2026:DHC:8708-DB

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

Date of decision: 30th September, 2026
Uploaded on: 5th October, 2026

\# **CNR No. DLHC010474192026**

\+ **FAO(OS) (COMM) 272/2026**

M/S HAYAGREV CIVIL ENGINEERING PVT LTD. .....Appellant
Through: Mr. Anirudh Wadhwa, Mr. Raghav Wadhwa, Ms. Anjali Jain, Mr. Siddharth Jain, Advs. (M: 9465351015)

versus

NBCC (INDIA) LIMITED & ORS. .....Respondents
Through: Mr. Gudipati G. Kashyap, Mr. Ranvijay Gohain, Mr. Nishant Pandit and Mr. Deepak, Advs.

CORAM:
JUSTICE PRATHIBA M. SINGH
JUSTICE DINESH BHATT

Prathiba M. Singh, J. (Oral)

1. This hearing has been done through hybrid mode.

CM APPL.68301/2026 (for exemption)

2. Allowed, subject to all just exceptions. Application is disposed of.

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3. The present appeal has been filed by the Appellant under Order XLIII Rule 1 of the Code of Civil Procedure, 1908 *(hereinafter, 'CPC')* read with Section 13(1A) of the Commercial Courts Act, 2015, *inter alia*, assailing the impugned order dated 20th August, 2026 passed by the ld. Single Judge in I.A. No. 14495/2026 in ***CS (COMM) No. 331/2024*** titled ***'Hayagreve Civil Engineering Private Ltd. v. NBCC India Ltd.'***

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4. The brief background of the present case is that, a suit being ***CS (COMM) No. 331/2024*** was filed by the Appellant against the Respondent-NBCC (India) Limited seeking various reliefs, including recovery of a sum of of Rs.6,59,13,849/- against the Respondent.

5. The recovery of the aforesaid amount was in respect of certain works, which were executed by the Appellant for the Respondent in the project called the *Construction of Cooling Tower (NDCT) including Raft Foundation, Basin, Columns & Shell etc. all complete Civil Site Works for BHEL/GSECL at 1x800 MW Wanakbori Super Critical TPP Unit-8, District- Kheda (Gujarat).*

6. In the said suit, an application under Order XXXIX Rule 10 of CPC was filed by the Appellant seeking directions to the Respondent to deposit the admitted amount to the tune of Rs. 4,00,17,407/-, before the Court. The said application was disposed of by the ld. Single Judge, *vide* order dated 26th November, 2025.

7. *Vide* the said order, the ld. Single Judge, after considering paragraph 12 of the written statement filed by the Respondent, had directed as under:

> *"1. The plaintiff has filed the instant application seeking directions to the defendant to deposit Rs. 4,00,17,407/- before this Court.*
> *2. In paragraph no. 12 of the written statement, following position has been taken by the defendant.*
> > *"12. Thus, the balance payable amount of Rs.4,00,17,407/- to the plaintiff with respect to project "Construction of Cooling Tower (NDCT) including Raft Foundation, Basin, Columns & Shell etc. all complete Civil Site Works for BHEL/GSECL at 1x800 MW*

Wanakbori Super Critical TPP Unit-8, District-Kheda (Gujarat)", was transferred from NDCT works, Wanakbori to NDCT works, Yadadri under Clause 26 of the contract entered into between the plaintiff and the defendant. That Clause 26 of the contract states thus:

"26.0 WITHHOLDING AND LIEN IN RESPECT OF SUMS DUE FROM CONTRACTOR

26.1 Whenever any claim or claims for payment of a sum of money arises out of or under the contract or against the contractor, NBCC shall be entitled to withhold and also have a lien to retain such sum or sums in whole or in part from the security, if any, deposited by the contractor and for the purpose aforesaid, NBCC shall be entitled to withhold the security deposit, if any, furnished as the case may be and also have a lien over the same pending finalization or adjudication of any such claim. In the event of the security being insufficient to cover the claimed amount or amounts or if no security has been taken from the contractor, NBCC shall be entitled to withhold and have a lien to retain to the extent of such claimed amount or amounts referred to above from any sum or sums found payable or which may at any time there after become payable to the contractor under the same contract or any other contract pending finalization of adjudication of any such claim.

26.2 It is an agreed term of the contract that the sum of money or moneys so Withheld or retained under the lien referred to above by the Engineer-in- Charge or NBCC will be kept withheld or retained as such by the Engineer in-Charge or NBCC till the claim

arising out of or under the contract is determined by the competent court and that the contractor will have no claim for interest or damages whatsoever on any account in respect of such withholding or retention under the lien referred to above and duly notified as such to the contractor. For the purpose of this clause, where the contractor is a partnership firm or a limited company, the Engineer-in-Charge or the NBCC shall be entitled to withhold and also have a lien to retain towards such claimed amount or amounts in whole or in part from any sum found payable to any partner/limited company, as the case may be in his individual capacity or otherwise. NBCC shall have the right to cause an audit and technical examination of the works and the final bills of the contractor including all supporting vouchers, abstract, etc, to be made after payment of the final bill and if as a result of such audit and technical examination any sum is found to have been overpaid in respect of any work done by the contractor under the contract or any work claimed to have been done by him under the contract and found not to have been executed, the contractor shall be liable to refund the amount of over-payment and it shall be lawful for NBCC to recover the same from him in the manner prescribed in sub-clause 26.1 of this clause or in any other manner legally permissible; and if it is found that the contractor was paid less than what was due to him under the contract in respect of any work executed by him under it, the amount of such under payment shall be duly paid by NBCC to the contractor, without any interest thereon whatsoever.

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26.3 LIEN IN RESPECT OF CLAIMS IN OTHER CONTRACTS

Any sum of money due and payable to the contractor (including the security deposit returnable to him) under the contract may be withheld or retained by way of lien by the Engineer-in-Charge or by NBCC against any claim of the Engineer-in-Charge or NBCC in respect of payment of a sum of money arising out of or under any other contract made by the contractor with the Engineer-in-Charge or the NBCC. It is an agreed term of the contract that the sum of money so withheld or retained under this clause by the Engineer-in-Charge or the NBCC will be kept withheld or retained as such by the Engineer-in-Charge or the NBCC or till his claim arising out of the same contract is or any other contract is either mutually settled or determined by the competent court, as the case may be, and that the contractor shall have no claim for interest or damages whatsoever on this account or on any other ground in respect of any sum of money withheld or retained under this clause and duly notified as such to the contractor."

Further, because of slow progress of work by plaintiff, since client (BHEL) has withdrawn the project "Construction of NDCT" to plaintiff at Yadadri, Telangana vide LOA No – NBCC/ED(CPG)/2021/726 dated 05.03.2021 for an amount of Rs.98.75 Crores" from the defendant and since the entire work of CT#1,3 & 5 is being executed through other agency at the risk & cost of Defendant (NBCC), the plaintiff is liable to compensate the defendant for the said actual loss, which can be calculated only after completion of the said works. However, it is

> *pertinent to mention that the defendant has also challenged the termination by BHEL before the Administrative Mechanism for Resolution of CPSEs Disputes (AMRCD), a forum established to resolve the disputes between two Government entities. It is clarified that the dispute before AMRCD is pending and has not been finalized yet. The defendant company reserves its right to quantify the said and claim the same from the plaintiff, which the defendant is liable to be compensated, as per relevant Contractual clause agreed between the parties. It is clarified that a clear picture with regard to the dues recoverable from the plaintiff would be possible once the pending dispute between Defendant and BHEL before AMRCD is finalized. Hence, as per the relevant contractual clauses the amount of plaintiff is rightly withheld by the defendant and the instant suit filed by the plaintiff is premature."*
>
> *3. Under these circumstances, it is directed that without prejudice to the rights and contentions, the aforesaid amount be deposited before the Registrar General of this Court within a period of six months from today, who shall keep the same in an interest bearing FDR."*

8. Pursuant to the order dated 26th November, 2025, the amount was deposited by the Respondent before this Court.

9. Thereafter, the Appellant preferred an application under Section 151 of CPC, seeking withdrawal of the deposited amount.

10. However, the said withdrawal was opposed by the Respondent, stating that the said deposit was an interim deposit and not an admitted amount. *Vide*

order dated 20th August, 2026 passed by the ld. Single Judge, the said application was disposed of in the following terms:

> *"2. Pursuant thereto, an amount of Rs.4,00,17,407/- was deposited by the defendant. The defendant claims a contractual lien over the said amount, citing a separate, unresolved dispute under another project.*
>
> *3. Learned counsel for the plaintiff submits that there is no linkage between the deposited amount and the dispute sought to be raised by the defendant in respect of the other project. The same is, however, refuted by the learned counsel for the defendant.*
>
> *4. The present application seeks that the plaintiff be permitted to withdraw the amount deposited by the defendant pursuant to the aforesaid order dated 26.11.2025.*
>
> *5. The defendant has admitted in its written statement that the amount owed to the plaintiff under the contract, which is the subject matter of the present suit, is to the tune of Rs.4,00,17,407/-.*
>
> *6.* ***Considering the circumstances, the plaintiff is permitted to withdraw the said amount, subject to furnishing an unconditional bank guarantee to the satisfaction of the Registrar of this Court for an equivalent amount, as also an undertaking agreeing to abide by orders passed by this Court for restitution of the said amount, if so required in future.***
>
> *7. It is directed accordingly."*

11. In terms thereof, the Court had permitted the Appellant to withdraw the admitted amount to the tune of Rs.4,00,17,407/-, subject to furnishing of unconditional bank guarantee to the satisfaction of the Registrar General of

this Court, for an equivalent amount as also to furnish an undertaking agreeing to abide by the orders passed by this Court for restitution of the said amount, if required.

12. Aggrieved by the said order, the Appellant has preferred the present appeal.

13. The submission on behalf of the ld. Counsel for the Appellant is that for the amount of Rs.4,00,17,407/-, there cannot be any lien by the Respondent, in respect of a separate project, which is known as *Yadadri* project.

14. On the other hand, ld. Counsel for the Respondent relies upon clause 26.3 in the Yadadri project contract to argue that the lien in respect of claims in other contracts can also be maintained by the Respondent.

15. Further, it is also submitted by ld. Counsel for the Appellant that unconditional withdrawal of the amount ought to have been permitted, as the same is deposited, pursuant to the admission made by the Respondent.

16. On the other hand, ld. Counsel for the Respondent relies upon clause 26.3 in the Yadadri project contract to argue that Respondent can retain the amount.

17. The Court has heard ld. Counsel for the parties. At the outset, a query has been put to ld. Counsel for the Appellant, as to how the present appeal is maintainable, as the same is challenging an order passed in an application under Section 151 of CPC. The said order is a discretionary order permitting the conditional withdrawal of the deposited amount.

18. In response, ld. Counsel Mr. Jain submits that the order has been passed in furtherance of the order passed in application under Order XXXIX Rule 10 of CPC.

19. In the opinion of this Court, the application under Order XXXIX Rule 10 of CPC was disposed of directing the deposit of the amount before the Registrar General of this Court and further direction was made that the same would be kept in an interest bearing FDR.

20. Order XXXIX Rule 10 of CPC is primarily meant to safeguard and secure the interest of the Appellant-Plaintiff, subject to satisfying the conditions set out in the said provision. The said application was disposed of *vide* order dated 26th November, 2025.

21. The impugned order dated 20th August, 2026, was passed in respect of the application filed by the Appellant under Section 151 of CPC , seeking withdrawal of the deposited amount, pursuant to order dated 26th November, 2025. While disposing of the application under Section 151 of CPC, the Court exercised discretion and permitted withdrawal of the amount, subject to certain conditions.

22. In the opinion of this Court, such an order does not fall within any of the clauses of Order XLIII Rule 1 of CPC, and is not an appealable order.

23. In fact, the Supreme Court in ***Keshardeo Chamria v. Radha Kissen Chamria, (1952) 2 SCC 329*** has held that an order passed under Section 151 of CPC is not appealable under Order XLIII Rule 1 of CPC. The relevant portion of the said decision is as under:

> *"[…]18. It was not contended and could not be seriously urged, that an order under Section 151 simpliciter is appealable. Under the Code of Civil Procedure certain specific orders mentioned in Section 104 and Order 43 Rule 1, only are appealable and no appeal lies from any other orders (vide Section 105 CPC). An order made under Section 151 is not included in the category of appealable orders."*

24. Further, Section 13(1A) of the Commercial Courts Act, 2015 permits an appeal only against orders enumerated in Order XLIII Rule 1 of CPC. The impugned order dated 20th August, 2026 does not fall within the category of appealable orders under Order XLIII Rule 1 of CPC. Consequently, the present appeal is not maintainable.

25. Thus, without going into the merits of the matter, the present appeal is held as being not maintainable and the same is, accordingly, dismissed.

PRATHIBA M. SINGH
JUDGE

DINESH BHATT
JUDGE

SEPTEMBER 30, 2026/*dk/sm*

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