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

% *Judgment reserved on: 17.08.2026*
Judgment pronounced on: 25.08.2026
Judgment uploaded on: 26.08.2026

\# **CNR No. DLHC010333592026**

\+ **W.P.(C) 10430/2026**

URS SCOTT WILSON INDIA PRIVATE LIMITED IN JOINT VENTURE WITH M/S LION ENGINEERING CONSULTANTS PRIVATE LIMITED & ANR. ....Petitioners

Through: Mr. Rajshekhar Rao, Sr. Advocate with Mr. Atul Sharma, Mr. Abhishek Agarwal, Ms. Vinita Sasidharan, Ms. Anandita and Ms. Neha Narang, Advocates

versus

NATIONAL HIGHWAYS AUTHORITY OF INDIA & ANR. .....Respondents

Through: Mr. Santosh Kumar, Senior Advocate with Mr. Devansh Malhotra, Ms. Dharitry Phookan and Mr. Akash Kishore, Advocates for R-1.
Mr. Nirmalya Shukla, Advocate for R-2.

CORAM:
HON'BLE DR. JUSTICE SWARANA KANTA SHARMA

JUDGMENT

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DR. SWARANA KANTA SHARMA, J

CM APPL. 48445/2026 (for stay)

1. By way of the present application, the applicant/petitioner seeks following reliefs:

> "(a) Stay the operation, implementation, execution and all further effect of the impugned Debarment Order dated 20.07.2026 issued by Respondent No. 1, during the pendency of the accompanying writ petition;
>
> (b) Stay all consequential action taken or proposed to be taken pursuant to or on the basis of the impugned Debarment Order dated 20.07.2026, including in particular its publication or uploading upon the website, portals, e-tendering platforms or vendor databases of Respondent No. 1, and its communication or circulation to any other government department, authority, public sector undertaking, State agency or funding institution, during the pendency of the accompanying writ petition;
>
> (c) Direct the Respondent No.1 to permit the Applicants to participate in, bid for and be evaluated in all tenders, projects and assignments of Respondent No. 1 without reference to or reliance upon the impugned Debarment Order dated 20.07.2026, subject to the final outcome of the accompanying writ petition;
>
> (d) Grant ex parte ad interim relief in terms of prayers (a) to (d) hereinabove pending notice to and reply by the Respondent No. 1..."

2. Brief facts of the case, as set out in the petition, are that respondent no. 1, i.e. National Highways Authority of India (**NHAI**), had awarded the project for six-laning of the Naidupeta Junction–Turpukanupur section and the Chillakuru Cross Road–Turpu Kanupur/Turpu Kanupur–South Gate sections on New NH-516W, on Hybrid Annuity Mode (HAM) under Bharatmala Pariyojana Phase-I,

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to M/s APCO Sri Venkateshwara Expressways Private Limited (**Concessionaire**) on 13.02.2023. The Concession Agreement was executed on 01.05.2023. Thereafter, by Consultancy Agreement dated 02.06.2023, respondent no. 1 appointed petitioner no. 1 as the Independent Engineer (**IE**) for the project for a period of 48 months, for a consideration of Rs. 8,91,22,800/- plus GST. The IE commenced its services on 23.06.2023 and completed mobilisation by August 2023. The Appointed Date of the project was 20.10.2023. On 02.12.2023, Cyclone 'Michaung' struck the project region and caused widespread waterlogging and inundation of the Greenfield alignment. The petitioner states that the cyclone also brought to light that a number of cross-drainage and balancing structures had been omitted from the Detailed Project Report (**DPR**). On 22.01.2024, respondent no. 1 recorded that the DPR Consultant had not obtained the requisite clearances from the Irrigation Department and that additional cross-drainage structures were required, which could result in a change of scope. The DPR Consultant subsequently acknowledged, on 04.04.2024, that certain structures may have been missed from the DPR. In these circumstances, the IE issued a Change of Scope (**CoS**) Notice on 12.04.2024 under Clause 16.2 of the Concession Agreement. Thereafter, the IE processed the successive CoS proposals, including review and recommendation of proposals, participation in meetings concerning designs and drawings and issuance of reminders to the Concessionaire. The petitioner also

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states that, in certain instances where the Concessionaire had not prepared the required estimates, the IE prepared revised estimates itself. It is stated that the processing of the CoS proposals continued through 2024 and 2025. During this period, respondent no. 1 itself considered the possibility of foreclosure of the Concession Agreement on account of the extent of the CoS and the deficiencies in the DPR. The project and the CoS proposal were also considered at various levels within NHAI, including by the CGM (Tech), NHAI Headquarters and the Regional Office, Vijayawada, and at a meeting chaired by the Chairman, NHAI, on 01.03.2025.

3. It is stated that the CoS proposal for Section-I was approved in principle in May 2025 and formally approved on 01.12.2025. On 18/19.03.2026, the IE recommended the CoS-02 proposal for Section-II for an amount of Rs. 1,58,94,29,470/-, representing 16.54% of the Bid Project Cost, exclusive of GST and inclusive of tender discount. About three weeks thereafter, on 10.04.2026, respondent no. 1 issued a Show Cause Notice (**SCN**) alleging delay of more than one year in submission/recommendation of the comprehensive CoS proposal and calling upon petitioner no. 1 to show cause against action including suspension and debarment. The petitioner submitted its reply to the SCN on 25.04.2026. It thereafter received sanction for deployment of additional staff on 15.04.2026, pursuant to its earlier request. The petitioner was heard in person before the Member (Projects), NHAI, on 10.06.2026, followed by a

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further hearing of the Team Leader through video conference on 06.07.2026. A further detailed explanation was submitted by the petitioner on 15.07.2026, setting out a chronology of the correspondence and the time taken at various stages of the CoS process. On 20.07.2026, respondent no. 2 issued the impugned Debarment Order bearing No. NHAI/RO-VJA/KP Port/2026/2488 [hereafter '**impugned orde**r'], declaring the petitioner a "non-performer" and debarring the Joint Venture and each of its constituent members from participation in all future bids of NHAI for a period of one year, i.e. up to 19.07.2027.

4. Aggrieved by the said order, the petitioner has filed the accompanying writ petition, along with the present application seeking interim relief.

5. The learned senior counsel appearing for the petitioner submits that the petitioners have, at all material times, discharged their functions as the IE diligently and in accordance with the TOR contained in Section 6 of Appendix-A to the Consultancy Agreement. It is submitted that, during the entire currency of the Consultancy Agreement, no notice of default, warning or notice to cure was ever issued to petitioner no. 1. It is submitted that respondent no. 1 issued the SCN dated 10.04.2026 alleging delay on the part of the IE in finalising and recommending the CoS proposals, purportedly in breach of Clause 3.1(vi) of Section 6 of the TOR, and called upon petitioner no. 1 to show cause why action should not be taken under

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the debarment policy of respondent no. 1. Petitioner no. 1 submitted a detailed reply dated 25.04.2026 and a further explanation dated 15.07.2026, setting out, *inter alia*, the following:

(i) Clause 3.1(vi) of the Terms of Reference refers to "Determining, as required under the Consultancy Agreement, the cost of any works or services and/or their reasonableness," 1082 but only to determine the cost of CoS and it's reasonableness and casts no obligation or determining the items of works/ services or timelines under the CoS, whatsoever upon the Independent Engineer;

The alleged delay that the "submission/ recommendation of comprehensive COS proposal for the entire stretch got delayed by 01 year since the Chairman, NHAI has accorded the working permission for COS works. Even after explicit direction of the Competent Authority, detailed COS has not been submitted on time by the Independent Engineer." is not as per Consultancy Agreement provisions, wherein it states under clause 16.2.2 of Concessionaire Agreement that " upon receipt of the Change of Scope Notice, the Concessionaire shall, with due diligence, provide to the Authority such information as is necessary, together with preliminary documentation in support of:". Thus, it is not under the jurisdiction of the Independent Engineer to finalize the CoS unilaterally, without complete submissions from the Concessionaire.

(ii) the Force Majeure event of Cyclone Michaung during 02.12.2023 to 04.12.2023 operated to extend time automatically under Clause 2.7 of the General Conditions;

(iii) CoS-01 stood approved and the CoS Order came to be issued on 26.11.2025 and CoS-02 stood recommended by the 1083 Independent Engineer on 18.03.2026, i.e. barely three weeks prior to the Show Cause Notice; and

(iv) such delay as occurred was occasioned by the Respondent No.1's own multi-tiered internal approval process and by more than twenty-three iterations of comments and resubmissions required by the Respondent No.1 themselves. Personal hearings were afforded on 10.06.2026 and 06.07.2026..."

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6. The learned senior counsel for the petitioner submits that, notwithstanding the aforesaid, respondent no. 1, by the impugned debarment order dated 20.07.2026, has debarred the petitioners for one year, i.e. up to 19.07.2027, without dealing with their material submissions or recording reasons for departing from the graded regime stipulated in the Consultancy Agreement. It is submitted that the impugned order is contrary to the Consultancy Agreement and the TOR, arbitrary, disproportionate and violative of the principles of natural justice and Articles 14 and 19(1)(g) of the Constitution of India. The learned senior counsel argues that the petitioners have a strong *prima facie* case. Clause 3.1(vi) of Section 6 of the TOR confines the IE's function to determining the cost of works or services and their reasonableness and prescribes no timeline, outer date or periodicity for CoS proposals. In contrast, the TOR prescribes express timelines of thirty, fifteen, ten, seven and three days in several other clauses. The absence of any timeline in Clause 3.1(vi) cannot, therefore, be supplied by implication. It is submitted that debarment founded upon breach of an obligation which does not exist is without jurisdiction and suffers from an error apparent on the face of the record. It is further submitted that Clause 13 of the TOR, titled "Performance Clause", prescribes a graded and self-contained regime for alleged non-performance, requiring warnings in the first instance and permitting temporary debarment for up to twelve months only upon continued default despite more than five warnings. No warning

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was ever issued to petitioner no. 1. The impugned order, therefore, imposes the maximum contractual penalty at the first instance, contrary to the Consultancy Agreement. It is also contended that no notice to cure was issued either. Clause 2.8 read with Clause 2.9.1(a) of the General Conditions requires the Client to specify the default in writing and afford thirty days to remedy it before taking adverse action. This condition precedent was never satisfied. It is further submitted that Clause 2.7 of the General Conditions recognises storm and flood as Force Majeure events, provides that the affected party shall not be deemed to be in breach and contemplates extension of time. Cyclone 'Michaung', which struck the project region between 02.12.2023 and 04.12.2023, therefore, operated to excuse the petitioners from consequent delay. The learned senior counsel submits that the substantive performance of the IE is undisputed. CoS-01 stood approved and the CoS Order was issued in November 2025, while CoS-02 was recommended on 18.03.2026, approximately three weeks before the SCN and was in its final iteration when the SCN was issued. There is no allegation of fraud, collusion, misrepresentation or moral turpitude, or of gross negligence or wilful misconduct, which, according to the petitioner, is the standard contemplated by Clause 3.4 of the General Conditions, as modified by the Special Conditions. It is further submitted that the delay, if any, was substantially attributable to respondent no. 1. The record accompanying the reply dated

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15.07.2026 demonstrates more than twenty-three rounds of iterations at the instance of respondent no. 1 and successive approvals at various internal levels. Respondent no. 1 cannot, it is contended, take advantage of delay occasioned by its own conduct. The learned senior counsel further submits that the impugned order violates natural justice, as no deadline for submission or recommendation of the CoS proposals was ever communicated to the petitioners. The order also proceeds on an erroneous factual premise regarding the date of the personal hearing and is non-speaking, having failed to deal with the detailed submissions and documentary material placed by the petitioners. Lastly, it is submitted that debarment is a drastic measure carrying grave civil consequences and the doctrine of proportionality applies to its quantum and duration. The petitioners would suffer grave, irreparable and irreversible prejudice, incapable of adequate monetary compensation, if the impugned order is not stayed.

7. It is also averred that the balance of convenience lies entirely in favour of the petitioners and against respondent no. 1 for the following reasons:

(a) No prejudice whatsoever will be occasioned to the Respondent No. 1 by the grant of the interim relief prayed for. The impugned Order is purely prospective and disqualificatory in character; it neither recovers any sum for the Respondent No. 1 nor confers upon them any accrued benefit. A stay of its operation therefore takes nothing away from the Respondent No. 1.

(b) The Consultancy Agreement dated 02.06.2023 subsists and

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the Applicants continue to render services thereunder. The Respondent No. 1 retain, undiminished, every contractual remedy available to them, including the remedies of notice to cure, termination and recovery under the General Conditions of the Consultancy Agreement, as well as the remedy of arbitration.

(c) Should the Respondent No.1 ultimately succeed in the accompanying writ petition, the impugned Order can be given full effect from such date as this Hon'ble Court may direct, and the Respondent No. 1 would be restored in full to the position that they presently occupy. In contrast, should the Applicants succeed after the expiry of the period of debarment, no order of this Hon'ble Court could restore to the Applicant the opportunities, the contracts and the reputation lost in the interregnum. The injury is therefore wholly asymmetric.

(d) The Applicants are willing to abide by any condition, undertaking or safeguard that this Hon'ble Court may deem fit to impose while granting the interim relief prayed for, and further undertake to continue to render the services of the Independent Engineer under the said Consultancy Agreement with due diligence.

8. On the other hand, learned senior counsel appearing for respondent no. 1/NHAI argues that the impugned debarment was a consequence of the petitioner's serious and documented lapses in discharge of its functions as the IE. It is submitted that, instead of conducting a comprehensive review at the outset, the petitioner raised observations over successive review cycles, returned cost proposals on irrelevant grounds and thereby prolonged the CoS process for more than two years. Such failure, according to respondent no. 1, delayed execution of critical national highway infrastructure and adversely affected public interest. It is stated that the impugned debarment is an administrative action founded upon NHAI Policy

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Circular No. 16.12/2022 dated 18.01.2022 and is not a contractual remedy arising from the Consultancy Agreement. NHAI, being a statutory authority, possesses an independent administrative power to debar consultants and IEs in accordance with its policy framework. It is submitted that both the SCN dated 10.04.2026 and the impugned order dated 20.07.2026 expressly refer to the said Policy Circular, which constitutes an independent regulatory framework prescribing the grounds and procedure for debarment. Learned senior counsel draws attention to the scope of the Policy Circular, particularly paragraph 2 thereof, which states:

> "In order to ensure construction of roads as per standard and specifications laid down in contract/concession agreement and to avoid project delays, it has been decided to debar/penalize/declare as Non-Performer the Authority's Engineer (AE)/Independent Engineer (IE)/Construction Supervision Consultant (CSC)/Project Management Consultant (PMC) for their lapses/deficiencies in services in National Highways and centrally sponsored road projects."

9. It is submitted that the Circular is a regulatory instrument issued by NHAI and operates independently of any individual Consultancy Agreement. The learned senior counsel further submits that delay in processing CoS proposals is not required to be specifically provided as a contractual default, as the power to take action against such delay flows from the Policy Circular. It is submitted that NHAI followed the procedure prescribed therein and invoked paragraph 4.1(2)(d), which specifically covers:

> "Delay in processing EOT/COS proposals, inaccurate

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> assessment of COS proposals, not issuing NCRs, delays/improper review of designs/drawings/work programme or failure to submit Completion/Provisional Completion Certification as prescribed in contract."
>
> Prescribed action against Firm: Declaring the Consultant as Non-Performer upto 1 year, or till rectification of deficiencies and taking adequate measures not to repeat such instances in future, whichever is earlier."

10. The learned senior counsel for respondent no. 1 submits that the petitioner's reliance on Clause 13 of the TOR, requiring multiple warnings before debarment, is misplaced. It is submitted that this contention was never raised by the petitioner in its reply dated 25.04.2026, additional reply dated 15.07.2026 or during the personal hearings. The petitioner, having participated in the proceedings under the Policy Circular without questioning its applicability, cannot raise this contention for the first time before this Court. It is further submitted that NHAI complied with the procedure prescribed under the Policy Circular. The petitioner was issued the SCN dated 10.04.2026, setting out the alleged performance deficiencies and expressly invoking the Policy Circular; was afforded an opportunity to submit its reply, which it exercised through its replies dated 25.04.2026 and 15.07.2026; and was granted two personal hearings on 10.06.2026 and 06.07.2026. Thereafter, the impugned order dated 20.07.2026 was passed after consideration of the petitioner's written replies and submissions made during the hearings, recording findings against the petitioner.

11. The learned senior counsel further submits that the petitioner

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never challenged the applicability of the Policy Circular during the SCN proceedings. It did not contend that the Circular was inapplicable to IEs/consultants, that NHAI lacked power to debar it under the Circular, or that such power had to be sourced from the Consultancy Agreement. Its replies were confined to the factual aspects of the alleged delay. Having participated in the proceedings without questioning the legal basis of the action, the petitioner, according to respondent no. 1, cannot now challenge the applicability of the Circular for the first time before this Court.

12. It is also argued that the debarment derives its authority from the Policy Circular and is, therefore, an administrative action governed by public law principles. The impugned order does not enforce any contractual term but operates prospectively to regulate the petitioner's participation in future NHAI tenders. Since the prescribed procedure was duly followed, the scope of judicial review under Article 226 is limited to examining whether the decision is perverse or irrational. In the absence of such perversity, no interference is warranted. Reliance is placed on the judgment of the Supreme Court in ***Patel Engineering Ltd. v. Union of India:*** *(2012) 11 SCC 257*, particularly paragraph 36, which reads:

> "36. We cannot say the reasoning adopted by the second respondent is either irrational or perverse. The dereliction, such as the one indulged in by the petitioner, if not handled firmly, is likely to result in recurrence of such activity not only on the part of the petitioner, but others also, who deal with public bodies, such as the second respondent giving scope for unwholesome practices. No doubt, the fact that the petitioner is

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> blacklisted (for some period) by the second respondent is likely to have some adverse effect on its business prospects, but, as pointed out by this Court in Jagdish Manda v. State of Orissa 9: (SCC p. 518) "Power of judicial review will not be invoked to protect private interest at the cost of public interest, or to decide contractual disputes."

13. The learned senior counsel for respondent no. 1 submits that the power exercised by NHAI to debar the petitioner under the Policy Circular flows from its inherent executive powers and is independent of the Consultancy Agreement. It is submitted that there is no contemporaneous communication from the petitioner to NHAI attributing the delay to the Concessionaire, despite the petitioner's contractual duty to identify and escalate such delays. The learned senior counsel refers to Clause 13.4 of the Concession Agreement, requiring the IE to monitor the Concessionaire's construction milestones and overall progress, and Clause 5.9 of the TOR, which provides for escalation of milestone failures to NHAI. It is submitted that this mechanism was never invoked by the petitioner during the CoS process, despite the alleged failure of the Concessionaire to achieve milestones. Such failure, according to respondent no. 1, amounted to a breach of the petitioner's supervisory duties. It is submitted that, for nearly two years, from 12.04.2024 to 10.04.2026, the petitioner never attributed the CoS delay to the Concessionaire. This was done for the first time in the reply dated 25.04.2026 to the SCN, wherein 205 days were attributed to the Concessionaire. It is argued that such belated attribution, after issuance of the SCN, is

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inconsistent with the conduct expected of a vigilant IE.

14. It is further submitted that failure to propose action against a contractor or concessionaire for default or poor progress having a material adverse effect on project implementation is itself a ground for debarment under paragraph 4.1(3)(d) of the Policy Circular, which provides:

> "Failure to propose action (like cure period notice, levy of damages, etc.) on contractor I concessionaire as per contract agreement for their default/ poor progress having material adverse effect on the project implementation in terms of cost (1% of civil work cost or more) and/ time (5% of project completion period or more)."

15. The learned senior counsel further submits that the Concessionaire had, on several occasions during the currency of the petitioner's engagement, expressly attributed delay to the IE in correspondence, containing specific complaints regarding delays allegedly caused by the petitioner's conduct.

16. This Court has **heard** arguments addressed on behalf of the petitioner as well as the respondents, and has perused the material available on record.

17. In the present case, the case of the petitioner, in a nutshell, is that Clause 3.1(vi) of the TOR does not prescribe any timeline for finalisation or recommendation of CoS proposals and that the delay, if any, was substantially attributable to the Force Majeure event, deficiencies in the DPR, the Concessionaire and NHAI's own multi-

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tiered approval process. It is submitted that the petitioner had diligently discharged its functions, while NHAI bypassed the graded mechanism under Clause 13 of the TOR and proceeded directly to debarment without any prior warning or notice to cure. The impugned order is therefore alleged to be contrary to the Consultancy Agreement, non-speaking, disproportionate and violative of natural justice.

18. On the other hand, the case of respondent no. 1, in nutshell, is that the petitioner failed to discharge its supervisory functions diligently, resulting in prolonged delay in processing the CoS proposals and consequent prejudice to a critical public infrastructure project. It is contended that the debarment is not a contractual penalty but an independent administrative action under the Policy Circular, which specifically permits debarment for delay in processing CoS proposals. NHAI further submits that the petitioner never escalated the alleged defaults of the Concessionaire and that the prescribed procedure, including issuance of the SCN, consideration of replies and personal hearings, was duly followed.

19. At this stage, the submission of learned senior counsel for respondent no. 1 that the petitioner did not raise any objection regarding the applicability of Clause 13 of the TOR in its reply to the SCN or during the hearings, *prima facie*, cannot be accepted to the extent that it would absolve respondent no. 1 of its obligation to follow the procedure stipulated under the Consultancy Agreement.

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Merely because a party to a contract does not initially raise an objection regarding a particular contractual requirement, the other party cannot be absolved of its mandatory contractual obligation to follow the procedure agreed upon by both parties. Learned senior counsel for respondent no. 1 has also not disputed that Clause 13 of the TOR contemplates issuance of warnings before the consequence of debarment can be imposed, or that no such warning was issued to petitioner no. 1 in the present case. The SCN dated 10.04.2026 was issued on the ground that there had been delay on the part of the IE in submission/recommendation of the comprehensive CoS proposal, which, according to the Competent Authority, "got delayed by 01 year since the Chairman, NHAI has accorded the working permission for COS works" and that "even after explicit direction of the Competent Authority, detailed COS has not been submitted on time". In this Court's view, *prima facie*, the contractual procedure governing such alleged non-performance could not have been bypassed before imposing the consequence of debarment.

20. Further, this Court notes that, as is also apparent from the documents on record, there was no communication or warning issued by respondent no. 1 to the petitioner during the intervening period of nearly two years, which is now sought to be projected as an inordinate delay on the part of the IE. The petitioner has also relied upon the intervening Force Majeure event, namely, Cyclone 'Michaung', and the consequent requirement of relooking at the

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project and preparing and approving additional drawings.

21. Without, at this stage, entering into the merits of the other contentions raised by the parties, this Court is of the view that, *prima facie*, the contractual procedure contemplated under Clause 13 of the TOR, including the issuance of warnings prior to resorting to debarment, has not been followed in the present case.

22. The impugned debarment order dated 20.07.2026 is, accordingly, stayed during the pendency of the present writ petition.

23. With the aforesaid directions, the present application stands disposed of.

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24. List this matter for final hearing on 22.01.2027

25. The judgment be uploaded on the website forthwith.

DR. SWARANA KANTA SHARMA, J

AUGUST 25, 2026/ns
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