

ITEM NO.48

COURT NO.17

SECTION XIV

S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS

Petition(s) for Special Leave to Appeal (C) No.2840/2026

[Arising out of impugned final judgment and order dated 13-01-2026 in FA0(OS)(COMM) No. 4/2026 passed by the High Court of Delhi at New Delhi]

ROADWAY SOLUTIONS INDIA INFRA LTD.

Petitioner(s)

VERSUS

NATIONAL HIGHWAY AUTHORITY OF INDIA NHAI

Respondent(s)

FOR EXEMPTION FROM FILING C/C OF THE IMPUGNED JUDGMENT ON IA 16674/2026 FOR PERMISSION TO FILE ADDITIONAL DOCUMENTS/FACTS/ANNEXURES ON IA 18752/2026

IA No. 16674/2026 - EXEMPTION FROM FILING C/C OF THE IMPUGNED JUDGMENT

IA No. 18752/2026 - PERMISSION TO FILE ADDITIONAL DOCUMENTS/FACTS/ANNEXURES

Date : 02-02-2026 This matter was called on for hearing today.

CORAM : HON'BLE MR. JUSTICE K.V. VISWANATHAN
HON'BLE MR. JUSTICE VIPUL M. PANCHOLI

For Petitioner(s) : Mr. C. Aryama Sundaram, Sr. Adv.
Mr. Samir Malik, Adv.
Mr. Varun Kalra, Adv.
M/S. D.S.K. Legal, AOR

For Respondent(s) : Mr. Tushar Mehta, SG (N/P)
Mr. Ankur Mittal, Adv.
Mr. Abhay Gupta, Adv.
Mr. Sucharu, Adv.
Mr. Ankur Saboo, Adv.
Ms. Ipshita Dutta, Adv.
Mr. Aviraj Pandey, Adv.
Ms. Medha Pushkarna, Adv.
Ms. Paromita Majumdar, AOR

UPON hearing the counsel the Court made the following
O R D E R

1. Heard Mr. C. Aryama Sundram, learned Senior Counsel appearing for the petitioner.
2. The present Special Leave Petition calls in question the correctness of the order dated 13.01.2026 in FA0(OS)(COMM) No. 4 of 2026 passed by the High Court of Delhi at New Delhi. By the said judgment, the Division Bench of the High Court while setting aside the judgment of the Single Judge made the following operative order:

"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."

3. The dispute itself arose out of a Section 9 petition filed by the petitioner herein seeking to restrain petitioner from giving effect to the notice of intention to terminate dated 23.12.2025 with respect to the contract dated 19.01.2024 and for other reliefs. The relief prayed for under Section 9 of the Arbitration and Conciliation Act, 1996 are extracted hereinbelow:

"(a) Pass an order of appropriate interim measure, staying forthwith the operation and effect of the Notice of Intent to Terminate dated 23.12.2025, issued by the Respondent, with respect to the Contract dated 19.01.2024;

(b) Pass an order of appropriate interim measure staying forthwith the invocation of the insurance Surety Bond dated 09.09.2024 bearing No.06-25-1908-6621-00000001 issued for an amount of Rs.36.84 Crores submitted by the Petitioner to the Respondent and Surety Bond dated 29.10.2024 bearing 06-25-190 8-6621-00000002 issued for an amount of Rs.67.54 Crores submitted by the Petitioner to the Respondent;

(c) pass the above orders ex-parte; and/or Pass any other order/direction which this Hon'ble Court may deem

just, fair and equitable in the aforesaid facts and circumstances."

4. As pointed out above, the learned Single Judge granted the relief. The Division Bench while setting aside that portion of the order restraining respondent No.1 from terminating the contract, granted certain protection to the petitioner herein..

5. The impugned order was passed on 13.01.2026. The Special Leave Petition was filed on 16.01.2026. However as on today, we are informed by Mr. Ankur Mittal, learned counsel for respondent No.1 that by a notice of 17.01.2026, the contract was terminated.

6. Today, Mr. C. Aryama Sundaram, learned Senior Counsel expressed an apprehension that if the termination is understood to be a disqualification for participation in future tenders, it would work enormous hardship to the petitioner.

7. During the course of the submissions, both the petitioner and respondent voluntarily submitted to the Court that since each party has nominated their arbitrators, all that remains is to nominate a Chairman. Parties left it to this Court to appoint a Chairman who will preside over the Arbitral Tribunal.

8. After giving due consideration, we appoint Hon'ble Justice Mr. L. Nageswara Rao, retired Judge of this Court to act as the Presiding Arbitrator.

9. All grievances of the parties can be agitated before the Arbitrator. All disputes are left open for the Presiding Arbitrator to decide. Needless to say that Arbitrator will decide in accordance with law, uninfluenced by any other observations. All issues are kept open.

10. In view of the present order, nothing survives in the Section 9 petition pending before the High Court. The Division Bench order dated 13.01.2026 in FAO(OS)(COMM) No.4 of 2026 will operate until it is modified by the arbitral tribunal.

11. Special Leave Petition is disposed of in above terms.
12. Pending application(s), if any shall stand disposed of.

(VIJAY KUMAR)
ASTT. REGISTRAR-cum-PS

(MANOJ KUMAR)
COURT MASTER (NSH)