2026:DHC:7350

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

% Judgement reserved on: **19.08.2026**
Judgement delivered on: **01.09.2026**

\+ O.M.P.(I) (COMM.) 145/2026

DC MULTI MODAL PARK PVT LTD ......Petitioner

versus

MAHARASHTRA MMLP PVT. LTD & ANR. ....Respondents

Advocates who appeared in this case:

For the Petitioner: Mr. Kirtiman Singh, Senior Advocate with Mr. Amber Sachdeva, Mr. Cauuery Rawal and Mr. Maullick, Advocates alongwith Mr. Mudit P./AR.

For the Respondents: Mr. Arun Kumar Verma, Senior Advocate Mr. Abhishek Kumar, Ms. Twinkle Kataria, and Mr. Kunal, Advocates for R-1.

Mr. Rajiv Nayar, Senior Advocate with Mr. Mayank Jain, Mr. Madhur Jain, Mr. Saurabh Seth, Mr. Arpit Goel, Mr. Deepak Jain and Mr. Showmik Choudhary, Advocates for R-2.

CORAM:
HON'BLE MR. JUSTICE TUSHAR RAO GEDELA

J U D G E M E N T

TUSHAR RAO GEDELA, J.

1. The present petition has been filed under Section 9 of the Arbitration and Conciliation Act, 1996 (hereinafter referred to as *"the Act"*) seeking interim measures on account of termination of the Concession Agreement dated 12.12.2023 by the respondent no.1, Maharashtra MMLP Private Limited.

2. Facts leading to filing of the present petition are as under:

a. National Highways Logistics Management Limited and Jawaharlal Nehru Port Trust on 22.10.2021 executed a Memorandum of Understanding for the development of a Multi Modal Logistics Park at Sindhi, Nagpur through a Special Purpose Vehicle, subsequently incorporated as Nagpur MMLP Pvt. Ltd. (now respondent no.1).

b. On 27.06.2023, the respondent no.1 invited proposals (for short "NIT") for selection of bidders to design, build, finance, operate and transfer (for short "DBFOT") a Multi Modal Logistics Park, and accepted the bid of one M/s Deltabulk Shipping India Private Limited on 10.11.2023. It is also stated to have issued a Letter of Award ("LoA") *vide* which the bidder granted the right to DBFOT.

c. Consequently, the petitioner company was incorporated on 28.11.2023 to act as the "Concessionaire" for the said project, and thereafter, the petitioner and the respondent no.1 entered into a Concession Agreement on 12.12.2023, whereunder the Concessionaire was granted the exclusive right, license and authority to design, finance, operate and maintain the project and provide services for a period of 45 years from the appointed date *vide* Clause 3.1.1. As per the "Scheduled Completion Date" under the agreement, the Concessionaire was to complete Phase I in 24 months from the date of appointment i.e. 10.07.2026. The said agreement also categorically stipulated that in case Phase I was left incomplete, and commercial operation date does not commence within 270 days from the Scheduled Completion Date, the respondent no.1 shall be entitled to terminate the agreement.

d. It is stated that In terms of the LoA dated 10.11.2023 as well as the Concession Agreement dated 12.12.2023, the Concessionaire deposited the Performance Security amount of Rs 4,11,70,808/- on 18.04.2024. Pursuant to the handover of 150.42 acres of land by the Authority to the Concessionaire, as well as the achievement of the financial closure on 24.05.2024, the Authority declared 11.07.2024 as the appointed date for Phase I of the project.

e. It is further stated that as per Schedule-G of the agreement, which details the Project Completion Schedule, is to be developed in three phases: i) Phase I – 79.59 acres [to be completed within 730 days from the appointed date 11.07.2024 i.e. on or before 10.07.2026 ('Scheduled Completion Date'); ii) Phase II – 36.06 acres [to be completed on or before 10 years from the appointed date]; and iii) Phase III – 34.77 acres [to be completed on or before 15 years before the appointed date. In so far as Phase I is concerned, which is to be completed on or before 10.07.2026, Schedule-G envisages the same to be achieved in four stages i.e. Project Milestone I-IV.

f. It is stated that Clauses 12.6.3, 12.6.4, 12.6.5 as well as Clause 15.2 of the Concession Agreement categorically provides for an elaborate and detailed procedure to be followed in case there is a delay in achieving any project milestone as provided under Schedule-G.

g. It is the case of the petitioner that the bare reading of these clauses does not postulate immediate termination of the Concession Agreement in the event there is a delay in achieving the project milestone. It is stated that the Authority can only invoke its power to terminate in the eventuality that the Concessionaire fails to complete the project/obtain the completion certificate. It is stated that the respondent no.1 terminated the agreement *vide* notice of termination dated 18.09.2025.

h. Being aggrieved by the said termination, the petitioner had preferred the petition bearing O.M.P.(I) (COMM.) 417/2025 for interim relief before this Court under Section 9 of the Act (hereinafter referred to as *"First Petition"*). This Court *vide* the order dated 02.12.2025, directed both the parties to nominate their respective Nominee Arbitrators for the arbitration proceedings for the resolution of the dispute.

i. Thereafter, as per the direction of this Court, petitioner initiated the process of arbitration and had nominated Justice (Retd.) G.S. Sistani as one of the Arbitrators. However, while the arbitration proceedings were underway, the respondent no.1 issued a fresh NIT for the said project, and that the respondent no.2 emerged as the successful bidder.

j. That, being aggrieved by the re-bidding of the said project and offering of the project to the respondent no.2, the petitioner has preferred the present petition.

3. Mr. Kirtiman Singh, learned senior counsel appearing for the petitioner stated that *vide* the order dated 19.05.2026, this Court passed a direction that *status quo* shall be maintained by the parties till the next date of hearing on the understanding that despite issuance of LoA dated 18.03.2026 in favour of the respondent no.2, the final contract pursuant thereto, is yet to be signed.

4. Learned senior counsel also drew attention of this Court to the order dated 01.06.2026 of the Division Bench of this Court passed in FAO(OS) (COMM) 153/2026 whereby the order dated 19.05.2026 passed by the learned Single Judge

in the present petition was assailed by the respondent no.1. Relying on the said order, learned senior counsel also stated that the petitioner herein was permitted to file an appropriate application before this Court for treating the present petition as an application under Section 17 before the learned Arbitral Tribunal.

5. He also stated that the learned Division Bench took note of the fact that the parties had nominated their respective arbitrators who were requested to nominate an umpire within a period of one week from the date of the receipt of that order.

6. Keeping in view the aforesaid and in pursuance of the observations noted by learned Division Bench in the order dated 01.06.2026, learned senior counsel would submit that the present petition be directed to be treated as a petition under Section 17, and be listed before the learned Arbitral Tribunal which is now constituted. He also submitted that the order dated 24.07.2026 of the learned Division Bench in FAO (OS) (COMM) 183/2026 directing this Court to hear this petition is clearly in alignment with the order dated 01.06.2026, in that, after hearing the parties this Court may, in terms of the observations in order dated 01.06.2026, direct that the present petition be treated as one under Section 17 of the Act, and direct the learned Arbitral Tribunal, already constituted, to decide the said petition finally.

7. He would submit that the interim order so granted by this Court *vide* the order dated 19.05.2026 be construed to be operative in the meantime, till the learned Arbitral Tribunal disposes of the application under Section 17 of the Act.

8. This submission of Mr. Singh, learned senior counsel for the petitioner, is vehemently opposed by Mr. Rajiv Nayar, learned senior counsel appearing for the respondent no.2.

9. Mr. Rajiv Nayar, learned senior counsel would contend that not only is the petitioner estopped under law from re-agitating or seeking identical prayers in the present petition, which is the second petition under Section 9 of the Act, but also on account of the conduct of the petitioner which does not instill confidence in the petitioner.

10. Contrary to the submissions made by Mr. Singh, learned senior counsel, Mr. Rajiv Nayar, learned senior counsel drew attention to the order dated 24.07.2026 of the learned Division Bench in FAO(OS) (COMM) 183/2026, wherein, respondent no.2 had challenged the order dated 19.05.2026 passed by this Court, whereby this Court was directed to decide the present petition. He would contend that the order dated 01.06.2026 was passed without giving an opportunity to the respondent no.2 to address its concerns. Thus, the observation made by the learned Division Bench on the statements made by the counsel for the petitioner herein or respondent no.1 may not bind the respondent no.2. He would insist that the order dated 24.07.2026 was passed in the presence of all the three parties to the appeal. Thus, according to him, this Court must hear the present petition and dispose of it on merits.

11. Drawing attention to the chronology of events, he would submit that the petitioner was well aware of the timelines. In that, petitioner was aware of the termination of its contract on 18.09.2025; that respondent no.1 had issued a fresh NIT for the balance works on 09.10.2025; and that the LoA was issued to the respondent no.2 on 18.03.2026 after the entire re-tendering process had completed. He would submit that all along, the petitioner kept waiting without initiating any legal proceeding against either of the respondents. He would submit that it was only when the time for execution of the Concession Agreement had become ripe that the present petition seeking stay had maliciously and mischievously been filed.

He forcefully contended that such a party does not deserve any latitude or indulgence, specially keeping in view the *malafide* behind such action.

12. Referring to the order dated 19.05.2026 passed by this Court, he canvassed that the reading of the order suggested that the Court had proceeded as if essentially there are only two central parties to the proceeding, i.e., the petitioner and respondent no.1. According to him, it is on that perception perhaps, this Court passed the *status quo* order.

13. Mr. Nayar, learned senior counsel then invited attention to certain facts, which according to him are disturbing and tantamount to unfair practices. He invited attention to the memo of parties to submit that the petitioner had correctly mentioned the details of the respondent no.2 including the email address. However, according to him, in order to deprive the said respondent from a fair opportunity to appear before this Court and effectively oppose the interim orders, no service was effected upon the respondent no.2. In support thereof, he drew attention to the proof of service attached to the petition, which was clearly conspicuous by the absence of any email address of the respondent no.2. Moreover, the affidavit of service was also glaringly silent as to the service to be effected upon respondent no.2 inasmuch as there is no mention of the email address of the respondent no.2 either. It was his vehement contention that with an oblique motive to deprive the respondent no.2 of an opportunity of hearing and to gain unfairly, that no service was effected at all. This conduct according to him, is reprehensible and violative of and contrary to the rules prescribed by this Court.

14. He, therefore, would submit that it is in these circumstances that the order dated 19.05.2026 came to be passed. He would stoutly submit that in the aforesaid circumstances, the interim *status quo* order be vacated forthwith as a party

indulging in such unfair practices is clearly disentitled from any discretionary relief.

15. Mr. Nayar, learned senior counsel, laid great emphasis on the objection that the present petition is not maintainable on the ground that the very same reliefs were sought in the First Petition, and was declined by the Court. He would contend that on 18.09.2025, the contract between petitioner and respondent no.1 was terminated by the respondent no.1. He stated that the petitioner filed the First Petition on 04.10.2025 against respondent no.1 herein seeking identical prayers as sought in the present petition. He would submit that the respondent no.1 floated a fresh NIT in respect of the balance works left for completion post-termination of the previous tender on 09.10.2025. He would submit that the issuance of fresh NIT was in the knowledge of the petitioner.

16. Learned senior counsel would submit that this Court *vide* order dated 02.12.2025, in the First Petition declined to grant any relief and relegated the parties i.e. the petitioner and the respondent no.1 to nominate their arbitrators and constitute a tribunal in accordance with Society for Affordable Redressal of Disputes (SAROD) Rules. It was further directed that the First Petition be treated as one under Section 17 of the Act within four weeks of entering reference. In other words, learned senior counsel would contend that this Court in the First Petition refused and declined to grant any relief to the petitioner. It was in that background, learned senior counsel would forcefully contend that a Second Petition under Section 9 of the Act is not at all maintainable for the same reliefs. Learned senior counsel had handed over the Bench a chart detailing the comparison of reliefs sought in both the Section 9 petitions filed by the petitioner. By referring to each of the reliefs, learned senior counsel would stoutly contend

that the prayers sought in both the petitions being identical, the present petition is barred. In that context, he relied upon the judgement of the Division Bench of Gujarat High Court in ***Time Cinemas and Entertainment Pvt. Ltd. v. Venus Infrastructure and Development Pvt. Ltd***., RFA No.3416/2021 dated 21.04.2022, and Delhi High Court in ***National Highways Authority of India NHAI v. Roadway Solutions India Infra Limited*** in FAO(OS) (COMM) 4/2026 dated 13.01.2026.

17. Apart from the above, learned senior counsel also emphasized that the agreement is in respect of Infrastructure Projects, and it is well-settled that in such projects no interim orders restraining the continuation or completion of works can be fathomed. In that context, learned senior counsel also brought attention of this Court to Section 20A and Section 41(ha) read with the Schedule to the Specific Relief Act, 1963 to submit that the proscription/bar from a Court granting injunction restraining infrastructure projects is now statutorily recognized and available.

18. Mr. Nayar, learned senior counsel also submitted that the various timelines and chronological events would clearly depict the *malafide* of the petitioner, and demonstrate the malicious and vexatious intention of the petitioner in filing the present petition. He would submit that the present petition be dismissed with exemplary costs so as to ensure such petitioners do not over reach the discretionary jurisdiction of the Court.

19. Mr. Arun Verma, learned senior counsel appears for the respondent no.1 and limits his arguments to the prayer (e) of First Petition, which has now been re-worded and re-phrased as prayer (c) in the present petition. In tandem with the arguments of Mr. Nayar, he too would submit that the same prayer in a re-worded

or a re-phrased manner cannot be permitted to be again taken in the present petition, once the identical relief was refused/declined in the First Petition.

20. This Court has heard the arguments of learned senior counsel for the parties and also perused the records with their valuable assistance.

21. So far as the orders of learned Division Bench dated 01.06.2026 and 24.07.2026, in FAO(OS)(COMM) 153/2026 and FAO(OS)(COMM) 183/2026 respectively, are concerned, it appears from the plain reading of the order dated 01.06.2026 that even before the respondent no.2 was heard, the appeal was disposed of on the statements tendered by learned senior counsel appearing for the petitioner as also the respondent no.1 herein. *Vide* the said order, the two nominated arbitrators, of the parties were directed to appoint an umpire within a week, based on the statements of the learned senior counsel. It is also to be noted that the parties through their learned senior counsel were *ad idem* that the respondent no.1 therein (petitioner herein) had agreed to move an application before this Court praying for a direction to treat the present petition as an application under Section 17 of the Act, and be placed before the learned Arbitral Tribunal.

22. It appears that once the respondent no.2 was served with the present petition, being aggrieved of the order dated 19.05.2026, had filed an appeal bearing FAO(OS)(COMM) 183/2026, wherein the following order dated 24.07.2026 was passed:

> *"1. With consent of learned Counsel for the parties, we dispose of this appeal with a request to learned Single Judge to hear arguments and take a decision on OMP (I) (Comm) 145/2026 on the next date fixed i.e. 10 August 2026.*
>
> *2. To facilitate the learned Single Judge, all learned Counsel are directed to place on record short notes of their respective submissions not exceeding five pages each, with cross reference to relevant PDF page numbers, after exchanging copies with*

> *each other at least two days in advance of the next date of hearing before the learned Single Judge.*
>
> *3. Replies to the Section 9 petition, if not filed shall be filed positively within a week from today with advance copy to learned Counsel for the appellant, who may file rejoinder thereto, if any, before the next date of hearing.*
>
> *4. The appeal stands disposed of in the aforesaid terms."*

23. It is clear from the above that there is a direction for this Court to dispose of the present petition after hearing the parties. This Court is of the considered opinion that the two orders of the learned Division Bench are not in conflict except for the fact that the respondent no.2 herein was not present before the learned Division Bench prior to the passing of the order dated 01.06.2026. In such circumstances, reading both the orders conjointly, it appears that the respondent no.2 is resisting the continuation of the interim order of *status quo* passed on 19.05.2026. It is also significant to note that the learned Division Bench could have directed the parties to directly approach the learned Arbitral Tribunal, once constituted, under the provision of Section 17 of the Act, however, consciously chose to direct this court to dispose of the present petition. It is in these circumstances that this Court has proceeded to hear the matter on merits.

24. According to this Court, the chronology of events is of utmost importance and significance.

25. It is admitted that the Concession Agreement dated 12.12.2023 executed between the petitioner and respondent no.1 was terminated on 18.09.2025. It is admitted before this Court by the learned senior counsel for the petitioner that the petitioner had knowledge of issuance of a fresh NIT by respondent no.1 in respect of the balance works, post termination of the said agreement. It is also not disputed that the petitioner had filed the First Petition on 04.10.2025 seeking various reliefs which are similar to the relief sought in the present petition. It is also not disputed

that this Court *vide* order dated 02.12.2025 had declined to grant any relief as prayed for by the petitioner, and relegated the parties to the learned Arbitral Tribunal which was to be constituted in terms of SAROD Rules by treating the said petition as an application under Section 17 of the Act within four weeks of the entering of reference by the learned Arbitral Tribunal.

26. Ostensibly, since no orders injuncting the respondent no.1 from proceeding and progressing with the fresh NIT issued on 09.10.2025 were available, the respondent no.1 completed all the formalities required therein. It is pertinent to note that on 27.02.2026, the technical qualifications of the respondent no.2 were verified and found fit to proceed to the next stage. On 02.03.2026, the financial bid of the respondent no.2 was opened, and consequently, selected. As a consequence thereof, on 18.03.2026, a LoA was issued to the respondent no.2. It is of great significance to note that despite having knowledge of the entire progression of the NIT, the petitioner did not challenge any of such proceedings post the order dated 02.12.2025. It was only when, as per letter dated 18.03.2026, the Concession Agreement was to be signed between respondent no.1 and respondent no.2, that the petitioner, *malafide*, filed the present petition seeking the same reliefs. Having regard to the aforesaid knowledge of the crucial timelines, this Court is of the *prima facie* opinion that the petitioner has filed the present petition mischievously, and with an oblique motive.

27. In the aforesaid context, it would be relevant to consider as to whether the present petition would also be maintainable in view of the fact that the relief sought in the First Petition, and the present petition are nearly identical. In that context, it would be relevant and worthwhile to extract hereunder the comparison

chart, which will clearly indicate the similarity of the prayers sought in both the petitions:-

Comparison of reliefs sought in both Section 9 petitions

Reliefs *qua* Termination

OMP(I)COMM 417/2025	OMP(I) COMM 145/2026
[prayer (a)] *Issue an ad-interim order of stay, staying the operation of the Termination Notice dtd. 18.09.2025 issued by the Respondent, Maharashtra MMLP Pvt. Ltd., terminating the concession agreement dtd. 12.12.2023, till adjudication of the legality/validity of the termination by the Arbitral Tribunal; and*	***[prayer (a)]*** *Issue ad-interim order of stay, staying the operation of the Termination Notice dated 18.09.2025 issued by the Respondent no. 1 Maharashtra MMLP Pvt. Ltd. terminating the concession agreement dated 12.12.2023 till the adjudication of the legality/validity of the termination by the Arbitral Tribunal.*
[prayer (b)] *Pass an appropriate order restraining the Respondent from acting in furtherance of the Termination Notice dtd. 18.09.2025 and/or taking any further coercive steps against the Petitioner herein;*	
[prayer (c)] *Pass an appropriate order and direct the Respondent Authority to permit the Petitioner to carry out the project development, and complete the pending milestones, by extending the timelines as permissible under the Concession Agreement;*	***[prayer (d)]*** *Pass an appropriate order and direct the Respondent no. 1 to permit the petitioner to carry out development, operation and maintenance of Multimodal Logistics Park(MMLP),Nagpur at Sindi, in Wardha District in the State of Maharashtra and complete mile stones to avoid deterioration, safety risk and cost escalation*

Reliefs qua Fresh Tender

[prayer (h)] *Pass an appropriate direction injuncting the Respondent Authority from engaging any third party for lesser than the minimum phasewise investment assured by the Petitioner in its financial close i.e. Rs. 577.02 crores (Phase 1 192.17 crores; Phase 2 170.25 crores; and Phase 3 - 214.60 crores)* ***[prayer (i)]*** *Pass an appropriate order to the effect that none of the contracts entered into by the Petitioner with third parties for utilizing the MMLP facility, pursuant to the partial COD, shall be terminated;* ***[prayer (g)]*** *Pass an appropriate direction injuncting the Respondent Authority from engaging any third party for lesser than the minimum guaranteed revenue share offered by the Petitioner herein i.e. Rs.365.89 Crore;* ***[prayer (f)]*** *Pass an appropriate direction restraining the Respondent Authority from modifying the scope of the Concession Agreement, while calling for fresh tenders / entering into a contract with a third party for completing the balance* ***[prayer (e)]*** *Pass an appropriate order directing the Respondent Authority to categorically and prominently mention at the beginning of any agreement it enters with any third party, replacing the Petitioner herein, for carrying out the remaining work pursuant to the termination notice dtd. 18.09.2025, that "The present agreement is subject to the determination of the validity of the termination notice dtd. 18.09.2025, by which Maharashtra MMLP Pvt. Ltd. terminated the Concession Agreement dtd. 12.12.2023 with DC Multi Modal Park (Nagpur) Pvt Ltd. The [contracting party] acknowledges and agrees that in case the termination notice dtd. 18.09.2025 is set aside, the present agreement shall stand lapsed with immediate effect and DC Multi Modal Park (Nagpur) Pvt Ltd. or its successors/assignees will be restored as the Concessionaire under the original Concession Agreement dtd. 12.12.2023, as if the termination had never taken place, and the [contracting party] shall have absolutely no claim whatsoever"*	***[prayer (b)]*** *Issue an ad-interim ex parte order restraining the Respondent No. 1 from giving effect to the re-bidding process (RFP Invitation dated 9-10-2015) and from entering into a New Concession Agreement with the new successful bidder i.e. Respondent no. 2 in respect to Tender ID 2025_NHAI_251673_1 till the disposal of Section -17 application of the Petitioner by the Arbitral Tribunal;* *[prayer (c)]* *Pass an appropriate order and direct maintenance of status quo with respect to the project till the time Arbitral Tribunal is constituted and adjudicates the issue of validity of termination;*

Other reliefs

[prayer (d)] *Pass an appropriate order restraining the Respondent Authority from encashing and appropriating the Bank Guarantee (BG No.088GT02241090001) of Rs. 4,11,70,808/- submitted by the Petitioner as performance security;*	

28. From a plain reading, it is more than evident that the petitioner failed to obtain any stay order against the respondent no.1 in respect of the Concession Agreement dated 12.12.2023, which was terminated, whether it was the stay against termination notice or acting in furtherance of the termination notice or a direction to permit petitioner to carry out project development or a direction to injunct respondent no.1 from engaging any third party so on and so forth.

29. In contradistinction, if one were to consider the prayers of the present petition, it leaves no manner of doubt that the petitioner has sought the very same relief which it had sought in the First Petition, which was declined. In the facts of the case, not only is this impermissible, but appears to be a clear attempt to overreach the discretionary power of this Court by seeking a relief, which was already denied once. It is to be noted that the petitioner has not placed on record the First Petition for a perusal of this Court, and has only placed on record the order dated 02.12.2025. In a way, the non-filing of the First Petition has deprived this Court of an opportunity to ascertain the similarity of reliefs.

30. Although, the aforesaid observations ought to be enough to vacate the *status quo* order dated 19.05.2026, and reject the present petition, however, there are certain other observations, which are required to be made.

31. Attention of this Court was drawn to Clause 36.9 of the Concession Agreement dated 12.12.2023 by the petitioner to submit that even post the termination, the petitioner can be permitted to carry on executing the contract and having regard to the fact that the respondents are yet to execute the Concession Agreement, the petitioner may be permitted to continue such execution. In the context, it would be apposite to consider Clause 36.9 of the said Agreement. The same reads thus:

"36.9 Continuity upon Termination

In case of Termination under Article 36 and notwithstanding pendency of any judicial/quasi-judicial proceeding, the Authority , shall be entitled to appoint/engage the services of another contractor to execute or complete the Project with or without appropriate changes or modifications and the same shall be without prejudice to the Concessioner's liabilities and obligations under Article 38 and similar such Articles. In case termination of this Agreement is set aside pursuant to legal or quasi-judicial proceedings, the Concessionaire shall be put to the same position as if such termination had never happened."

In the considered opinion of this Court, a plain reading of the said clause provides for two contingencies. One, the Authority is permitted to continue to complete the pending works notwithstanding the pendency of any judicial or quasi judicial proceeding through another entity, without prejudice to its own rights and at the risk of the Concessionaire; and two, the Concessionaire is entitled to be put back in the same position as it were, pre-termination, upon such termination being set aside by such judicial/quasi judicial authority. It needs to be understood that the two portions of Clause 36.9, though are interlinked, however, provide both, the Authority and the Concessionaire, their own rights.

In the first part, the Authority may proceed to complete the remaining/balance works/project keeping in view the interests of infrastructure development projects, if it deems it expedient to do so. In the second part, the Concessionaire is entitled to be put back as a Concessionaire for the balance period or for completion of the remaining works. There is a caveat to that. It cannot be perceived that having provided the right to the Authority to complete the balance works by another entity, the second part would also grant the Concessionaire the right to be put back to the date of termination, so far as the execution of balance or remaining works are concerned. In other words, for the period that may have been spent in proceedings for setting aside the termination, while the Concessionaire may be entitled to monetary compensation on the general principles of damages, however, once such termination is set aside, the Concessionaire would be entitled to continue the works from such date or any subsequent date when it is put back in possession, in terms of the order setting aside the termination.

This, in the humble opinion of this Court would balance the interests of both the parties and harmoniously integrate the rival rights, without any conflict as to the extent of rights and liabilities *qua* each other.

32. Section 20A as also Section 41(ha) of the Specific Relief Act, 1963 may also be required to be taken into consideration while assessing the merits of the present petition. The aforesaid sections are extracted hereunder:

> *"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.*
>
> *Explanation.—For the purposes of this section, section 20B and clause (ha) of section 41, the expression "infrastructure project" means the category of projects and infrastructure Sub-Sectors specified in the Schedule.*
>
> *(2) The Central Government may, depending upon the requirement for development of infrastructure projects, and if it considers necessary or expedient to do so, by notification in the Official Gazette, amend the Schedule relating to any Category of projects or Infrastructure Sub-Sectors.*
>
> *(3) Every notification issued under this Act by the Central Government shall be laid, as soon as may be after it is issued, before each House of Parliament, while it is in session, for a total period of thirty days which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session immediately following the session or the successive sessions aforesaid, both Houses agree in making any modification in the notification or both Houses agree that the notification should not be made, the notification shall thereafter have effect*

only in such modified form or be of no effect, as the case may be; so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that notification."

xx xx xx

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

xx

xx

1 [(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.]"

33. From a plain reading, it appears that the proscription or prohibition hitherto before, cautioned by the Courts in respect of unnecessary restraint in the matters of infrastructure projects, has now been statutorily recognized. Although, the application of such proscription would obviously be based on facts arising in each case, no strait jacket formula on such prohibition, can be formulated. It appears to this Court that the magnitude of the project is akin to one which could be termed as an infrastructure project although, this Court is unable to give a determinative conclusion to the same. In the present case, having regard to the facts as noted above, this Court need not examine as to whether the proscription under Section 20A or 41(ha) of the Specific Relief Act, 1963 is strictly applicable and such question is left open.

34. At this stage, it would be relevant to consider the ratio laid down by the learned Division Bench of the Gujarat High Court as also the Delhi High Court in ***Time Cinemas*** *(supra)* and ***National Highways Authority of India*** *(supra)*, respectively are extracted hereunder:

Time Cinemas And Entertainment Pvt. Ltd. vs. Venus Infrastructure and Developers Pvt. Ltd. - Gujarat High Court:

"5. Having considered the rival submissions, it is to be noticed that in Commercial Civil Misc. Application No. 503 of 2021 from which this appeal arises, the interim measures prayed for was to direct the respondent to provide essential services like

lifts, escalators etc. in the Mall stating that without which the applicant was not able to enjoy the fruits of order dated 31.7.2021 passed in earlier Commercial Civil Misc. Application No. 424 of 2021. Now in the said earlier Misc. Civil Application, also filed under section 9 of the Act, prayers in two-folds were made as reproduced in paragraph No. 4 above. First was to restrain the respondent from dispossessing the applicant from the premises and the second was for direction not to obstruct in the peaceful enjoyment of the leased premises. As noted above, the respondent filed Purshis at Exh.16 to agree that it will not take any coercive steps against the applicant. Based on the Purshis, the Commercial Court passed order granting the said relief of not taking any coercive steps. The peaceful possession of the applicant of the leased premises was thus protected. The second prayer was not granted by the said order. It has to be treated as deemed to have been rejected. The order passed was a reasoned order in which merits were also considered.

5.1 Evidently, the present application seeking interim measures is repetitive. Once the application under section 9 of the Arbitration and Conciliation Act seeking interim measures was filed with similar prayers and the same has been disposed of by granting the prayers either fully or in part, subsequent similar application making prayers on the same lines which were dealt with in the earlier proceedings, could hardly be said to be maintainable. The second application with similar prayers was not maintainable. The First Commercial Civil Misc. Application No. 424 of 2021 was dealt with by the court on merits and the interim measures pertaining in the first prayer was granted as per order dated 31.7.2021. The applicant has been in peaceful possession of the Mall premises accordingly."

National Highways Authority of India NHAI vs. Roadways Solutions India Infra Limited - Delhi High Court:

"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."*

35. Drawing strength from the observations made by the learned Division Bench of this Court in ***National Highways Authority of India*** *(supra)* as also ***Time Cinemas Entertainment Ltd*** *(supra)* of the Guajart High Court, it is evident that not only should the Court while dealing with the petition under Section 9 of the Act, be loathe in passing restraint orders if it involves infrastructure projects, but also that a Second Petition under Section 9 of the Act for the same relief which may have been declined in the First Petition would not be maintainable. Either which way, the ratio laid down in the aforesaid judgments, appear to be squarely applicable to the facts arising in the present case.

36. It is relevant to note that though this Court in the First Petition *vide* order dated 02.12.2025 had granted two weeks to each of the parties therein to nominate their respective Nominee Arbitrators from that date, the petitioner had nominated its Nominee Arbitrator only on 11.03.2026, which is almost 100 days from the order dated 02.12.2025. This point and the above observations are emphasized only to indicate that the petitioner, which did not take effective steps to obtain restraint orders at the right time, cannot be permitted to take advantage of its own laconic conduct.

37. Apart from the above, it is intriguing to note as to why once the petitioner has given complete details of the respondent no.2 alongwith its e-mail address for effecting service, would, while effecting advance service, not serve respondent no.2. Even the affidavit of service annexed to the petition is conspicuous by the absence of any reference whatsoever of advance service upon the respondent no.2. It is to be noted that it was only in the order dated 19.05.2025 that notice was directed to be issued to the respondent no.2. By this time, this Court had already passed a *status quo* order which has significantly impacted the respondent no.2.

38. The idea behind rules prescribing advance service is clearly laudable. In that, all parties who may be severely or drastically impacted by any order that might be passed by this Court ought to be afforded an opportunity of hearing so as to ensure a level playing field. This case presents itself as a stark example of the reason why such procedures have been prescribed. Although, procedures are not substantive law, yet are handmaidens to justice. Though this Court could have passed severe directions, however, is refraining from doing so and in the alternative, sternly noting that such practices should not be indulged in.

39. In view of the above, this Court holds that the present petition, being the Second Petition under Section 9 of the Act seeking identical relief, is not maintainable. Even otherwise, on merits, this Court does not find any reason whatsoever to grant interim relief in view of the facts noted above.

40. In view of the above, the present petition is dismissed with costs of Rs.1 lakh to be deposited by the petitioner with the Delhi High Court Staff Welfare Fund bearing **A/c No.15530110074442 (UCO BANK)** within two weeks from date. The acknowledgement thereof shall be filed under a cover of an index within one week thereafter.

TUSHAR RAO GEDELA
(JUDGE)

SEPTEMBER 01, 2026
rl/yrj