

**IN THE HIGH COURT OF DELHI AT NEW DELHI**  
**(CIVIL ORIGINAL COMMERCIAL JURISDICTION)**

**OMP (I) COMM. NO. \_\_\_\_\_ OF 2021**

**IN THE MATTER OF:**

Supreme Panvel Indapur Tollways .....Petitioner  
Private Limited

versus

National Highways Authority of India .....Respondent

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*[Signature]*

PETITIONER



THROUGH

*[Signature]*

SP MUKHERJEE (D/1840/2015)

AVINASH SHUKLA (D/7568/2019)

Counsel for Petitioner

B-107, BASEMENT (SIDE ENTRANCE),

C.R. PARK, NEW DELHI 110019

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Email: subhropan[at]gmail[dot]com

Place: New Delhi

Date: 20.11.2021

**IN THE HIGH COURT OF DELHI AT NEW DELHI  
(CIVIL ORIGINAL COMMERCIAL JURISDICTION)**

**OMP (I) COMM. NO. \_\_\_\_\_ OF 2021**

**IN THE MATTER OF:**

Supreme Parvel Indapur Tollways ...Petitioner  
Private Limited

versus

National Highways Authority of India ...Respondent

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PETITIONER

THROUGH

**SP MUKHERJEE (D/1840/2015)**  
**AVINASH SHUKLA (D/7568/2019)**

Counsel for Petitioner

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Place: New Delhi

Date: 20.11.2021

1.

OMP (I) COMM. NO. \_\_\_\_\_ OF 2021

**IN THE MATTER OF:**

Supreme Panyel Indapur Tollways Private Limited

...Petitioner

versus

National Highways Authority of India

Respondent

## NOTICE OF MOTION

To,

National Highways Authority of India.

Through its Chairman

Please take notice that the accompanying Petition is being filed on behalf of M/s Supreme Panvel Indapur Tollways Private Limited and the same is likely to be listed before the Hon'ble Court on 22.11.2021 or on such other day thereafter, as may be fixed by the Hon'ble Court.

PETITIONER



THROUGH

Subh

SP MUKHERJEE (01/1840/2015)  
AVINASH SHUKLA (09/7568/2019)

Counsel for Petitioner:

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C.R. PARK, NEW DELHI 110019

Mobile: 191 9810062693

Email: [subtrop@atgmail.com](mailto:subtrop@atgmail.com)

Place: New Delhi

Date: 20.11.2021

## 2

Date: 20.11.2021



**IN THE HIGH COURT OF DELHI AT NEW DELHI  
(CIVIL ORIGINAL COMMERCIAL JURISDICTION)**

**OMP (T) COMM. NO. \_\_\_\_\_ OF 2021**

**IN THE MATTER OF:**

Supreme Panvel Indapur Tollways Private Limited .....Petitioner

versus

National Highways Authority of India .....Respondent

**MEMO OF PARTIES**

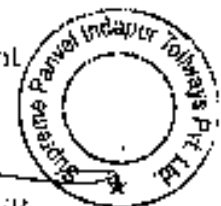
1. M/s Supreme Panvel Indapur Tollways Private Limited  
Through its Authorized Representative,  
Mr. Tej Pal Sharma  
510, 5<sup>TH</sup> Floor, ABW Tower, HFPCO Chock,  
MG Road, Gurgaon, Haryana 122002.  
Email: [cs@supremeinfra.com](mailto:cs@supremeinfra.com) .....Petitioner

1. National Highways Authority of India  
Through its Chairman,  
G - 5 & 6, Sector - 10,  
Dwarka, New Delhi - 110075  
Email: [chairman@nhai.org](mailto:chairman@nhai.org), [memberitech@nhai.org](mailto:memberitech@nhai.org),  
[ashishasati@nhai.com](mailto:ashishasati@nhai.com) .....Respondent

THROUGH

  
PETITIONER

SP MUKHERJEE (D/1840/2015)



4

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Email: subhrojni[at]gmail[dot]com

Place: New Delhi

Date: 20 .11.2021

## LIST OF DATES AND EVENTS

<u>DATE(S)</u>	<u>EVENT(S)</u>
20.05.2010	The National Highway Authority of India ("NHAI" " <b>Respondent</b> ") issued the list of pre-qualified applicants for the project " <i>Four Laning of Panvel-Indapur section of NH-17 from km 0.000 to km 84.000 in the State of Maharashtra to be executed as BOT (Toll) on DBFO Pattern under NHDP Phase-III- Reg RFP</i> ". The consortium (" <b>Consortium</b> ") comprising Supreme Infrastructure India Limited (" <b>Supreme</b> "), China State Construction Engineering Hong Kong Limited ("CSCEC"), and Mahavir Roads and Infraprojects Private Limited (" <b>Mahavir</b> ") was found to be qualified in terms of the requirements of the Request for Proposal dated 19.07.2010. (" <b>RFP</b> ").
10.08.2010	The Consortium submitted its bid to NHAI along with bid security of INR 9.42 crores in form of a bank guarantee. The bid premium was INR 33.95 crores
28.10.2010	The Consortium was issued the <b>Letter of Award</b> on account of being the "Selected Bidder". The Consortium was directed to incorporate a Special Purpose Vehicle for demarcating the project. The concession period was for 21 years including the Construction Period of 910 days from the "Appointed Date".
19.11.2010	The Consortium incorporated a Special Purpose Vehicle by the name "Supreme Panvel Indapur Tollways Private Limited" (" <b>Concessionaire</b> " " <b>Petitioner</b> ").
21.01.2011	The Concession Agreement (" <b>Agreement</b> ") was entered between the NHAI and Petitioner for " <i>Four Laning of Panvel- Indapur Section 17 from Km 0.000 to Km 84.000 in the State of Maharashtra Under NHDP Phase III on BOT Basis (Package No. NHDP-III/191/4/05)</i> " (" <b>the Project</b> "). The timeline envisaged under the Agreement was as under: <ol style="list-style-type: none"> <li>1. Date of signing the Agreement: 21 January 2011</li> <li>2. Development Period: 21 January 2011 to 18 December 2011</li> <li>3. Appointed Date 19 December 2011</li> <li>4. Concession Period: 21 years from 19.12.2011 till 18 December 2033</li> <li>5. Scheduled Construction Period: 910 days</li> <li>6. Scheduled Date for Completion: 16 June 2014</li> </ol>
30.08.2011	Common Loan Agreement between the Petitioner and consortium of lenders comprising SBI, Canara Bank, IFCL, Corporation Bank, Union Bank, SBOP and L&T Infrastructure (" <b>the Lenders</b> ") whereby

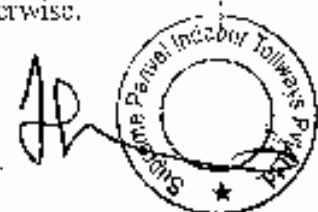


*[Handwritten signature]*

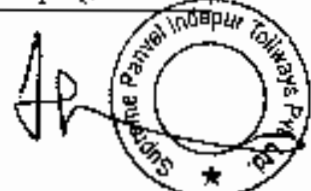
	<p>the lenders extended a term loan of INR 900 crores and the promoters raised INR 306 crores on their own.</p> <p>Simultaneously, the Petitioner entered into a Substitution Agreement with the State Bank of India in its capacity as the Lenders' Representative and the NHAI whereby the Petitioner agreed to assign its rights, title and interest in the concession to SBI by way of security in respect of the financing by the Lenders under the Common Loan Agreement in the event that it was in breach of its obligations to the Lenders.</p> <p>It is important to note that the commercial bargain struck between the Petitioner, NHAI and the Lenders inasmuch as the Project would require INR 1206 crores was as per the understanding of 2011 and did not account for the inordinate delay in handing over the land on part of the NHAI.</p>
02.02.2012	The NHAI issued a letter to the Petitioner stating that 19.12.2011 was being treated as the Appointed Date under Article 48 of the Agreement.
19.12.2012	The original for completion of Milestone I since this was the "first anniversary of the Appointed Date" as per Schedule G read with Clause 12.1 of the Agreement. However, this was not achieved admittedly due to the NHAI's abject failure in handing over land under Article 10 of the Agreement.
05.04.2013	The NHAI-appointed Independent Engineer wrote to NHAI recommending extension of time for Milestone I.
16.04.2013	The parties exchanged a series of correspondence re extension of the time required for achievement of Milestone I. Though, NHAI resisted, the Petitioner put forth its contention as to why it was helpless and bore no responsibility for Milestone I not being achieved as per schedule on 19.12.2012.
07.05.2013	NHAI and its Independent Engineer implicitly accepted the Petitioner's bona fide conduct and revised the date for completion of Milestone I.
03.04.2014	<p>The Independent Engineer wrote to the NHAI confirming that Milestone 2 was achieved, for the land made available, by 19.12.2013 i.e. as per the Project Completion Schedule stated in Schedule G despite the NHAI's abject failure in handing over land and ensuring Right of Way as per Clause 10.</p> <p>It is important to note that Project Milestone II was defined as "falling on the second anniversary of the Appointed Date" whereupon the</p>





	"Concessionaire shall have achieved a physical progress of not less than 65% and expended not less than 65% (sixty five percent) of the total capital cost set forth in the Financial Package.
24.05.2014	The Petitioner was constrained to write to the NHAI stating that as against the total length of 84.60 kms, only 28.43% i.e. 23.12 kms was made available to the Petitioner. The Petitioner was constrained to point out that it was facing immense financial problems due to the inordinate delay in getting the land from NHAI.
07.06.2014	Petitioner submitted application for Extension of time ("EOT") till 31.3.2017. This was the first EOT that the Petitioner was constrained to seek.
16.06.2014	Though, this was the original scheduled completion date. However, this could not be achieved <i>admittedly</i> because of NHAI's failure to hand over land.
15.09.2014	The Petitioner was constrained to write yet another detailed letter requesting for EOT as NHAI was delaying granting of the EOT due to reasons best known to it.
12.02.2015	The Petitioner wrote a letter complaining to the NHAI that it was impossible to complete the construction by March 2016 when NHAI resiled from its promise from avoiding encumbrance-free land by 30.08.2014. The letter conveyed its dismay at the NHAI stating that it could hand over the land only by June 2015.
26.02.2015	On the Independent Engineer's recommendation dated 27.09.2014, the NHAI wrote to its Independent Engineer allowing for the "adjustment of milestone" up to 31.3.2016 (i.e. 653 days) excluding eco-sensitive zone with mutual forfeiture of any claim/compensation for the delays occurring of "any kind". It is pertinent to note that this EOT was allowed <ol style="list-style-type: none"> <li>despite the Petitioner requesting for EOT till 31.03.2017.</li> <li>when the request was first made almost 9 months ago.</li> <li>the EOT granted on 26.02.2015 was premised on the condition that all lands would be made available by 31.08.2014- an event which NHAI failed to adhere to.</li> <li>the concession period remained unchanged</li> </ol>
14.03.2016	The Petitioner was constrained seeking another EOT i.e. the second EOT <i>inter alia</i> on the grounds that: <ol style="list-style-type: none"> <li>The project was to be completed long back i.e. by 16.06.2014 i.e. 910 days from the Appointed Date being 19.12.2011;</li> <li>Revenue could be earned only when four-laning was complete as toll could not be collected otherwise.</li> </ol>



	<p>iii. Delays were caused due to failure in provide encumbrance-free site inasmuch till the scheduled completion date (16.06.2014), only 24.05 kms were made available as against 84 kms.</p> <p>iv. Delay was also caused due to delay in diversion of forest land and approval for diversion of forest land for an addition 1.03 hectare, delay in shifting of utilities such as ISPAT, CIDCO, absence of GAD approval from railways, delay in shifting gas pipeline.</p> <p>v. The EOT granted on 26.02.2015 was premised on the basis that NHAI would make all lands available by 31.08.2014.</p> <p>vi. Despite adequate mobilisation of resources, the Petitioner could not act in terms of Clauses 10.3, 10.4, 11.2, 11.4 of the Agreement.</p> <p>vii. NHAI was yet to pay bills for maintenance work and demolition work whilst the bills were submitted almost a year back.</p> <p>viii. Lenders had stopped funding the project as NHAI was taking inordinate amount of time in granting Extension of Time.</p> <p>ix. Only 64 kms of land was made available at the time of the letter being written.</p> <p>x. Damages were due to the Petitioner in terms of Article 4, Clause No. 4.2 apart from maintenance bills, compensation in terms of Clause 10.3, Clause 35.2, Clause 35.3 etc.</p> <p>EOT was sought till 31.12.2017 under the assumption that the land would be made available till 31.3.2016.</p>
29.03.2016	The Independent Engineer wrote to the NHAI recommending extension of construction period by 1318 days as against the requested 1351 days.
31.03.2016	NHAI's agreed with the Independent Engineer inasmuch as the second EOT for 1318 days was allowed. The NHAI admitted that only 80.66% (68.24 kms) of the land was made available as of 80.66%, and admitted that <i>"acceleration is dynamic and has to be finalised once 100% encumbrance-free land is handed over"</i> .
22.04.2016	Petitioner wrote to the Independent Engineer requesting for one time capital infusion ("OTFI") of INR 540 crores where it explained elaborately as to why the delay was caused in the project.
23.04.2016	The Independent Engineer wrote to the NHAI recommending OTFI of INR 540 crores. It noted that 70.99% of the physical progress had



	been achieved in available land (being 35.15 kms out of 84.6 kms as of end of October 2014).
23.04.2016	The Project Implementation Unit of the NHAI wrote to Regional Office endorsing its Independent Engineer's recommendation of OTFI of INR 540 crores.
22.06.2016	IE wrote to the NHAI stating that 42.97% of physical progress was achieved between 2012 and end of May 2016. This was the second EOI granted by NHAI.
22.06.2016	NHAI's Project Implementation Unit wrote a letter to its Regional Office recommending extension of construction period till 30.09.2017.
09.11.2016	Tripartite Agreement was executed amongst between NHAI, SBI (as the Lenders' Representative) and the Petitioner for OTFI to the tune of INR 540 crores due to the NHAI-induced delay in the project.
19.12.2016	NHAI wrote to the Petitioner stating that the Government of Maharashtra had granted working permission for widening of NH-66 (formerly NH-17) involving 1.65 HA of forest land in Karnala Bird Sanctuary area in favour of NHAI. It is pertinent to note that NHAI could ensure permission for this stretch on 19.12.2016 even as the Project was supposed to be completed by 16.06.2014.
26.04.2017	Internal NHAI correspondence demonstrated that it felt that the Project merited activation of OTFI and further that "work is progressing well".
24.10.2017	The Independent Engineer issued Cure notice of 1 month as Petitioner allegedly achieved 57.12% physical completion as opposed to 65.05% as of 30.09.2017. The Petitioner was directed to complete the balance work of developing the Project Highway by March 2018.
21.08.2019	The NHAI issued an illegal Show Cause Notice to the Petitioner for alleged slow progress of the work even as it admitted that almost 75% physical progress had been made and the project was egregiously delayed due to the acts and omissions of the NHAI itself.
16.09.2019	The Petitioner wrote a detailed reply to the illegal and perverse Show Cause Notice <i>inter alia</i> noting the various factors responsible for the delay in the project, none of which were within the Petitioner's control: <ol style="list-style-type: none"> <li>1. Slowdown due to the Eco Sensitive Zone</li> <li>2. Delay in handing over land</li> <li>3. Relocation of Reliance Gas Pipeline</li> <li>4. Relocation of electric utilities</li> <li>5. Relocation of ISPAI and CIDCO water pipe line</li> <li>6. Removal of encroachments</li> </ol>

	<p>7. increase in scope of work</p> <p>8. Other constraints: damages for delay, excessive use of project highway by unexpected heavy vehicles etc.</p>
15.02.2020	The Petitioner was constrained to seek a third EOT for construction till 31.12.2020 due to breaches on part of the NHAI and other factors not within the Petitioner's knowledge.
30.04.2020	Petitioner was constrained to write yet another letter for additional funding of INR 230 crores due to escalating costs caused by NHAI's delay which was wholly unforeseen by the Petitioner but well within the NHAI's control. This communication explained as to why even the OTFIS was not effective in saving a public project.
13.05.2020	Internal NHAI letter stated that any amount beyond the OTFIS was to be arranged by the Concessionaire under Clause 4.2 and 5.1 of the Tripartite Agreement. Even after criticising the Concessionaire's conduct, the NHAI noted that the delays were not caused due to the Concessionaire. NHAI accepted the Independent Engineer's recommendation for additional funding of <b>INR 335 crores</b> .
11.08.2020	NHAI wrote to the Petitioner forwarding the NHAI HQ's letter dated 03.08.2020 which acted in accordance with the minutes of the meeting held on 09.07.2020. The NHAI allowed the EOT till 31.12.2021 subject to unreasonable and unfair liquidated damages being imposed on the Petitioner.
15.10.2020	The Petitioner protested to the Independent Engineer explaining as to why it should not be burdened with liquidated damages. In fact, vide this communication, the Petitioner invoked the dispute resolution clause under Clause 4.1. However, the NHAI has failed to act in terms of that.
16.10.2020	NHAI wrote to the Petitioner illegally rejecting its plea to waive liquidated damages, and indicated its intention of terminating the Agreement. It is pertinent to note that it is this communication on the basis of which the NHAI has sought to justify its illegal termination notice dated 17.11.2021 (" <b>Impugned Communication</b> ") even though this communication was sent more than a year back.
31.10.2020	The Petitioner wrote a detailed response to the Impugned Communication pointing out as to why it was was illegal and unwarranted.
05.07.2021	The Petitioner issued a letter to the NHAI explaining as how the Project would be eligible for the issuance of Provisional Completion Certificate ( <b>PCOD</b> ) with the infusion of INR 40 crores.
17.07.2021	The Independent Engineer issued a Show Cause Notice for concessionaire default, alleging that the Petitioner had committed





	fundamental breach of the Agreement inasmuch as it had allegedly failed to cure its defaults.
10.08.2021	Petitioner's wrote a detailed reply to the Independent Engineer's illegal Show Cause Notice stating as to why it was not in breach of Agreement.
11.08.2021	The minutes of the Minister's review meeting held on 04.07.2021 were drawn up which reflected that the NHAI itself noted that the Project was being hampered due to extreme rainfall and villagers interfering with construction activity.
21.08.2021	The Independent Engineer recommended invocation of Clause 36.1 and suspension of the Petitioner's rights. This communication incorrectly characterised the Petitioner's rights and requests under the Agreement as "not tenable".
24.08.2021	The minutes of the OTFIS Review Meeting held on 24.08.2021 noted that: <ol style="list-style-type: none"> <li>1. While the cost of balance work is INR 267 crores but Lenders have not released the balance INR 40 crores.</li> <li>2. The Lenders were accused by NHAI of creating excuses for not releasing INR 40 crores even though they were duly secured.</li> </ol> <p>As subsequent events were to demonstrate, the Petitioner rightly apprehended that since imaginary defaults were being fabricated by the Respondent, the Respondent had every intention of taking illegal coercive and/or precipitative action against the Petitioner.</p>
10.11.2021	The Petitioner wrote a letter to the Independent Engineer categorically stating that it is likely to achieve PCOD by 30.11.2021. Thus, the Independent Engineer was requested to act under Clause 14.1 read with Clause 14.3.
11.11.2021	The Petitioner wrote a letter to the Respondent stating that it is likely to achieve PCOD by 30.11.2021. Thus, the Respondent was requested to act under Clause 14.1 read with Clause 14.3.
16.11.2021	The Independent Engineer wrote a letter disputing that PCOD would be achieved. This letter was received only on 17.11.2021.
17.11.2021	In a complete breach and departure from the terms and conditions of the very Agreement of which it was the author, NHAI illegally terminated the Agreement vide letter dated 17.11.2021 (" <b>Impugned Communication</b> ") even as it admitted that its intention to terminate under Clause 37.12 was issued almost a year back vide its letter dated 16.10.2020.
19.11.2021	Hence the present petition under Section 9 of the Arbitration and



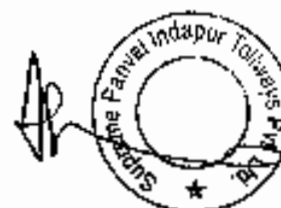
	<p><i>Conciliation Act 1996</i> praying that this Hon'ble High Court</p> <ol style="list-style-type: none"> <li>1. stay the effect of the Impugned Communication i.e. NHAI's letter dated 17.11.2021;</li> <li>2. direct that the NHAI be restrained from coercive and precipitative measures against the Petitioner until the appointment of an Arbitral Tribunal.</li> </ol>
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### SYNOPSIS

The Petitioner/Concessionaire is a Special Purpose Vehicle formed by the consortium comprising Supreme Infrastructure India Limited ("Supreme"), China State Construction Engineering Hong Kong Limited ("CSCHKL"), and Mahavir Roads and Infraprojects Private Limited ("Mahavir"). The Petitioner was incorporated after the above stated consortium emerged as the successful bidder in terms of the Request for Proposal dated 19.07.2010 for "*Four Laning of Panvel-Indapur section of NH-17 from km 0.000 to km 84.000 in the State of Maharashtra to be executed as BOT (Toll) on DBFO Pattern under NHDP Phase-III- Reg RFP*" and was awarded the Letter of Award dated 28.10.2010.

The Petitioner and the NHAI entered into the Concession Agreement on 21.01.2011 for a concession period of 21 years including the Construction Period of 910 days from the "Appointed Date". The timeline as envisaged by the Agreement was as follows:

1. Date of signing the Agreement: 21 January 2011
2. Development Period: 21 January 2011 to 18 December 2011
3. Appointed Date: 19 December 2011
4. Concession Period: 21 years from 19.12.2011 till 18 December 2023
5. Scheduled Construction Period: 910 days
6. Scheduled Date for Completion: 16 June 2014



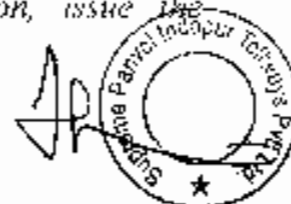
Subsequently, primarily due to the NHAI's failure in handing over unencumbered land, the Petitioner has been given extension of time twice:

- i. The first EOT was granted up to 31.03.2016 vide letter dated 26.02.2015.
- ii. The second EOT was granted up to 30.09.2017 as stated in NHAI's letter dated 22.06.2016.

Yet, in a desperate to attempt to shift responsibility, the NHAI has allowed a third EOT till 31.12.2021 on the condition that the Petitioner be saddled with exorbitant liquidated damages- a condition that the Petitioner has vociferously protested against as being unjust. In fact, it is apparent that the so-called liquidated damages are in the nature of penalty.

Despite its own constant failure in performing its contractual duties in providing for unencumbered land, to the utter shock of the Petitioner, the Respondent issued a letter dated 17.11.2021 purporting to be a Termination Notice under Clause 37.1.2 of the Agreement ("**Impugned Communication**"). For sake of reference, Clause 37.1.2 reads as under:

*Without prejudice to any other rights or remedies which the Authority may have under this Agreement, upon occurrence of a Concessionaire Default, the Authority shall be entitled to terminate this Agreement by issuing a Termination Notice to the Concessionaire: provided that before issuing the Termination Notice, the authority shall by a notice inform the Concessionaire of its intention to issue such Termination Notice and grant 15 (fifteen) days, whether or not it is in receipt of such representation, issue the*



*Termination Notice, subject to the provisions of clause 37.1.3.*

[Emphasised]

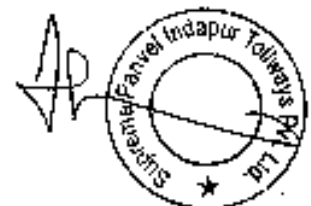
Admittedly, NHAI is justifying the Impugned Communication on the basis of a stale, inefficacious and illegal letter dated 16.10.2020. The NHAI is seeking to characterise this letter, issued almost a year back, as a notice to "*inform the Concessionaire of its intention to issue*" the Impugned Communication.

Time and time again, the NHAI and NHAI-appointed Independent Engineer have acknowledged the Respondent's failure in performing its contractual duties- evident from its repeated extension of time (EOT) and the like.

The Petitioner is constrained to prefer this petition under Section 9 of the *Arbitration and Conciliation Act 1996* seeking a stay on the effect of the Impugned Communication (purporting to be a termination notice under Clause 37.1.2 of the Agreement) as the illegal termination would allow the Respondent to take coercive and precipitative measures against the Petitioner, which includes but is not limited to the Petitioner being divested of all its rights and interests in accordance with Clause 38 of the Concession Agreement.

It is pertinent to note that the Petitioner has mobilised its own funds of a huge magnitude through debt and equity for the execution of the work, and therefore has a special and vested right in continuing with the work. Furthermore, the present Project is being executed on a Public-Private Partnership basis and, hence, it is not for the NHAI to unilaterally throw out the Petitioner in an arbitrary and unilateral manner.

Hence, this petition.



## 15

IN THE MATTER OF:

versus

National Highways Authority of India ...Respondent

**PETITION UNDER SECTION 9 OF THE ARBITRATION AND CONCILIATION ACT 1996 FOR STAY OF THE OPERATION OF THE RESPONDENT'S LETTER DATED 17.11.2021 AND RESTRAINING THE RESPONDENT FROM ACTING UPON THE SAME BY TAKING ANY PRECIPITATIVE/COERCIVE ACTION AGAINST THE PETITIONER**

**MOST RESPECTFULLY SHOWETH:**

1. That aggrieved by the NHAI's letter dated 17.11.2021 ("Impugned Communication") purporting to be a so-called Termination Notice under Clause 37.1.2 of the Agreement between the parties, the Petitioner is constrained to file the present Petition as vide the Impugned Communication, the NHAI has illegally terminated the Concession Agreement dated 21.01.2011 for the "*Four Laning of Panvel-Indapur Section of NH-17 from Km 0+000 to 84+000 in the State of Maharashtra under NHDP Phase-III on BOT Basis (Package No- NHDP-III/014/05)*" ("the Project"). The Impugned

Communication is wholly illegal inasmuch as the NHAI failed to inform the Petitioner of its intention to terminate in accordance with Clause 37.1.2. Once this illegal termination is effected, the Petitioner's hard earned rights in the project will be divested as the Respondent will take coercive and precipitative steps under the Agreement, including and not limited to Clause 38.

2. It is of some significance to note that the Petitioner has mobilised its own funds of a huge magnitude through debt and equity for the execution of the work, and therefore has a special and vested right in continuing with the work. Furthermore, the present Project is being executed on a Public-Private Partnership basis and, hence, it is not for the NHAI to unilaterally throw out the Petitioner in an arbitrary and unilateral manner.

#### **RELEVANT FACTS OF THE CASE**

3. The Petitioner is a Private Limited Company and Special Purpose Vehicle incorporated under the Companies Act 1956 to execute the Concession Agreement as described above. The present Petition is being filed through Mr. Tej Pal Sharma, Authorized Signatory of the Petitioner vide Board Resolution dated 12.11.2021 issued by the



Handwritten signature and circular stamp of Supra Infra Pvt. Ltd. The stamp contains the text "Supra Infra Pvt. Ltd." and a star symbol.

Petitioner. The copy of the Board Resolution dated 12.11.2021 is marked as **DOCUMENT-1**.

4. The Respondent has been established under the *National Highways Authority Act 1988*, having its headquarters at G- 5 & 6, Sector- 10, Dwarka, New Delhi- 110 075 and has been entrusted with the development, maintenance and management of National Highways network across the country and further mandated to develop and maintain road connectivity in the country.
5. Pursuant to the Respondent inviting proposals for "*Four Laning of Panvel-Indapur Section of NH-17 from Km 0+000 to 84+000 in the State of Maharashtra under NHDP Phase-III on BOT Basis (Package No-NHDP-III/DL4/05)*", the consortium ("**Consortium**") comprising Supreme Infrastructure India Limited ("**Supreme**"), China State Construction Engineering Hong Kong Limited ("**CSCCHKI**"), and Mahavir Roads and Infraprojects Private Limited ("**Mahavir**") was found to be qualified and issued the Letter of Award dated 28.10.2010. The copy of the Letter of Award is dated 28.10.2010 is marked as **DOCUMENT-2**.
6. Thereafter, the Consortium was directed to incorporate a Special Purpose Vehicle for domiciling the project. The



17


concession period was for 21 years including the Construction Period of 910 days from the "Appointed Date".

7. On 21.01.2011, a Concession Agreement ("Agreement") was entered between the NHAI and Concessionaire for the Project. The timeline envisaged under the Agreement was as under:

- i. Date of signing the Agreement: 21 January 2011
- ii. Development Period: 21 January 2011 to 18 December 2011
- iii. Appointed Date: 19 December 2011
- iv. Concession Period: 21 years from 19.12.2011 till 18 December 2023
- v. Scheduled Construction Period: 910 days
- vi. Scheduled Date for Completion: 16 June 2014

A copy of the relevant clauses and extracts of the Concession Agreement dated 21.01.2011 is marked as **DOCUMENT -3.**

8. On 30.08.2011, a Common Loan Agreement was entered into between the Petitioner and consortium of lenders comprising SBI, Canara Bank, IIFCL, Corporation Bank, Union Bank, SBIOP and I&T Infrastructure ("the





**Lenders**") whereby the lenders extended a term loan of INR 900 crores and the promoters raised INR 306 crores on their own. Simultaneously, the Petitioner entered into a Substitution Agreement with the State Bank of India in its capacity as the Lenders' Representative and the NIIAI whereby the Petitioner agreed to assign its rights, title and interest in the concession to SBI by way of security in respect of the financing by the Lenders under the Common Loan Agreement in the event that it was in breach of its obligations to the Lenders. It is important to note that the commercial bargain struck between the Concessionaire, NIIAI and the Lenders inasmuch as the Project would require INR 1206 crores was as per the understanding of 2011 and did not account for the inordinate delay in handing over the land on part of the NIIAI.

9. On 02.02.2012, the Respondent issued a letter to the Petitioner stating that 19.12.2011 was to be treated as the "Appointed Date" as per Article 48 of the Agreement. A copy of NIIAI's letter dated 02.02.2012 is marked as **DOCUMENT-4**.

10. Though the day of 19.12.2012 was the original date for completion of Milestone I being the "*first anniversary of the Appointed Date*" as per Schedule G read with Clause



12.1 of the Agreement which stipulated that the Petitioner ought to have spent at least 25% of the total capital cost set forth in the Financial Package and completed not less than 25% of the physical progress, yet the stated Milestone I was not achieved as NHA admittedly failed to hand over the requisite land.

11. Thereafter, the parties exchanged a series of correspondence re extension of the time required for achievement of Milestone I. The Independent Engineer vide its letter dated 05.04.2013 endorsed EOT for Milestone I. The Independent Engineer's letter dated 05.04.2013 is marked as DOCUMENT-5.

12. Though, the Respondent demonstrated a perverse attitude and resisted such an extension, the Petitioner put forth its contention as to why it was helpless and bore no responsibility for Milestone I not being achieved as per schedule on 19.12.2012. In this regard, the Petitioner's letter dated 16.04.2013 is marked as DOCUMENT-6.

13. The Independent Engineer again wrote a letter dated 07.05.2013 endorsing EOT for Milestone I. Thereafter, EOT was granted for Milestone I and the Respondent accepted that the Petitioner had shown its *bona fide* and revised the date for completion of Milestone I. A copy of



the Independent Engineer's letter dated 07.05.2013 is marked as **DOCUMENT-7**.

14. Incredibly, against all odds, the Petitioner achieved Milestone 2 by 19.12.2013 as per the Project Completion Schedule as stated in Schedule G despite the NHAI's abject failure in handing over land. A copy of the letter dated 03.04.2014 whereby the Independent Engineer acknowledged the Petitioner's progress is marked as **DOCUMENT-8**.

15. On 24.05.2014, the Petitioner wrote a letter to the NHAI stating that as against the total length of 84.60 kms, only 28.43% was made available to the Petitioner. This was merely 33.12 kms, made available in bits and pieces. The Petitioner also brought to the Respondent's notice that it was facing financial hardships due to the Respondent's inability in handing over land. A copy of the letter dated 24.05.2014 is marked as **DOCUMENT-9**.

16. On 07.06.2014, the Petitioner submitted its first application for Extension of time ("EOT"). Meanwhile, predictably, the original completion date of 16.06.2014 was breached as land was not made available to the Petitioner by then.



17. On 15.09.2014, the Petitioner was constrained to write another detailed letter requesting for EOT as the NHAI was not granting the EOT due to reasons best known to it. The Petitioner's letter dated 15.09.2014 is marked as **DOCUMENT-10**.

18. On 12.02.2015, the Petitioner wrote another letter to the NHAI stating that it was impossible to complete the construction by March 2016 when the NHAI resiled from its earlier promise of provide the land by 30.08.2014. The Petitioner conveyed its dismay at the NHAI communicating that land would be made available only by June 2015. The Petitioner's letter dated 12.02.2015 is marked as **DOCUMENT-11**.

19. On 26.02.2015, the first EOT was finally allowed up to 31.03.2016 (i.e. 653 days) excluding eco-sensitive zone with mutual forfeiture of any claim/compensation for the delays occurring of "any kind". It is pertinent to note that this EOT was allowed

- i. when the request was first made after almost 9 months.
- ii. the EOT granted on 26.02.2015 was premised on the condition that all lands would be made available by



31.08.2014- an event which NITAI failed to adhere to.

iii. the concession period remained unchanged

The letter dated 26.02.2015 is marked as **DOCUMENT-12.**

20. However, fully cognizant that it was in breach of its contractual obligations and that the Petitioner would be constrained to seek another EOT, the NHA and its Independent Engineer wrote a series of letters levelling baseless allegations against the Petitioner- *none of which were acted upon.*

The Independent Engineer's letter dated 5.11.2015 is marked as **DOCUMENT-13.** The Independent Engineer's letter dated 24.11.2015 is marked as **DOCUMENT-14.** The NHA's letter dated 30.11.2015 is marked as **DOCUMENT-15.**

21. On 14.03.2016, the Petitioner was constrained to seek a second EOT *inter alia* on the grounds that:

- i. The project was to be completed long back i.e. by 16.06.2014 i.e. 910 days from the Appointed Date being 19.12.2011;
- ii. Revenue could be earned only when four-laning was complete as toll could not be collected otherwise.



- iii. Delays were caused due to failure in provide encumbrance-free site inasmuch till the scheduled completion date (16.06.2014), only 24.05 kms were made available as against 84 kms.
- iv. Delay was also caused due to delay in diversion of forest land and approval for diversion of forest land for an addition 1.03 hectare, delay in shifting of utilities such as ISPAT, CIDCO, absence of GAD approval from railways, delay in shifting gas pipeline.
- v. The EOT granted on 26.02.2015 was premised on the basis that NHAI would make all lands available by 31 August 2014.
- vi. Despite adequate mobilisation of resources, the Concessionaire could not act in terms of Clauses 10.3, 10.4, 11.2, 11.4 of the Agreement.
- vii. NHAI was yet to pay bills for maintenance work and demolition work whilst the bills were submitted almost a year back.
- viii. Lenders had stopped funding the project as NHAI was taking inordinate amount of time in granting Extension of Time.
- ix. Only 64 kms of land was made available at the time of the letter being written.



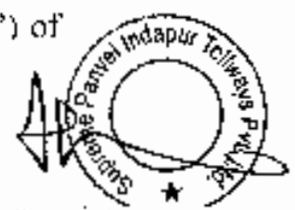
- x. Damages were due to the Concessionaire in terms of Article 4, Clause No. 4.2 apart from maintenance bills, compensation in terms of Clause 10.3, Clause 35.2, Clause 35.3 etc.
- xi. EOT was sought till 31.12.2017 under the assumption that the land would be made available till 31.3.2016.

The letter dated 14.03.2016 is marked as **DOCUMENT-16**.

22. The Independent Engineer wrote to NHAI recommending EOT by 1318 days as against the requested 1351 days vide its letter dated 29.03.2016. The letter dated 29.03.2016 is marked as **DOCUMENT-17**.

23. Vide its letter dated 31.03.2016, NHAI's agreed with its Independent Engineer inasmuch as EOT for 1318 days was allowed. The NHAI admitted that only 80.66% (68.24 kms) of the land was made available as of 80.66%, and stated that "calculation is dynamic and has to be finalised once 100% encumbrance-free land is handed over". The Respondent's letter dated 31.03.2016 is marked as **DOCUMENT-18**.

24. Since the commercial bargain between the parties had completed broken down due to the passage of time, the Petitioner, vide its letter dated 22.04.2016 wrote to the IR vide requesting for one time capital infusion ("**OTFI**") of



INR 540 crores wherein it explained elaborately as to why the delay was caused in the project. The Petitioner's letter dated 22.04.2016 is marked as **DOCUMENT- 19**.

On 23.04.2016, the Independent Engineer wrote to the Respondent recommending OEE of INR 540 crores. It noted that 70.99% of the physical progress had been achieved in available land (being 35.15 kms out of 84.6 kms as of end of October 2014). This recommendation was also endorsed by the NHAI's Project Implementation Unit's letter of the same date.

The Independent Engineer's letter dated 23.04.2016 is marked as **DOCUMENT- 20**. The Respondent's letter dated 23.04.2016 is marked as **DOCUMENT-21**.

25. On 22.06.2016, the Independent Engineer wrote to the Respondent recommending the second EOI. By a letter of the same date, the Respondent's Project Implementation Unit wrote a letter to its Regional Office endorsing the extension of the construction period till 30.09.2017.

The Independent Engineer's letter dated 22.06.2016 is marked as **DOCUMENT-22**. The Respondent's letter dated 22.06.2016 is marked as **DOCUMENT-23**.

26. On 12.08.2016, the NHAI wrote a letter to the Petitioner imposing strict conditions for the OEE which the Petitioner was forced to accept to keep the Project alive.





26

The NHAI's letter dated 12.08.2016 is marked as

**DOCUMENT-24.**

27. Pursuant to the recommendation of OTFI, on 09.11.2016, a Tripartite Agreement was entered into amongst the Respondent, State Bank of India (as the Lenders' representative) and the Petitioner for OTFI of INR 540 crores due to the delay in the Project. The Tripartite Agreement dated 9.11.2016 is marked as **DOCUMENT-25.**

28. On 19.12.2016, more than 2 years after the scheduled completion date, the Respondent issued a letter to the Petitioner stating that Government of Maharashtra had granted working permission for widening of NH-66 (formerly NH-17) involving 1.65 HA of forest land in Kamala Bird Sanctuary area in favour of NHAI.

29. On 26.04.2017, the NHAI's wrote a letter recommending that OTFI be activated and admitted that "*work is progressing well*". NHAI's letter dated 26.04.2017 is marked as **DOCUMENT-26.**

30. Thereafter, in order to justify its breaches and find faults with the Petitioner, the NHAI and its independent Engineer wrote a series of communications to blame the



Petitioner even though as of that date, it could not supply<sup>27.</sup>  
the unencumbered land to the Petitioner.

The NHAI's letter dated 30.5.2017 is marked as  
**DOCUMENT-27.**

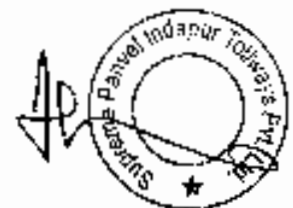
The Independent Engineer's letter dated 5.09.2017 is  
marked as **DOCUMENT-28.**

The Independent Engineer's letter dated 17.10.2017 is  
marked as **DOCUMENT-29.**

31. Incredibly, vide its letter dated 24.10.2017, the  
Independent Engineer, instead of the NHAI, issued a Cure  
Notice of 1 month, alleging that the Petitioner achieved  
57.12% physical completion as opposed to 65.05% as of  
30.09.2017. The Concessionaire was directed to complete  
the balance work of developing the Project Highway by  
March 2018. However, there was no coercive action taken  
against the Petitioner thereafter for almost four years.

The Independent Engineer's letter dated 24.10.2017 is  
marked as **DOCUMENT-30.**

32. Thereafter, the Respondent and its Independent Engineer  
continued writing letters levelling bizarre allegations  
against the Petitioner even though it was the Respondent  
which woefully failed in performing its contractual  
obligations.



The Independent Engineer's letter dated 25.10.2017 is marked as **DOCUMENT-31**.

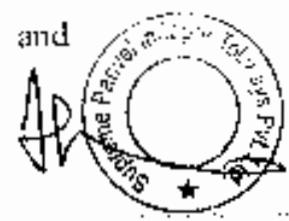
The Independent Engineer's letter dated 8.11.2017 is marked as **DOCUMENT-32**.

The NHAI's letter dated 9.11.2017 is marked as **DOCUMENT-33**.

33. In 2018, the Hon'ble Minister for Road Transport held a meeting on 27.08.2018, the minutes of which were communicated by the NHAI to the Petitioner vide letter dated 5.09.2018. The 10<sup>th</sup> OTFIS Review Meeting was held on 13.03.2018 and the minutes were communicated vide letter dated 22.03.2018.

NHAI's letter dated 22.03.2018 enclosing the minutes of the 10<sup>th</sup> OTFIS meeting held on 13.03.2018 is marked as **DOCUMENT-34**. NHAI's letter dated 05.09.2018 enclosing the minutes of the Hon'ble Minister's review meeting held on 27.08.2018 is marked as **DOCUMENT-35**.

34. Vide letter dated 21.08.2019, the Respondent issued an illegal Show Cause Notice issued to the Concessionaire for alleged slow progress of the work even as it admitted that almost 75% physical progress had been made and the project was grievously delayed due to the acts and



omissions of the NHAI itself. The Respondent's letter dated 21.08.2019 is marked as **DOCUMENT-36**.

35. The Petitioner was constrained to write a detailed letter dated 16.09.2019 in reply to the falsified Show Cause Notice dated 21.08.2019 *inter alia* noting that there were various factors responsibly for the delay which were not within the control of the Petitioner. Some factors listed were:

- i. Slowdown due to the Eco Sensitive Zone
- ii. Delay in handing over land
- iii. Relocation of Reliance Gas Pipeline
- iv. Relocation of electric utilities
- v. Relocation of ISPAT and CIDCO water pipe line
- vi. Removal of encroachments
- vii. increase in scope of work
- viii. Other constraints: damages for delay, excessive use of project highway by unexpected heavy vehicles etc.

The Petitioner's reply dated 16.09.2019 is marked as **DOCUMENT-37**.

36. On 15.02.2020, the Petitioner was constrained to seek a third EOT for construction till 31.12.2020 due to breaches



on part of the Respondent other than factors not within the Petitioner's control. The Petitioner's letter dated 15.02.2020 is marked as **DOCUMENT-38**.

37. On 30.04.2020, the Petitioner was constrained to write yet another letter for additional funding of INR 230 crores due to escalating costs caused by NHAI's delay which was wholly unforeseen by the Concessionaire but well within the NHAI's control. This communication explained as to why even the OTFIS was not effective in saving a public project. The Petitioner's letter dated 30.04.2020 is marked as **DOCUMENT-39**.

38. Vide its letter dated 13.05.2020, the Respondent's Project Implementation Unit wrote to its Regional Office unfairly criticising the Petitioner's conduct while admitting that the all delays were not caused by the Petitioner. The Respondent proposed an additional funding of INR 335 crores. The Respondent's letter dated 13.05.2020 is marked as **DOCUMENT-40**.

39. Meanwhile, the Independent Engineer wrote letters dated 13.07.2020 and 07.08.2020 in order to cover up for the NHAI's failures. The Independent Engineer's letters dated 13.07.2020 and 07.08.2020 are marked as **DOCUMENT-41** and **DOCUMENT-42** respectively.



40. On 11.08.2020, the Respondent stated that it would be willing to approve the third EOT till 31.12.2021 subject to liquidated damages being imposed on the Petitioner. The Respondent's letter dated 11.08.2020 is marked as **DOCUMENT-43.**

41. Vide letter dated 25.08.2020, NHAI forwarded the minutes of the 25<sup>th</sup> OTFIS Review Meeting held on 14.08.2020. NHAI's letter dated 25.08.2020 is marked as **DOCUMENT-44.**

42. NHAI wrote letter dated 1.10.2020 to the Petitioner. NHAI's letter dated 1.10.2020 is marked as **DOCUMENT-45.**

43. On 15.10.2020, the Petitioner wrote a letter to the Independent Engineer explaining as to why liquidated damages should not be imposed on the Petitioner. The Petitioner's letter dated 15.10.2020 is marked as **DOCUMENT-46.**

44. It is pertinent to note that the Petitioner had invoked the Dispute Resolution Clause vide its letter dated 15.10.2020, however the Respondent is yet to appoint a Conciliator in this regard till date.



45. On 16.10.2020, the Respondent wrote to the Petitioner illegally and irrationally rejecting the Concessionaire's plea to waive liquidated damages. It is pertinent to note that it is this letter, sent over a year ago, on the basis of which the Respondent states that the Petitioner had adequate notice of the purported Termination Letter i.e. the Impugned Communication. The Respondent's letter dated 16.10.2020 is marked as **DOCUMENT-47**.

46. The illegal communication dated 16.10.2020 was responded to by the Petitioner vide its letter dated 31.10.2020. The Petitioner's letter dated 31.10.2020 is marked as **DOCUMENT-48**.

47. Vide letter dated 12.03.2021, NHAI forwarded to the Petitioner the minutes of the 28<sup>th</sup> OT/IS Meeting held on 9.03.2021. Similarly, vide email dated 22.04.2021, State Bank of India forwarded the minutes of the meeting held on 20.04.2021 to discuss the additional lending of INR 40 crores. The Independent Engineer wrote yet letters dated 27.05.2021 and two letters dated 18.06.2021 levelling baseless allegations against the Petitioner. On 25.06.2021, the Independent Engineer wrote another letter levelling similar allegations against the Petitioner.



NHAI's letter dated 12.03.2021 enclosing the minutes of the 28<sup>th</sup> OTFIS Meeting held on 09.03.2021 is marked as **DOCUMENT-49.**

The minutes of the meeting held on 20.04.2021 is marked as **DOCUMENT-50.**

The Independent Engineer's letters dated 27.05.2021, 18.06.2021, 18.06.2021 and 25.06.2021 are marked as **DOCUMENT-51, DOCUMENT-52, DOCUMENT-53** and **DOCUMENT-54** respectively.

48. On 05.07.2021, the Petitioner wrote to the NHAI explaining as to how the Project would be eligible for the issuance of Provisional Completion Certificate (PCOD) with the infusion of INR 40 crores. The Petitioner's letter dated 5.07.2021 is marked as **DOCUMENT-55.**

49. On 13.07.2021, the Independent Engineer issued yet another letter to the Petitioner. The Independent Engineer's letter dated 13.07.2021 is marked as **DOCUMENT-56.**

50. On 17.07.2021, the Independent Engineer issued yet another illegal Show Cause Notice for Concessionaire Default wherein it was alleged that the Petitioner had committed fundamental breach of Agreement and had failed to cure the defects despite opportunities. The





Respondent's letter dated 17.07.2021 is marked as **DOCUMENT-57.**

51.The Show Cause Notice dated 17.07.2021 harked back to the so-called Cure Period Notice dated 24.10.2017 in a desperate attempt to comply with the Agreement that it had itself drawn up.

52.On 31.07.2021, the Independent Engineer wrote another letter to the Petitioner alleging non-compliance with Agreement. The Independent Engineer's letter dated 31.07.2021 is marked as **DOCUMENT-58.**

53.On 10.08.2021, the Petitioner replied to the Respondent explaining as to why and how it was not in breach of the Agreement. The Petitioner's reply dated 10.08.2021 is marked as **DOCUMENT-59.**

On 11.08.2021, the minute of the Hon'ble Minister's Review Meeting was published where it was admitted that the Project was being hampered *inter alia* due to extreme rainfall and interference of villagers. The Minutes dated 11.08.2021 is marked as **DOCUMENT - 60.**

54.On 21.08.2021, the Independent Engineer recommended to the NHAI that Article 36.1 be invoked and the Petitioner's rights be suspended. The communication was perverse inasmuch as it characterised the Petitioner's conditions as



"not tenable". The Independent Engineer's letter dated 21.08.2021 is marked as **DOCUMENT-61**.

55. The OIVIS Review Meeting took place on 24.08.2021 where the everyone was *ad idem* and only INR 40 crores was required for the Project to achieve PCOD. The Respondent squarely held the banks of delaying matters and not releasing the amount despite being adequately secured.

The minutes of the OIVIS Meeting held on 24.08.2021 is marked as **DOCUMENT-62**.

56. On 24.09.2021, the Independent Engineer wrote another letter to the Petitioner alleging non-compliance with the Agreement. The Independent Engineer's letter dated 24.09.2021 is marked as **DOCUMENT-63**.

57. In September 2021, the Independent Engineer acknowledged that physical progress to the extent of more than 88% was already achieved by the Petitioner. The Monthly Progress Report of  $\text{ഒക്ടോബർ 2021}$  2021 is marked as **DOCUMENT-64**.

58. On 10.11.2021, the Petitioner wrote a letter to the Independent Engineer stating that PCOD would be achieved by 30.11.2021. Thus, the Independent Engineer was advised to invoke Clause 14.1 r/w Clause 14.3 of the



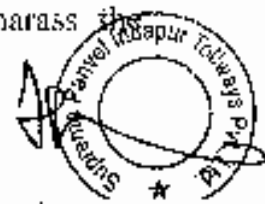
Agreement. The Petitioner's letter dated 10.11.2021 is marked as **DOCUMENT-65**.

59. Similarly, on 11.11.2021, the Petitioner wrote a letter to the Independent Engineer stating that PCOD would be achieved by 30.11.2021. Thus, the Respondent was advised to invoke Clause 14.1 r/w Clause 14.3 of the Agreement. The Petitioner's letter dated 11.11.2021 is marked as **DOCUMENT-66**.

60. On 16.11.2021, the Independent Engineer wrote a letter disputing that PCOD would be achieved by 30.11.2021. This letter was received by way of an email on 17.11.2021. The Independent Engineer's letter dated 16.11.2021 is marked as **DOCUMENT-67**.

61. On 17.11.2021, the Respondent illegally terminated the Agreement ("Impugned Communication") even though it has not served the Petitioner a notice communicating its intention to terminate under Clause 37.1.2. The impugned communication dated 17.11.2021 and issued by the Respondent is marked as **DOCUMENT-68**.

62. Though the Respondent is a state entity and is bound by the Law of the country as well as the Concession Agreement, it is deliberately giving a strained interpretation of the Agreement in order to harass the



Petitioner in order to shift responsibility of the delay in the Project onto the Petitioner.

**LEGAL SUBMISSIONS/SUBMISSIONS ON MERITS**

63. The Impugned Communication, purporting to be a termination notice under Clause 37.1.2, is illegal inasmuch the NHAI has failed to serve a notice informing the Petitioner of the NHAI's intention to issue the impugned communication dated 17.11.2021.

64. The basis of the Impugned Communication i.e. NHAI's letter dated 16.10.2020, cannot be termed as a valid notice informing the Petitioner of the NHAI's intent to issue letter dated 17.11.2021 inasmuch as the letter dated 16.10.2020 was issued more than a year back and is hence inefficacious.

65. Assuming without accepting that the Impugned Communication can be sustained on the basis of the otherwise stale and inefficacious letter dated 16.10.2021, it is abundantly clear that the Impugned Communication also suffers from the vice of being unreasoned inasmuch as it fails to deal with the Petitioner's reply dated 31.10.2020 to the NHAI's letter dated 16.10.2020.



66.The Impugned Communication does not even have a salutory reference to the Petitioner's reply dated 31.10.2020 to the stale and inefficacious letter dated 16.10.2020.

67.Even the Cure Period Notice dated 24.10.2017 can by no stretch of the imagination be said to be valid, leave alone form a basis for the Show Cause Notice for Termination dated 17.07.2021. This is so because of the lapse of such a long period of time and the numerous associated developments that have transpired thereafter. Furthermore, the so-called Cure Period Notice dated 24.10.2017 is invalid and illegal since the NHA has not issued the same, but the Independent Engineer.

68.Such a stale and outdated Cure Period Notice is completely inefficacious in the present, and can never be made the basis of a Show Cause Notice for Termination. It is most pertinent to note that the all the defects highlighted in the Cure Period Notice dated 24.10.2017 have been rectified.

69.The Impugned Communication was passed in a *mala fide* manner and trampled upon the rights of lenders to the prejudice of public exchequer. Even though the Petitioner wrote letters dated 10.11.2021 and 11.11.2021 intimating



that the Project was ready to be issued PCOD, the NHAI issued the so-called termination notice/Impugned Communication so that the lenders' rights could be defeated under the Tripartite Agreement and the waterfall mechanism defeated.

70. The NHAI deliberately contravened its obligations under Clause 14 of the Agreement as achievement of the PCOD would put the lenders and the Petitioner in greater control of the financials.

71. The Petitioner has deployed its resources vigorously for the last 4 months and was ready to achieve PCOD when the Impugned Communication was passed. In fact, the Impugned Communication does not even advert to the Petitioner's strenuous assertion that the Project was ready to be issued PCOD.

72. The NHAI controlled the fund flow of the OTFIS of INR 540 crores and was always cognisant of the progress of the Project. They have not prioritised the funding to achieve PCOD because of which it has passed the Impugned Communication. This is most evident from the NHAI and the Independent Engineer's admissions contained in Monthly Project Report of September 2021 wherein



PCOD was recommended and more than 88% progress was achieved.

73. The Respondent has not followed the principles of performing a BOT contract by going roughshod over others' rights.

74. Therefore, the Petitioner is humbly praying before this Hon'ble Court for relief, *inter-alia* on the facts and submissions stated above and the on following grounds:

- i. Because the Respondent has not complied with the terms and conditions of the Agreement inasmuch as neither has it made available unencumbered land to the Petitioner till date, nor has it followed the contractual mechanism of terminating the Agreement.
- ii. Because, till date, the Respondent has managed to provide 502.5 hectares of land against the required 504 hectares.
- iii. Because the Respondent is straining all cannons of contractual interpretation in order to justify the Impugned Communication inasmuch as it is relying upon an inefficacious and stale notice dated 16.10.2020 to justify the termination notice dated 17.11.2021.



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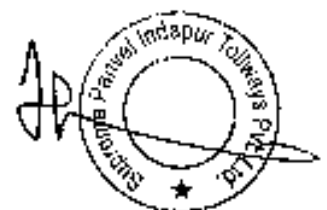
iv. Because if the Respondent insists that its notice dated 16.10.2020 is valid qua the termination notice dated 17.11.2021, then it is evident that the Petitioner's dispute resolution notice dated 15.10.2020 is equally valid and the Petitioner ought to be restrained from taking precipitative action till the appointment of a conciliator as the Petitioner has already invoked the Dispute Resolution Clause as per its letter dated 15.10.2021.

v. Because the Impugned Communication is unreasoned and *malafide*.

vi. Because there exists no valid Cure Period Notice at all inasmuch as the so-called Cure Period Notice dated 24.10.2017 was issued without any jurisdiction and is presently stale to sustain the Impugned Communication dated 17.11.2021.

vii. Because the status of the Project as on 31.08.2020 was as follows:

- Cumulative physical progress: 85.08%
- Cumulative financial progress: 92.07%
- Cumulative expenditure: INR 1684.60 crores
- OTFIS Funding: INR 504.81 crores





- Completion of Dense Bituminous Macadam  
four laning in kms: 59.84 kms
- Completion of BC four laning in kms: 49.38  
kms
- Length of affected ROW due to land  
acquisition issues: 2570 metres.

- viii. Because by way of OTEIS as also the two EOTs granted, the Respondent had acknowledged that it had continuously failed in its contractual duties as per the Agreement.
- ix. Because the coercive action sought to be initiated against the Petitioner is merely the Respondent trying to shift its blame for the requirement of a third EOT which had permitted with heavy liquidated damages.
- x. Because both the Respondent and its Independent Engineer had admitted in various correspondence that the Project was suffering on account of its failure to deliver encumbrance-free land and State Government permissions.
- xi. Because even apart from the illegal termination notice, there is no valid Cure Period Notice as of now and the Respondent's Notice dated 17.07.2021



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is laced with deliberate misrepresentations and contradictory statements.

- xii. Because the Independent Engineer in its communication dated 17.07.2021 has deliberately relied upon a stale Cure Notice dated 24.10.2017 in order to allow the Respondent to illegally terminate the Agreement.
- xiii. Because all the defects noted in the Cure Notice dated 24.10.2017 have already been rectified.
- xiv. Because the NIIAI is likely to take precipitative action against the Petitioner and divest it of its valuable rights under Clause 38 of the Agreement even though the Petitioner has invested INR 325.68 crores as equity and INR 900 crores as debt in the Project.
- xv. Because the Respondent has made available 96.96% of land only as late as of 31.03.2020 and land admeasuring 1.25 Hectares is still due as of date. Consequently, the Petitioner is unable to construct 895 metres 4-lane length, toll plaza building, toll plaza service roads on both sides, toll plaza canopy including booths. The Petitioner has also been unable to construct the main carriageway and



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service roads in Pen & Roha Taluka as evident from NHAI's letter dated 6.10.2021.

xvi. Because even the illegal, impugned communication dated 17.11.2021, purporting to be under Clause 37.1.2, is materially false for a number of reasons:

a) As per the Petitioner's EOT application dated 14.03.2016, only 24.05 kms of land was available for construction. Thus, the physical progress against available land could be  $34.48 \times 84.60 / 24.05 = 121\%$ . This implies that the Petitioner has actually achieved 100% work done in available land and also in some part of non-available land i.e. in Stretch from 0 to 6km. Further, as per the Petitioner's letter dated 15.10.2020, physical was 65.31%.

b) Physical progress against 84.60km was 43.31% but 100% land available was not made available as promised by NHAI as stated in the Petitioner's letter dated 30.10.2020. Working Permission in Eco sensitive Zone i.e. km 0 to km 20 was granted only in December 2016 i.e. after 4 Months of after expiry of 1<sup>st</sup> EOT on 30.06.2016.

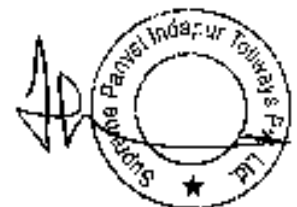


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The Cumulative Physical land available, as on 30.06.2016, was 43.16%.

- c) The OTFIS was deemed necessary because the Respondent failed in its obligation of providing land.
- d) The impugned communication dated 17.11.2021 is silent as to the Petitioner's letters dated 5.7.2021, 10.11.2021, 11.11.2021.
- e) There was no financial model submitted by the Petitioner as stated in the impugned communication.
- f) The Petitioner's staff was and has always have been available at the Project site.

xvii. Because it is a matter of grave concern that the Respondent, which is a Govt. instrumentality and a State under the meaning of Article 12 of the Constitution of India, is attempting to illegally enrich itself at the cost of the Petitioner, which is not permissible under the law. From the abovesaid premise, it is clear that Termination Letter dated 17.11.2021 is nothing but a bundle of lies concocted to make illegitimate gains at the cost of the Petitioner.



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xviii. Because the Respondent is expected to be fair and reasonable whereas it is acting in a manner which totally arbitrary and contrary to the obligation under the Agreement as well as the law of the country.

xix. Because the Respondent, on the basis of an illegal Termination Letter, take coercive actions against the Petitioner and divest it of all its rights in the Project even without the appointment of an arbitrator in line with the Petitioner's letter dated 15.10.2020.

75. It is equally well settled that the doctrine of fairness and reasonableness must be read into contracts to which State instrumentalities like the Respondent are a party and any attempt by the Respondent to vary, alter or change the terms and conditions of document or the underlying Concession Agreement cannot be permitted. It is submitted that when the Respondent did not find out any defects/defaults on the part of the Petitioner in executing the Project, it has started creating the fabricated and false documents against the Petitioner to blame the Petitioner for alleged defects/defaults mentioned in the Termination Letter dated 17.11.2021. Therefore, the act of threatening to take coercive and precipitative action under Clause 38



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against the Petitioner, would show that both fraud and special equities could be clearly made out against the Respondent and the Respondent ought to be restrained and enjoined so as to prevent irretrievable injustice to the Petitioner.

76. The present petition is being filed *bona-fide* and in the interests of justice, equity and good conscience. The Petitioner has a very good *prima facie* case in its favour and is sanguine of its success. The balance of convenience is also in favour of the Petitioner and against the Respondent. The Petitioner is also likely to suffer irreparable loss and injury, which cannot be compensated in terms of money, if the Respondent Authority is allowed to take any coercive and/or precipitative action in terms of Impugned Communication. No prejudice would be caused to the Respondent if the present Petition is allowed. On the contrary, grave prejudice would be caused to the Petitioner if the present Petition is not allowed.

77. The present petition is maintainable because there is an Arbitration Clause in the Concession Agreement between the Parties. Further the subject matter of the present Petition is a "commercial dispute" as defined in the Section 2(1) of the *Commercial Courts Act 2015*.



78. The Respondent has its principal office at New Delhi. The Contract Agreement between the Petitioner and the Respondent was executed at Delhi. The venue/seat of arbitration as per Clause 36.3 of the Concession Agreement is at New Delhi. The Courts of Delhi have therefore, jurisdiction over matters arising out of or relating to this Concession Agreement. Hence, this Hon'ble Court has the territorial jurisdiction to entertain the instant Petition.

79. For the purpose of pecuniary jurisdiction, it is submitted that any precipitate action by the Respondent would set at risk revenue running into several crores of rupees for the remainder of the concession period. The Cost expended on the project by the Petitioner is more than INR 340 crores. Therefore, this Hon'ble Court has the pecuniary jurisdiction to entertain the present petition.

80. That the Petitioner states that it has not filed any suit of other proceedings for the similar reliefs sought herein before any other Court of Law or Authority, except this Petition under Section 9 of the *Arbitration and Conciliation Act 1996*.



81. The present petition has been drafted urgently and in a <sup>u9</sup>

hurry. All facts considered material have been set out in the petition, however, the Petitioner respectfully and humbly craves leave of this Hon'ble Court to add/alter/amend the petition and to plead and set out further facts as may be considered necessary. The Petitioner relies on the documents, originals and/or photocopies of which are being filed along with this petition/application. That as the registry of this Hon'ble Court raises objections with respect to the dim/ semi legible documents and the instant petition is being filed in a hurry, the Petitioner may be allowed to file the some of the left out important documents in a separate compilation later on and the Petitioner craves leave to refer to and rely upon the same at the time of hearing. The Petitioner is in the process of carrying on further investigations and collecting documents and, therefore, reserves its right to add, alter or amend any or all of the submissions made hereinabove and to file additional documents and/or the English translations of documents already referred to at a later stage of the proceedings, if so advised.

82. That the Petitioner submits that the present Petition is being filed, seeking the relief(s) prayed herein, for the





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purpose of protecting its legal rights on account of the Respondent's letter dated 17.11.2021 issued by the Respondent whereby the Agreement has been terminated.

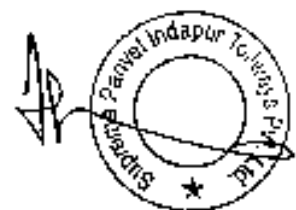
83. The Petitioner reserves its right to file a petition or seek further relief for any other cause of action, which may arise in the facts and circumstances of the case. The present Petition is without prejudice to all legal rights which accrue in favour of the Petitioner on account of the violation of its rights under the Concession Agreement.

84. The Petitioner reserves its rights to take appropriate legal action with respect to its rights under the Contract Agreement.

#### PRAYER

In view of the afore going facts and circumstances, it is most respectfully prayed that this Hon'ble Court may graciously be pleased to:

- I. Stay the operation of the Impugned Communication dated 17.11.2021;
- II. Restrain the Respondent Authority from acting upon the Impugned Communication dated 17.11.2021 by taking any coercive/precipitative action against the Petitioner under the same;



- III. grant Ad-interim ex-parte relief in terms of the above prayer(s) till the final disposal of the arbitration proceedings to be initiated between the Petitioner and the Respondent Authority;
- IV. grant any other or further relief that this Hon'ble Court deems fit and proper in the facts and circumstances of the case in favour of the Petitioner and against the Respondent.

IT IS PRAYED ACCORDINGLY



THROUGH

SP MUKHERJEE (D/1840/2015)  
 AVINASH SHUKLA (D/7568/2019)  
 Counsel for Petitioner  
 B-107, BASEMENT (SIDE ENTRANCE),  
 C.R. PARK, NEW DELHI 110019  
 Mobile: 991 9810067603  
 Email: subbropm[at]gmail[dot]com

Place: New Delhi  
 Date: 19.11.2021

**IN THE HIGH COURT OF DELHI AT NEW DELHI  
(CIVIL ORIGINAL COMMERCIAL JURISDICTION)**

**OMP (1) (COMM) NO. \_\_\_\_\_ OF 2021**

**IN THE MATTER OF:**

Supreme Panvel Indapur Tollways Private Limited.

...Petitioner

Versus

National Highways Authority of India.

...Respondent

**AFFIDAVIT**

I, Tej Pal Sharma S/o Sh. Shiv Charan Sharma, aged about 73 years, Residence at P-9/12 DLF City Phase 2, behind telephone exchange phase 2, Gurgaon, Sikanderpur Ghosi (68), Gurgaon, DLF Qe, Haryana, 122002, presently at New Delhi, do hereby solemnly affirm and declare as under:

- I. I am the Authorized Signatory of the Petitioner Company, namely Supreme Panvel Indapur Tollways Private Limited having its office at 510, 5<sup>th</sup> floor, ABW Tower, IFECO Chock, MG Road, Gurgaon, Haryana 122002.
- II. That I am fully conversant with facts and circumstances of the case on the basis of records maintained by the Petitioner in the ordinary course of business and as such am competent to depose the present affidavit.
- III. That I have read and understood the contents of the accompanying Petition under section 9 of the Arbitration



and Conciliation Act, 1996, and the same has been drafted by Counsel under my instructions.

IV. That the facts stated therein are true and correct to the best of my knowledge and the same may kindly be read as a part of this affidavit and are not being repeated here for the sake of brevity.

*[Signature]*  
DEPONENT

*[Signature]*  
I identified the deponent who has signed up in my presence.

### VERIFICATION

Verified at New Delhi on this the 20 day of NOV 2021, that the contents of this affidavit are true and correct to the best of my knowledge and the records maintained in the ordinary course of business and nothing material has been concealed there from.

20 NOV 2021

*[Signature]*  
DEPONENT



CERTIFIED THAT THE DEPONENT  
Shri/Smt./K...  
S/o W/o D/o...  
Identified by...  
has solemnly affirmed before me at Delhi  
on...  
that the contents of the affidavit are true and correct to the best of his knowledge.

11A

Notary Public

**IN THE HIGH COURT OF DELHI AT NEW DELHI  
(CIVIL ORIGINAL COMMERCIAL JURISDICTION)**

**OMP (1) (COMM) NO. \_\_\_\_\_ OF 2021**

**IN THE MATTER OF:**

Supreme Panvel Indapur Tollways Private Limited,

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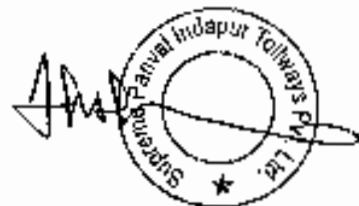
**STATEMENT OF TRUTH**

(Under First Schedule, Order VI, Rule 15-A and Order X, Rule 1 of the Code of Civil Procedure, 1908)

Statement of Truth of Tej Pal Sharma <sup>(Ld.)</sup> S/o Sh. Shiv Charan Sharma, aged about 73 years, the Authorized Signatory of the Petitioner having its office at 510, 5<sup>th</sup> floor, ABW Tower, IFFCO Chock, MG Road, Gurgaon, Haryana 122002, presently at New Delhi, do hereby solemnly affirm and declare as under:

1. I am the Authorized Signatory of the Petitioner Company in the above case and am competent to swear this Affidavit.
2. I am sufficiently conversant with the facts of the case and have also examined all relevant documents and records in relation thereto and am duly authorized and competent to file this affidavit.

3. I say that the statements made in the Petition at Paragraphs (1-62) are true and correct to my knowledge and derived from the records of the Company maintained its due course of



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business and the statements made in Paragraphs (63-84) are believed to be correct and are based on legal advice and last paragraph is the prayer to this Hon'ble Court.

4. I say that there is no false statement or concealment of any material fact comment or record and that I have included all information that according to me, is relevant for the present Petition.

5. I say that all the documents that are in my power, possession, control, or custody, pertaining the facts and circumstances of the proceedings, relevant for the adjudication of the present petition, have been disclosed and copies thereof annexed with the Petition and that I do not have any other documents in my power, possession, control, or custody.

6. I say that the above-mentioned pleadings comprise of a total of 4 pages, each of which has been signed by me.

7. I state that the documents being filed along with the list of documents are copies of the documents and relied upon by me.

8. I say that I am aware that for any false statement or concealment, I shall be liable for action taken against me under law.



*Sub*  
I identified the deponent who has  
signed and put in my presence  
VER  
cri  
cont  
know

Verified at New Delhi on this 26<sup>th</sup> day of May 2021, that the contents of this affidavit are true and correct to the best of my knowledge and nothing material has been concealed there from.

20 NOV 2024



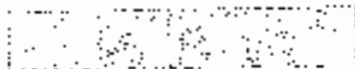
CERTIFIED TRUE AND CORRECT

that the contents of the instrument which  
have been read and explained to me are  
true and correct to the best of my knowledge

Notary Public

57

2021



GM 0000050929

**GOVERNMENT OF NCT OF DELHI**  
**e-Court Fee**



DATE & TIME : 18-NOV-2021 14:10:51  
 NAMES OF THE ADDY REGISTERED USER : SHCIL  
 LOCATION : DWARKA COURT  
 e-COURT RECEIPT NO : DLCT848K21100553  
 e-COURT FEE AMOUNT : ₹ 500  
 (Rupees Five Hundred Only)



DLCT1848K21100553

Statutory Alert : The authenticity of the e-Court fee receipt should be verified at [www.e-filing.gov](http://www.e-filing.gov). Any discrepancy in the details on this receipt and its availability on the website renders it invalid. In case of any discrepancy please inform the Government Authority. This receipt is valid only after verification & signing by the Court Official.



58

**GOVERNMENT OF NCT OF DELHI**  
**e-Court Fee**



<b>DATE &amp; TIME :</b>	18-NOV-2021 15:28:48
<b>NAMES OF THE ACC/ REGISTERED USER :</b>	SHCIL
<b>LOCATION :</b>	DELHI HIGH COURT
<b>e-COURT RECEIPT NO :</b>	DLC11830K2128P116
<b>e-COURT FEE AMOUNT :</b>	₹ 50
	( Rupees Fifty Only)



DLC11830K2128P116

Statutory Alert : The authenticity of this e-Court fee receipt should be verified at [www.echilestamr.com](http://www.echilestamr.com) . Any discrepancy in the details on this receipt and as available on the website renders it invalid. In case of any discrepancy please inform the Competent Authority. This receipt is valid only after verification & locking by the Court Clerk.



**PIN THE HIGH COURT OF DELHI AT NEW DELHI**  
**(CIVIL ORIGINAL COMMERCIAL JURISDICTION)**  
**OMP (I) COMM. NO. \_\_\_\_\_ OF 2021**

**IN THE MATTER OF:**

Supreme Panvel Indapur Tollways Private Limited ...Petitioner  
 versus  
 National Highways Authority of India ...Respondent

**AFFIDAVIT UNDER SECTION 65B OF THE INDIAN EVIDENCE ACT**  
**1872**

I, Tej Pal Sharma S/o late. Sh. Shiv Charan Sharma, aged about 73 years, residence at P-9/12 DLF City Phase 2, behind telephone exchange phase 2, presently at New Delhi, do hereby solemnly affirm and declare and state an oath as under:-

1. That I am the Authorised Representative of the Petitioner in the above stated case and well conversant with the facts and circumstances of the case and as such competent to swear this affidavit.

2. That many of the documents attached with the Petition are computer generated, thus mandating the present affidavit.


3. That I am well versed in English.



*Tej Pal Sharma*  
 Supreme Panvel Indapur Tollways Private Limited

4. That the electronic documents have been generated using my laptop and my cell phone- both of which are working properly.
5. Both the devices are in my lawful custody and documents have been generated in the ordinary course of business.
6. That no event has taken place to affect the accuracy of the computer generated documents.
7. That this affidavit is bonafide.

*[Signature]*  
DEPONENT



VERIFICATION:

*[Signature]*  
I identified the deponent who has signed put in my presence

Verified at Delhi on this **20 NOV 2021** day of November 2021 that the contents of the above affidavit are true and correct to my knowledge and belief and no part of it is false and nothing material has been concealed therefrom.



20 NOV 2021

CERTIFIED THAT THE DEPONENT  
Shri/Smt. *[Signature]*  
S/o W/o *[Signature]*  
Identified by *[Signature]*  
has solemnly sworn before me at Delhi  
on *[Signature]*  
that the contents of the affidavit which  
have been read & explained to him/her  
are true and correct to his/her knowledge.

*[Signature]*  
Notary *[Signature]*

*[Signature]*  
DEPONENT



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**IN THE HIGH COURT OF DELHI AT NEW DELHI**  
**(CIVIL ORIGINAL COMMERCIAL JURISDICTION)**  
**OMP (1) COMM. NO. \_\_\_\_\_ OF 2021**

**IN THE MATTER OF:**

Supreme Panvel Indapur Tollways Private Limited

...Petitioner

versus

National Highways Authority of India

...Respondent

**AFFIDAVIT OF SERVICE BY THE COUNSEL**

I, Avinash Shukla S/o Shri D.P. Shukla R/o E – 136/3, West Vinod Nagar,  
New Delhi - 110092, hereby swear and affirm as under:

1. That I have served upon the Respondent's standing counsel from my email id being Avinashshukla29@gmail.com on its email id being standingcounselnctd@gmail.com at on 20.11.2021.
2. That I have served upon the standing counsel of Respondent from my email id Avinashshukla29@gmail.com
3. That I have attached the screenshot of service to the affidavit.
4. That this affidavit is bona fide.



  
**DEPONENT**

*Shahjahan*  
*Sd/-*

VERIFICATION

*Red*

Verified at New Delhi on 20 NOV 2021 day of November 2021 that the contents of the above affidavit are true and correct to the best of my knowledge and nothing material has been concealed therefrom.

I Identified the Deponent who has Signed in my presence

*[Signature]*

DEPONENT

20 NOV 2021



CERTIFIED THAT THE DEPONENT  
Shri/Smt /Mm.....  
S/o W/o D/o.....  
Identified by *[Signature]* R/o.....  
has solemnly sworn before me at Delhi  
on.....  
that the contents of the affidavit which  
have been read & explained to him are  
true and correct to his knowledge

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Notary Public

**IN THE HIGH COURT OF DELHI AT NEW DELHI  
(CIVIL ORIGINAL COMMERCIAL JURISDICTION)**

**OMP (I) COMM. NO. \_\_\_\_\_ OF 2021**

**IN THE MATTER OF:**

Supreme Panvel Indapur Tollways  
Private Limited

...Petitioner

versus

National Highways Authority of India

...Respondent

**INDEX - II**

S. NO.	PARTICULARS	PAGE NO.
1.	Index - II ..	1-4
2.	Application under section 151 of the Code of Civil Procedure, 1908 along with the supporting affidavit seeking exemption from filing original documents / certified copies / fair typed copies of the dim or illegible documents.	1-4

PETITIONER

THROUGH

**SP MUKHERJEE (D/1840/2015)  
AVINASH SHUKLA (D/7568/2019)**

Counsel for Petitioner

B-107, BASEMENT (SIDE ENTRANCE),  
C.R. PARK, NEW DELHI 110019

Mobile: 91 9810062603

Place: New Delhi

Date: 20.11.2021

Email: subhrohm[at]gmail[dot]com

IN THE HIGH COURT OF DELHI AT NEW DELHI

LA. NO. \_\_\_\_\_ OF 2021

IN

OMP (I) COMM. NO. \_\_\_\_\_ OF 2021

**IN THE MATTER OF:**

SUPREME PANVEL INDAPUR TOLLWAYS PRIVATE LIMITED

.....PETITIONER

**Versus**

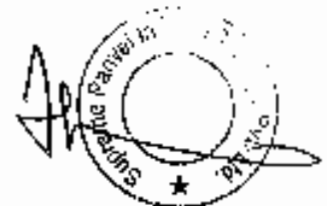
NATIONAL HIGHWAYS AUTHORITY OF INDIA

.....RESPONDENT

**APPLICATION UNDER SECTION 151 CPC FOR EXEMPTION  
FROM FILING THE ORIGINAL DOCUMENTS, DIM  
DOCUMENTS AND TRUE TYPED COPIES**

**MOST RESPECTFULLY SHOWETH:**


1. That the petitioner has preferred the accompanying Application under Section 151 CPC and the contents of the same are not repeated herein for the sake of brevity.
2. That the Petitioner have filed true copies of the documents/orders with the present Petition and is relying on the same.



3. That the certified copies of Original Documents are not available and the Petitioners undertake to file the same as and when the same are made available to the Petitioner.

### PRAYER

It is therefore, most respectfully prayed that the Petitioner may be exempted from filing the Original Documents ~~dim~~ documents and true typed copies.

  
FILED BY:

THROUGH 

**SP MUKHERJEE (D/1840/2015)**

**AVINASH SHUKLA (D/7568/2019)**

COUNSEL FOR PETITIONER

B-107, BASEMENT (SIDE ENTRANCE),

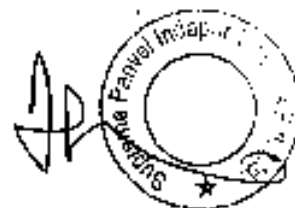
C.R. PARK, NEW DELHI 110019

MOBILE: +91 9810062603

EMAIL: SUBIROPM[AT]GMAIL[DOT]COM

New Delhi

Dated: 18.11.2021





**IN THE HIGH COURT OF DELHI AT NEW DELHI  
(CIVIL ORIGINAL COMMERCIAL JURISDICTION)**

**OMP (I) (COMM) NO. \_\_\_\_\_ OF 2021**

**IN THE MATTER OF:**

Supreme Panvel Indapur Tollways Private Limited,

...Petitioner

Versus

National Highways Authority of India,

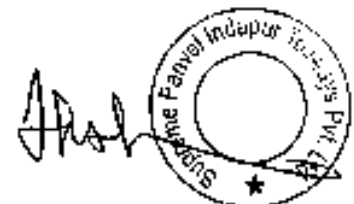
...Respondent

**AFFIDAVIT**

I, Tej Pal Sharma S/o Sh. Shiv Charan Sharma, aged about 73 years, Residence at P-9/12 DLF City Phase 2, behind telephone exchange phase 2, Gurgaon, Sikanderpur Ghosi (68), Gurgaon, DLF Qc, Haryana, 122002, presently at New Delhi, do hereby solemnly affirm and declare as under:

I. I am the Authorized Signatory of the Petitioner Company, namely Supreme Panvel Indapur Tollways Private Limited having its office at 510, 5<sup>th</sup> floor, ABW Tower, HFCO Chock, MG Road, Gurgaon, Haryana 122002.

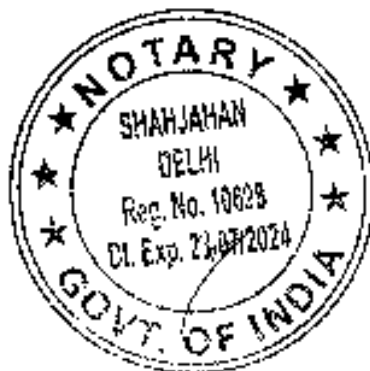
II. That I have read and understood the contents of the accompanying Application under Section 151 of the Code of Civil Procedure, 1908 and state that the facts stated in Paragraphs 1 to 22 thereof are true upon my personal knowledge.



**DEPONENT**

*[Signature]*  
I identified the document, signed and put in my presence.  
**VERIFIED**  
Verified and  
contents of  
knowledge

DEPONENT



26 NOV 2021

CERTIFIED THAT THE DEPARTMENT  
Sms/Sms...  
Sms Who has  
identified by  
has solemn  
on...  
that the contents of the above document  
have been read & explained to me as  
true and correct to his knowledge

Notary Public