ITEM NO.32 COURT NO.12 SECTION XV

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

SPECIAL LEAVE PETITION (CIVIL) Diary No(s). 16168/2026

[Arising out of impugned judgment and orders dated 19-08-2024 in WA No. 330/2023 & 15-12-2025 in REP No. 238/2025 passed by the Gauhati High Court]

NATIONAL HIGHWAYS AND INFRASTRUCTURE DEVELOPMENT CORP. LTD. & ORS. Petitioner(s)

VERSUS

GIRIN DEKA & ORS. Respondent(s)

[MEDIATION REPORT RECEIVED]
IA No. 111217/2026 - CONDONATION OF DELAY IN FILING

WITH

Diary No(s). 44999/2026 (XV)
IA No. 219138/2026 - CONDONATION OF DELAY IN FILING, IA No. 219140/2026 - EXEMPTION FROM FILING C/C OF I/MPUGNED JUDGMENT, IA No. 219137/2026 - PERMISSION TO FILE ADDL.DOCS./FACTS/ANNEXURES

Date : 12-10-2026 These matters were called on for hearing today.

CORAM :
HON'BLE MR. JUSTICE K.V. VISWANATHAN
HON'BLE MR. JUSTICE ARUN PALLI

For Petitioner(s) Mr. Narender Hooda, Sr. Adv.
Mr. Anshul Rai- 3198 , AOR
Mr. Anshul Rai, Adv.
Mr. S.k Pandey, Adv.
Mr. Chandrashekhar A Chakalabbi, Adv.
Mr. Ojaswa Pathak, Adv.
Ms. Mallika Ranjan, Adv.
Mr. Raunaq Singh, Adv.
Mr. Shivjiee Yadav, Adv.
Mr. K. K.Chouhan, Adv.

Mr. Amit Anand Tiwari, Sr.Adv.
Mr. Mohit Paul- 1899, AOR
Ms. Rangoli Seth, Adv.
Ms. Devyani Gupta, Adv.
Mr. Rohit, Adv.

For Respondent(s) Mr. Amit Anand Tiwari, Sr.Adv.
Mr. Mohit Paul- 1899, AOR

Ms. Rangoli Seth, Adv.
Ms. Devyani Gupta, Adv.
Mr. Rohit, Adv.

Mr. Narender Hooda, Sr. Adv.
Mr. Anshul Rai- 3198 , AOR
Mr. Anshul Rai, Adv.
Mr. S.K. Pandey, Adv.
Mr. Chandrashekhar A Chakalabbi, Adv.
Mr. Ojaswa Pathak, Adv.
Ms. Mallika Ranjan, Adv.
Mr. Raunaq Singh, Adv.

UPON hearing the counsel the Court made the following

O R D E R

1. Delay condoned.

2. These are petitions and cross petitions, challenging the correctness of the judgment/order dated 19-08-2024 in WA No.330/2023 and judgment/order dated 15-12-2025 in REP No.238/2025 passed by a Division Bench of the Gauhati High Court. By the said judgment/order(s), the High Court set aside the judgment of the learned Single Judge dated 12.06.2023.

3. Heard Mr. Narender Hooda, learned Senior Counsel for the National Highways and Infrastructure Development Corp. Ltd. (for short, 'NHIDCL')-petitioner(s)/respondent(s) and Mr.Amit Anand Tiwari, learned Senior Counsel for the Girin Deka-respondent(s)/petitioner(s) in these matters.

4. The respondent(s)- Girin Deka filed Writ Petition (Civil) No.7326/2018 before the Gauhati High Court seeking writ of mandamus directing release of a contractual amount of Rs.11,06,85,770/- by NHIDCL.

5. The learned Single Judge, on 12.06.2023, allowed the writ petition and directed the release of payment while allowing

NHIDCL to pursue remedies to recover any amounts, if any due from M/s.Corsan Corviam Construction S.A..

6. The matter was carried in appeal to the Division Bench of the High Court by NHIDCL. The Division Bench, by the impugned order(s), while holding that in a contractual dispute of the nature that arose in this case, it was not appropriate to invoke the writ jurisdiction since disputed question of facts were involved, allowed the appeal with certain observations.

7. The observations of the Division Bench in paragraph Nos.14, 20, 21 to 29 & 32 of the impugned order(s) dated 19.08.2024 were as under:

> *"14. It is trite that in a matter involving contractual disputes, remedy in the form of a writ petition would not be the appropriate remedy, more so, if there are disputed question of facts involved in the matter. Disputes arising within the realm of the contract agreement ought to be resolved by seeking remedy before the forum designated by the contract agreement. In the present case, clause 26.3.1 of the contract agreement dated 19/11/2014 contains an Arbitration agreement, according to which, disputes and difference between the parties to the contract is required to be resolved by referring the disputes to Arbitral Tribunal. However, the fact remains that the sub-contractor is not a signatory to the agreement dated 19/11/2014 and therefore, clause 26.3.1 would not be applicable to it.*
>
> *XXXXX*
>
> *XXXX*
>
> *20. For the reasons stated above, we are of the opinion that the impugned judgement and order dated 12/06/2023 is unsustainable in law and hence, liable to be set -aside by this Court."*

"21. Having held as above, we are also conscious of the fact that the sub-contractor M/s. Girin Deka, is a proprietorship firm registered under the Micro, Small and Medium Enterprises Development Act, 2006 (here-in-after referred to as the Act of 2006). The Act of 2006 has been enacted by the Parliament for the purpose of facilitating promotion, development and enhancing the competitiveness of Micro, Small and Medium Enterprises and for matters connected therewith or incidental thereto. From the object clause of the Act of 2006,8 apparent that the object of the Act of the 2006 is to protect and promote the interest of Micro, Small and Medium Enterprises.

22. Section 2(d) of the Act of 2006 defines 'buyer', which reads as follows:-

> *""Buyer" means whoever buys any goods or receives any service from a supplier for consideration."*

23. There is no dispute about the fact that the sub-contractor comes within the definition of "supplier" as provided in section 2(n) of the Act.

24. A careful analysis of the admitted facts of this case, in our opinion, prima facie establishes a "Buyer-Supplier" relationship between the appellant no. 1 (NHIDCL) and the sub-contractor falling within the scope and ambit of the Act of 2006.

25. Section 15 of the Act of 2006 reads as follows :-

> "15. Liability of buyer to make payment.-
> *Where any supplier, supplies any goods or renders any services to any buyer, the buyer shall make payment therefor on or before the date agreed upon between him and the supplier in writing or, where there is no agreement in this behalf, before the appointed day:*
> *Provided that in no case the period agreed upon*

between the supplier and the buyer in writing shall exceed forty-five days from the day of acceptance or the day of deemed acceptance."

26. Section 16 of the Act lays down the procedure for recovery of interest and the dues payable to the Micro, Small and Medium Enterprises, which reads as follows :-

16. Date from which and rate at which interest is payable.-

Where any buyer fails to make payment of the amount to the supplier, as required under section 15, the buyer shall, notwithstanding anything contained in any agreement between the buyer and the supplier or in any law for the time being in force, be liable to pay compound interest with monthly rests to the supplier on that amount from the appointed day or, as the case may be, from the date immediately following the date agreed upon, at three times of the bank rate notified by the Reserve Bank."

27. Section 17 of the Act of 2006 creates an obligation on the buyer to pay the amount due to the supplier along with the interest thereon. Section 17 reads as follows :-

17. Recovery of amount due.-

For any goods supplied or services rendered by the supplier, the buyer shall be liable to pay the amount with interest thereon as provided under section 16,"

28. Section 18 of the Act of 2006 lays down the procedure to be followed for the purpose of making a reference to Micro Small and Medium Enterprises Facilitation Council. Section 18 is reproduced herein below for ready reference :-

"18. Reference to micro and small enterprises facilitation council.-

1. Notwithstanding anything contained in any other

law for the time being in force, any party to a dispute may, with regard to any amount due under section 17, make a reference to the Micro and Small Enterprises Facilitation Council.

2. On receipt of a reference under sub-section (1), the Council shall either itself conduct mediation itself or refer the matter to any medication service provider as provided under the Medication Act, 2023.

3. The conduct of mediation under this section shall be as per the provisions of the Mediation Act, 2023.

4. Where the mediation initiated under sub-section (3) is not successful and stands terminated without any settlement between the parties, the Council shall either itself take up the dispute for arbitration or refer it to any Institution or centre providing alternative dispute resolution services for such arbitration and the provisions of the Arbitration and Conciliation Act, 1996 (26 of 1996), shall, then apply to the dispute as if the arbitration was in pursuance of an arbitration agreement referred to in sub-section (1) of section 7 of that Act.

5. Notwithstanding anything contained in any other law for the time being in force, the Micro and Small Enterprises Facilitation Council or the centre providing alternative dispute resolution services shall have jurisdiction to act as an Arbitrator or Mediator under this section in a dispute between the supplier located within its jurisdiction and a buyer located anywhere in India."

29. From a plain reading of the provisions of the Act of 2006, it is thus apparent that the Act of 2006 is a Special Statue, enacted by the Parliament with the objective of protecting the right of the Micro, small and Medium Enterprises. The fact that section 18 of the

Act of 2006 begins with a non-obstante clause is sufficient to indicate that the entitlement of the Micro provided under the Act, would have an overriding effect over any other law for the time Small and Medium Enterprises to recover its lawful dues by taking recourse to the mechanism being in force. Therefore, in the event, any MSM Enterprise, coming within the ambit of the Act of 2006, is wrongfully denied payment for the goods delivered or services rendered by it, than in that event, regardless of any other law for the time being in force to the contrary, the enterprise will be entitled to recover its dues by taking recourse to section 18. Section 18 of the Act of 2006, in our view, not only provides an adequate and efficacious remedy to the MSM Enterprise to recover its legitimates dues but the same also provides an opportunity to fast-track the resolution of all such disputes.

XXXXXX

32. *This writ appeal is being disposed of by granting liberty to the sub-contractor (respondent Nos 1 & 2 here-in) to invoke section 18 of the Act of 2006 for recovery of its Facilitation Council, having jurisdiction over the dispute, for resolution of the same in dues. The matter be, accordingly, referred to the Micro, Small and Medium Enterprises accordance with the scheme of the Act of 2006."*

8. The net result was, after holding the writ petition to be not maintainable, observations were made about the maintainability of a claim before the Micro, Small and Medium Enterprises Facilitation Council under the Micro, Small and Medium Enterprises Development Act, 2006 (for short, MSMED Act').

9. Mr. Narender Hooda, learned Senior Counsel for NHIDCL

submits that having held the writ petition to be not maintainable and having reversed the learned Single Judge finding on that score, the Division Bench of the High court ought not to have made the above observations.

10. Learned Senior Counsel for NHIDCL submits that if at all the respondent(s)-Girin Deka had any right to maintain proceedings under the Facilitation Council of the MSMED Act or any other body, it was upto them to do so and for those authorities/body to decide the maintainability of those proceedings and adjudicate the claim, if any, on merits.

11. On the other hand, Mr. Amit Anand Tiwari, learned Senior Counsel for respondent(s)-Girin Deka submits that learned Single Judge was right in issuing a mandamus for release of the subject amount and that these were admitted dues. Mr. Amit Anand Tiwari, learned Senior Counsel deferred the observations in the impugned order(s).

12. We have carefully considered the submissions made by the learned Senior Counsel for the parties. We are of the opinion that the Division Bench of the High Court was right in reversing the order(s) of the learned Single Judge and holding that writ was not maintainable on the facts of the case. We are also of the opinion that having held the writ to be not maintainable, the Division Bench of the High Court could not proceeded with and made the observations that it made in paragraph 21 to 29 thereof. We, therefore, set aside the observations of the Division Bench in paragraph 21 and 29 thereof. We also set aside the observation in paragraph 32

where conclusive findings on the jurisdiction of Facilitation Council under the MSMED Act has been recorded.

13. Having said that, we leave open the remedies that are available in law, to the respondent(s)-Girin Deka. As and when that remedies are resorted to before any Fora/Body/Authority, the said Fora/Body/Authority will decide the maintainability of the said proceedings and wherever necessary the merits of the claim.

14. All contentions are left open between the parties.

15. For the reasons stated above, while upholding the finding of the Division Bench of the High Court about the non-maintainability of the writ filed by the respondent(s)-Girin Deka, we set aside the portions referred to above.

16. Mr. Amit Anand Tiwari, learned Senior Counsel for the respondent(s) submits that already proceedings are pending before the MSMED Facilitation Council pursuant to the impugned order(s).

17. If that be so, they are at liberty to pursue the said proceedings. However, we make it clear that the objections including jurisdiction of MSMED would be open for NHIDCL.

18. Needless to observe that the Facilitation Council will decide those objections uninfluenced by any of the observations made in the impugned order(s) as well as in the present order.

19. Since, the dispute pertains to 2017-2018, the Facilitation Council shall dispose of the matter within a period of six months from today.

20. Both the Special Leave Petitions are disposed of in the

above terms.

21. Pending application(s), if any, shall also stand disposed of.

(NIRMALA NEGI)
ASTT. REGISTRAR-cum-PS

(NIKITA SINGH)
COURT MASTER (NSH)