methodology for overlay on existing rigid pavement as per clause 5.3.1, within 15 days of this agreement and further undertake to start the overlay on existing rigid pavement within 30 days from this agreement.

(vi) Authority agreed to release the Proportionate Performance Security Bank Guarantee & Additional Performance Security Bank Guarantee within 20 days of this agreement in view of descoped works amounting to 161.080 Cr.

(vii) No bonus shall be payable in this Contract.

(viii) Both parties agreed not to impose any damages till 30.04.2026 and waive off damages already imposed on each other i.e Rs 96.37 Cr claimed by Authority and Rs. 6.75 Cr Claimed by Contractor.

(ix) NHAI agreed for price escalation till 30.04.2026 as per the provisions of Contract Agreement since AE/PO/RO have intimated that the delay is concurrent delay.

(x) In reciprocation of above considerations, contractor agreed not to claim any prolongation cost such as idling of plant, machinery, overheads, loss of profit or any other claims under any clause of Contract Agreement, of entire EOT period from scheduled date of Completion Date i.e. 11.01.2025 to actual date of completion of project. Contractor also agreed not to impose any damages for delay in fulfilment of conditions precedent by NHAI including delay in handing over of encumbrance free land.

3.2 Each party hereby confirms that it does not have any residual, pending or any other claims, demands, disputes or differences against each other in respect of Contract Agreement and all claims, demands, disputes etc. of the Contractor including that arising out of in relation to the Contract Agreement against the

> *other party namely Authority stands settled without any further recourse whatsoever as on date.*
>
> *3.3 The terms and conditions of the Contract Agreement dated 17.10.2022 are modified to the above extent only. It is clarified that all other terms and conditions of the Contract Agreement dated 17.10.2022, save and except the terms and conditions expressed and agreed upon between the parties in this Settlement Agreement, shall remain unaltered/unchanged and remain binding on the parties. This Settlement Agreement is an integral part of the Contract Agreement dated 17.10.2022. In case of conflict between the provision of this Settlement Agreement and related provision of Contract Agreement, the provision of the Settlement Agreement will prevail."*

43. Upon a perusal of the Settlement Agreement also, it can be curled out that it only extended the overall completion period to 30.04.2026 and shifted the date for Milestone-III to 11.01.2026. There is, however, no specific stipulation granting immunity from all contractual defaults or preventing invocation of Clause 23 on account of independent breaches. Therefore, the Settlement Agreement, *prima facie*, cannot be interpreted as preventing the Respondent from invoking Contractor Defaults under Clauses 23.1(i)(d), (e), (g) and (q), if such defaults had independently arisen.

44. This court is not required, at this stage, to determine the correctness of such allegation. The Arbitral Tribunal would be the appropriate forum to determine the alleged faults. The interim proceedings under section 9 cannot be converted into a forum for determining such disputes questions. The grant of relief under Section 9 is discretionary and must satisfy the settled principle governing

injunctions, including prima facie case, balance of convenience and irreparable injury.

45. Even though this Court has *prima facie* found that the Contract is not rendered determinable merely because it contains a termination mechanism, the same does not conclude the issue. The grant of interim relief under Section 9 of the Arbitration and Conciliation Act, 1996 remains subject to the settled principles governing injunctions, including the statutory restrictions contained in the Specific Relief Act, 1963.

46. The Respondent has relied upon Section 20A and 41(ha) of the Specific Relief Act to contend that no injunction ought to be granted where such injunction would impede or delay completion of an infrastructure project. The present Contract admittedly relates to construction of a highway project, which falls within the category of infrastructure projects contemplated under the Specific Relief Act. Therefore, while considering interim relief, the Court is required to balance the contractual rights asserted by the Petitioner against the large public interest involved in ensuring timely completion of the infrastructure project.

47. Even otherwise, the Division bench of this Court in ***National Highways Authority of India v. Roadway Solutions India Infra***

Limited,[5] considered a similar issue arising from termination of a highway project contract. It held that Sections 20A and 41(ha) of the Specific Relief Act place clear fetters on granting injunctions that would delay infrastructure projects, even where a contractor may have a *prima facie* case. The Court further held that if termination is ultimately found to be wrongful, the contractor can be compensated through an arbitral award, whereas delay in completion of a highway project causes larger public loss. The principle laid down is equally applicable in the present case. The relevant portion of the judgment is reproduced below:

> *"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 (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:*

[5] **FAO(OS)(COMM) 4/2026**

> *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."

48. The Petitioner's contention that continuation of the existing contractor would avoid delay and no prejudice would be cause since an alternative agency has not yet been appointed cannot, at this stage,

outweigh the statutory mandate contained in Sections 20A and 41(ha) of the Specific Relief Act. The court cannot presume that continuation of the existing arrangement would necessarily serve public interest, particularly when the Respondent asserts continuing defaults affecting progress of the highway project.

49. Further, the Supreme Court in the case of ***N.G. Projects Ltd. v. Vinod Kumar Jain***[6]**,** has also emphasized that public infrastructure projects should not be stalled by interim order and that courts must exercise restraint while interfering with public works. The relevant paras of the judgment are reproduced:

> *"21. Since the construction of road is an infrastructure project and keeping in view the intent of the legislature that infrastructure projects should not be stayed, the High Court would have been well advised to hold its hand to stay the construction of the infrastructure project. Such provision should be kept in view even by the Writ Court while exercising its juris- diction under Article 226 of the Constitution of India.*
>
> *Xxxxx*
>
> *26. A word of caution ought to be mentioned herein that any contract of public service should not be interfered with lightly and in any case, there should not be any interim order derailing the entire process of the services meant for larger public good. The grant of interim injunction by the learned Single Bench of the High Court has helped no-one except a contractor who lost a contract bid and has only caused loss to the State with no corresponding gain to anyone."*

50. Thus, keeping in mind that the injury asserted by the Petitioner is principally commercial and as the present contract relates to public works particularly highway project, restraining the Respondent from proceeding further or a restraining order against termination may

delay completion of the highway project and adversely affect public interest.

Conclusion

51. Henceforth, in view of the above discussion, this Court is unable to make out a *prima facie* case in favor of petitioner.

52. Taking into consideration, Section 20A and Section 41(ha) of the Specific Relief Act, the balance of convenience tilts in favour of respondent and the public in large and this Court is unable to make out any irreparable injury or loss that cannot be compensated in terms of money.

53. This Court is unable to grant the restraint sought against the Notice of Intention to Terminate dated 16.07.2026, accordingly, the interim relief sought by the Petitioner is declined.

54. Accordingly, the present petition is dismissed, along with any pending application.

55. Needless to state, the opinion and observation made herein are only *prima facie* and limited to the adjudication of the present petition. All rights and contentions of the parties, on all issues, are left open for determination by the Arbitral Tribunal.

OM PRAKASH SHUKLA, J

JULY 30, 2026/*ss*/pa

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[6] **(2022) 6 SCC 127**