



**HIGH COURT OF JUDICATURE FOR RAJASTHAN
BENCH AT JAIPUR**

D.B. Civil Miscellaneous Appeal No. 1879/2026
URN: CMA / 3371U / 2026

M/s Bhimji Velji Sorathia Construction Private Limited, M/s. Rajkamal Builders Infrastructure Pvt. Ltd. (Jv), Registered Office- Plot No. 112-113, Survey No. 10/2 And 10/3, Arbuda Nagar, Village- Antarjal, Taluka Gandhidham (Kutch), Gujarat- 370205 Through Its Authorized Representative Sh. Ramesh Bhimjibhai Hadiya.

----Appellant

Versus

1. Ministry Of Road Transport And Highways, Government Of India, Through Secretary (Road Transport And Highways), Room No. 509, Transport Bhawan, 1, Parliament Street, New Delhi- 110001.
2. Chief Engineer, (National Highways And Public Private Partnership) Public Works Department, Government Of Rajasthan, Office Of Chief Engineer, Nirman Bhawan, Jacob Road, Civil Lines, Jaipur- 302006.

----Respondents

For Appellant(s)	:	Mr. Vivek Dangi with Mr. Hitanshu Jatav
For Respondent(s)	:	Mr. Alok Garg

**HON'BLE MR. JUSTICE ARUN MONGA
HON'BLE MR. JUSTICE SANDEEP TANEJA**

Order (Oral)

03/07/2026

Per: Arun Monga, J

1. The appeal herein is directed against an order dated 15.04.2026 passed by learned Commercial Court No.1, Jaipur Metro-II, whereby the application filed by the appellant under Section 9 of the Arbitration & Conciliation Act, 1996(for short, 'the Act of 1996'), inter alia seeking interim relief qua stay on proposed coercive action pursuant to Notice dated 28.04.2025 of termination of contract awarded to appellant, was dismissed.
2. Brief facts first, as pleaded in the appeal. The Ministry of Road Transport and Highways (MoRTH) issued Tender Notice dated

05.02.2016 for construction of the Nagaur Bypass on NH-65 under an EPC contract. The Appellant's bid of ₹92 crores was accepted, a Letter of Award was issued on 31.03.2016, and an EPC Agreement dated 18.04.2016 was executed between the Public Works Department, Government of Rajasthan (acting for MoRTH) and the Appellant. The project comprised a 19.225 km stretch with three flyovers, one Railway Over Bridge (ROB) and thirty-six culverts. Work commenced from the Appointed Date of 07.09.2016, and the Appellant claims to have met the initial milestones.

2.1. Delays in execution are attributed to the Respondent's alleged failure to secure approvals for the ROB, shift utilities, including the high-tension line at the Athiyasan Flyover, and remove other hindrances. The Respondent granted extension of time under Clause 10.5 of the contract. The project was substantially completed by December 2020; the remaining approach to the Athiyasan Flyover was completed in April 2023 after shifting of a 133 KV high-tension line, which lay outside the original scope of work.

2.2. Despite completion and an application made in September 2020, the Respondent issued neither a Provisional Completion Certificate nor a Completion Certificate. In their absence, payments towards price variation, certified Interim Payment Certificates, mining NOC claims and other contractual dues were withheld, notwithstanding recommendations of the concerned officers. The Appellant was also obliged to continue maintaining the project highway without receiving the maintenance payments contemplated under the contract.

2.3. The Respondent issued a Cure Period Notice dated 03.02.2023 and, following a joint inspection, a Notice of Intention to Terminate dated 23.05.2023. The Appellant carried out the required rectification works and submitted a detailed reply disputing the allegations. In

December 2023, an Independent Quality Auditor appointed by MoRTH reported the project to be physically and financially complete; subsequent communications merely required certain remedial works, without addressing the Appellant's requests for completion certificates or release of pending payments.

2.4. The Respondent nevertheless issued a Termination Notice dated 28.04.2025, followed by a notice dated 01.05.2025 for encashment of the performance bank guarantee.

3. Aggrieved, the Appellant filed an application under Section 9 of the Arbitration and Conciliation Act, 1996 (Civil Misc. Application No. 84/2025) before the Commercial Court No. 1, Jaipur Metro-II on 17.05.2025, seeking interim protection against coercive action. During its pendency, the Respondent issued a Show Cause Notice dated 26.12.2025 proposing to declare the Appellant a non-performer and debar it from future contracts.

4. The Appellant thereupon invoked the contractual dispute resolution mechanism, initiating conciliation, invoking arbitration under Section 21, and filing S.B. Arbitration Application No. 36/2026 under Section 11 before this Court on 06.03.2026 for appointment of an independent arbitrator.

5. By order dated 09.01.2026, the learned Commercial Court directed the parties to maintain status quo. On 13.03.2026, this Court, in D.B. Civil Misc. Appeal No. 747/2026 preferred by the Respondents, stayed that order ex parte.

6. As it turned out, on 14.04.2026, the Respondents passed a final order blacklisting / debarring the Appellant and declaring it a non-performer for two years, and on 15.04.2026 the Commercial Court dismissed the Section 9 application. Hence this appeal.

7. In the aforesaid backdrop we have heard the rival contentions and perused the case file. Learned counsel for appellant, *inter alia*, argues that blacklisting of the appellant is a death knell for its business activities and amounts to loss of livelihood and violative of fundamental right enshrined under Article 21 of the Constitution of India. He seeks stay and quashing of blacklisting order dated 14.04.2026.

8. Pertinently, the blacklisting order of 14.04.2026 was passed while the Section 9 proceedings were pending, indeed, after arguments had been heard and while pronouncement was awaited. Though the Show Cause Notice preceded it, no injunction against the proposed blacklisting was granted.

9. In course of hearing, on a Court query to learned counsel for the appellant, as to whether the Section 9 application was amended and/or otherwise the subsequent developments brought on record, it transpires that there was simply no occasion to do so. Given the sheer suddenness of events, we are one with the submission that the Appellant was placed in a genuine predicament.

10. Be that as it may, the fact remains, that no prayer for injunction against blacklisting was made before the learned Commercial Court, nor was the blacklisting order before that Court for adjudication on merits. Relief against the blacklisting is therefore being sought for the first time before us, in appellate jurisdiction.

11. It is borne out that the subsequent blacklisting has rendered the earlier Section 9 prayers, which are under adjudication vide instant appeal, as substantially infructuous. For ready reference, the prayer under Section 9 application of the Act of 1996 is reproduced hereunder:-

"i. Pass an ex-parte interim injunction in favour of the Applicant, restraining the Respondent No.1 & 2 from taking any coercive action against the Applicant, in pursuance of the Notice of Termination dated 28.04.2025;

- ii. Pass an ex-parte ad interim injunction in favour of the Applicant, restraining the Respondent No.1 & 2 from executing any further contract or agreement for carrying out completion or rectification works on Nagaur bypass from existing km 166/260 to km 180/500 of NH-65 at the risk and cost of the Applicant Company;*
- iii. Direct the Respondent No.2 to restore the Bank Guarantee No. No.216GT02172900001 dated 17.10.2017 of the Applicant amounting to Rs.2,52,00,000/- and the Applicant undertakes to keep the same alive till the resolution of disputes by Conciliation or Arbitration;*
- iv. In the alternative, the Respondent No.2 may be directed to refund the sum of Rs.2,52,00,000/- to the Applicant Company, which shall then submit a fresh Bank Guarantee of equivalent amount to the Respondents and shall also undertake to keep it alive till the resolution of disputes by Conciliation or Arbitration;*
- v. Award any cost of the present application to the Applicant Company;*
- vi. Any other appropriate order or direction which may be considered just and proper in the facts and circumstances of the case may also kindly be issued in favour of the Applicant."*

12. A perusal of the above reflects that, Prayer (i) thereof sought restraint against coercive action pursuant to the Termination Notice dated 28.04.2025; the coercive action contemplated was the blacklisting itself, which has since been carried out. Whereas Prayer (ii) i.e., restraining the Respondents from awarding the completion or rectification works on the Nagaur Bypass (km 166/260 to km 180/500 of NH-65) to another contractor at the Appellant's risk and cost, is consequential to the blacklisting. Once blacklisted, the Appellant cannot seek an injunction restraining the Respondents from executing further contracts. The remaining prayers concerned restoration or refund of Bank Guarantee No. 216GT02172900001 dated 17.10.2017 for ₹2,52,00,000, with an undertaking to keep it alive pending resolution of disputes.

13. In the peculiar premise, the appeal is disposed of with liberty to the Appellant to file a fresh application before the learned Commercial Court to agitate its cause against the blacklisting, if arbitration proceedings have not yet commenced between the parties and / or institute any other proceeding which it may deem fit, in accordance with law, if so advised.

14. In the parting, we may also add here that if arbitration has already commenced, the Appellant is at liberty so seek appropriate interim relief from the Arbitral Tribunal, or alternatively from the learned Commercial Court, which is the court of first instance. It is not for this Court, in appellate jurisdiction, to directly entertain such a prayer in the present appeal as passing of blacklisting order is a fresh cause of action.

15. With these observations, the appeal stands disposed of.

16. All pending applications, if any, also stand disposed of.

(SANDEEP TANEJA),J

(ARUN MONGA),J