

# Sai Consulting Engineers Private ... vs National Highways Authority Of India on 9 October, 2020

**Author: Rekha Palli**

**Bench: Rekha Palli**

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IN THE HIGH COURT OF DELHI AT NEW DELHI  
O.M.P.(I) (COMM.) 330/2020  
SAI CONSULTING ENGINEERS PRIVATE LIMITED

..... Petitioner

Through: Mr.Sandeep Sethi, Sr.Adv. with  
Mr.Jeevesh Nagrath, Mr Chandan Dutta  
Mr.Ankit Monga, Advs.

versus

NATIONAL HIGHWAYS AUTHORITY OF INDIA

Through: Mr. Manish Kumar Bishnoi with  
Mr.Robin Bishnoi, Mr. Umang Raj and Mr.  
Anurag Sarda, Advs.

CORAM:

HON'BLE MS. JUSTICE REKHA PALLI

ORDER

% 09.10.2020 I.A. No.9108/2020 (exemption)

1. Allowed, subject to all just exceptions.

O.M.P.(I) (COMM.) 330/2020

2. This is a petition under Section 9 of the Arbitration and Conciliation Act, 1996 seeking the following reliefs:-

(a) pass an order of injunction in favour of the Petitioner and against the Respondent thereby staying the operation of the Debarment Order bearing No. NHAI/ EW-II/ ADB/BOT/ 2007/39 dated 22.09.2020 issued by the Respondent against the Petitioner and restraining the Respondent from giving effect to or acting in terms of or in furtherance of the said Debarment Order dated 22.09.2020 issued by the Respondent till the adjudication of disputes in the arbitration proceedings;

(b) pass an ad-interim ex-parte order of injunction in terms of prayer (a) above in favour of the Petitioner;

c) grant costs of the present proceedings in favour of the Petitioner;

and

d) Pass any other and further order(s) as this Hon'ble Court may deem fit and proper in the facts and circumstances of the present case.

3. Learned senior counsel for the petitioner submits that the petitioner was appointed as an independent consultant by the respondent under a Consultancy Agreement dated 16.09.2005 to supervise the work of an independent contractor, with whom the respondent had entered into a concession agreement on 22.03.2005, for construction of a 68 kms highway in Gujarat. He submits that the construction of the project was completed on 17.03.2008, where after, on 30.03.2013, the petitioner handed over the entire records along with its report to the respondent after the expiry of the term of the consultancy agreement, and was duly issued a completion certificate on 22.02.2014. However, on 08.06.2020, a part of the retaining wall on the Rajkot Bypass collapsed due to cyclonic rain, resulting in the unfortunate death of two persons, which prompted the respondent to issue show cause notices to the petitioner and, thereafter, a debarment order on 28.08.2020. The petitioner was, therefore, compelled to approach this Court by way of O.M.P. (I) (COMM.) 287/2020 seeking stay of operation of the debarment order, and while the matter was being heard, the respondent had withdrawn the said debarment order, without prejudice to its right to take fresh steps in accordance with law. Consequently, the fresh impugned debarment order was issued by the respondent on 22.09.2020, which, he submits, shows complete non-application of mind as it was passed in a completely pre-determined manner and in a totally wrong, illegal and malafide manner, contrary to the records and the Consultancy Agreement. As a result, the petitioner has been blacklisted and is suffering grave prejudice as the respondent itself is proceeding to reject its bids on the ground of its debarment. He, therefore, prays that the debarment order dated 22.09.2020 be stayed, and the validity thereof be made subject to final adjudication by the arbitral tribunal in the arbitration proceedings.

4. Issue notice. Mr. Manish, Advocate accepts notice and submits that since the pleas raised by the petitioner would require proper appreciation of evidence, it would be appropriate that the aspect of validity of the debarment order dated 22.09.2020 is decided in arbitration proceedings and requests that an independent arbitrator be appointed by this Court. He further assures the Court that for the next 10 days, the respondent will not reject any bids of the petitioner on the ground of its debarment. Learned senior counsel for the petitioner has no objection to the said request.

5. In view of the aforesaid stand taken by the respondent, the petition is disposed of by appointing Mr. Justice Badar Durrez Ahmed, (Mobile No: 7042205786), Former Chief Justice of Jammu and Kashmir High Court, as the Sole Arbitrator for adjudication of disputes which have arisen between the parties in relation to the consultancy agreement dated 16.09.2005. It will also be open for the petitioner to move an appropriate application under section 17 of the Act before the learned

Arbitrator, seeking stay of the debarment order dated 22.09.2020, which will be considered by the learned Arbitrator on its own merits.

6. Before commencing arbitration proceedings, the learned Arbitrator will ensure the compliance of Section 12 of the Act. It will be open to the learned Arbitrator to fix his fee.

7. It is, however, made clear that this Court has not considered the rival claims of the parties on merits and it will, therefore, be open for them to file their claims and counter claims and raise all pleas permissible in law before the learned Arbitrator.

8. Keeping in view the peculiar facts of the present case, the learned Arbitrator is requested to hold a hearing in respect of the interim relief expeditiously, preferably within a period of 10 days.

9. It is further clarified that though the respondent will remain bound by its statement to not reject any of the bids of the petitioners for the next 10 days, on account of the debarment order dated 22.09.2020, however the same would not obligate the respondent to accept the bids of the petitioners.

10. A copy of this order be sent to the learned Arbitrator through electronic means.

11. The petition is disposed of in the aforesaid terms.

REKHA PALLI, J.

OCTOBER 9, 2020 'sdp'