

GAHC010137962024



THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)

Case No. : WP(C)/3511/2024

M/S SIMPLEX INFRASTRUCTURES LTD
A COMPANY INCORPORATED UNDER THE COMPANIES ACT, 1956 HAVING
ITS REGISTERED OFFICE AT SIMPLEX HOUSE, 27, SHAKESPEARE SARANI,
KOLKATA-700017 AND IS REPRESENTED BY ITS DULY AUTHORIZED
REPRESENTATIVE SMT. DEEPTARA DUTTA, AGED ABOUT 40 YEARS,
DAUGHTER OF LATE NC DUTTA, RESIDENT OF AT NIRUPAMA NIWAS,
PHAGUNA RABHA PATH, NEAR CENTRAL BANK, KAHILIPARA ROAD,
ASSAM SACHIVALAYA, IN THE DISTRICT OF KAMRUP (M), ASSAM, PIN-
781066

VERSUS

NATIONAL HIGHWAYS AND INFRASTRUCTURE DEVELOPMENT
CORPORATION LTD AND 5 ORS
REPRESENTED BY ITS MANAGING DIRECTOR, MINISTRY OF ROAD
TRANSPORT AND HIGHWAYS, GOVT. OF INDIA, 3RD FLOOR, P11
BUILDING, 4-PARLIAMENT STREET, NEW DELHI-110009.

2:THE DIRECTOR (TECHNICAL)

NATIONAL HIGHWAYS AND INFRASTRUCTURE DEVELOPMENT
CORPORATION LIMITED
MINISTRY OF ROAD TRANSPORT AND HIGHWAYS
GOVT. OF INDIA
3RD FLOOR
PTI BUILDING
4- PARLIAMENT STREET
NEW DELHI-110009.

3:THE GENERAL MANAGER (PROJECTS)

PMU-DHUBRI

NATIONAL HIGHWAYS AND INFRASTRUCTURE DEVELOPMENT
CORPORATION LIMITED
NEAR DHUBRI- PHULBARI
BRIDGE
ADABARI PART-2
P.O. CHAGOLCHARA
DHUBRI
ASSAM- 783324

4:THE EXECUTIVE DIRECTOR (P)

GUWAHATI
NATIONAL HIGHWAYS AND INFRASTRUCTURE DEVELOPMENT
CORPORATION LIMITED
2ND FLOOR
AGNISHANTI BUSINESS PARK
OPP. AGP OFFICE GNB ROAD
AMBARI
GUWAHATI-781001.

5:THE AUTHORITY ENGINEER

INTERCONTINENTAL CONSULTANTS AND TECHNOCRATS PVT. LTD. IN
ASSOCIATION WITH INNOVATIVE ENGINEERING ADVISORY LLP
OFFICE OF THE TEAM LEADER
VILL- NATABARI
PART- II
P.S. TAMARHAT
DIST. DHUBRI
ASSAM
PIN- 783332.

6:THE DY. GENERAL MANAGER (P)

GUWAHATI
NATIONAL HIGHWAYS AND INFRASTRUCTURE DEVELOPMENT
CORPORATION LIMITED
2ND FLOOR
AGNISHANTI BUSINESS PARK
OP. AGP OFFICE GNBROAD
AMBARI
GUWAHATI- 781001

Advocate for the Petitioner : MR G N SAHEWALLA

Advocate for the Respondent : SC, NHIDC

**BEFORE
HONOURABLE MR. JUSTICE KALYAN RAI SURANA**

ORDER

Date : 12.07.2024

Heard Mr. G.N. Sahewalla, learned senior counsel, assisted by Mr. M. Sahewalla, learned counsel for the petitioner. Also heard Mrs. R. Borah, learned standing counsel for the respondent nos.1, 2, 3, 4 and 6.

2. This matter has been listed on mentioning being made by the standing counsel for the respondent nos.1, 2, 3, 4 and 6 on the ground that she had no notice of the matter being listed on 11.07.2024 and therefore, she was not available in the city on 11.07.2024, when the matter was taken up in the vacation Bench. She has also submitted that the petitioner has not annexed the entire contract agreement between the respondent no.1 and the petitioner and therefore, as infrastructure project has been stayed vide order dated 11.07.2024, passed in this writ petition. She has submitted that her endeavour is only to produce a copy of the Vol-1 of the contract agreement which contains 700 pages to show that it was permissible for the respondent authorities to terminate the contract and also to show that this Court has no territorial jurisdiction to entertain this writ petition.

3. The learned standing counsel for the respondent nos.1, 2, 3, 4 and 6 has submitted that the contract agreement envisaged 4 (four) individual milestones to be achieved by the petitioner and only thereafter, on achieving first milestone of 10% contract work, the petitioner could have applied for extension of time. It is submitted that the relevant pages 420 and 421 being Schedule-J of the contract agreement Vol-1 has not been annexed to the writ petition. It is submitted that as on 29.10.2023, the petitioner was required to

achieve milestone-I of 10%, which was not achieved till date and that as on 28.04.2024, the petitioner was required to achieve milestone-II of 35%, which is also not achieved and accordingly, the respondent authorities had a right to terminate the contract as per Clause-23.1(ii) of the contract agreement dated 21.11.2022 (Vol.1).

4. It is submitted that for the time being, without entering into the merit of the claim made by the petitioner under Article 27, Clause-27.1 of the contract agreement dated 21.11.2022, the following is prescribed and agreed to between the parties:

“27.1 Governing law and jurisdiction

This Agreement shall be construed and interpreted in accordance with and governed by the laws of India, and the courts at [Delhi] shall have exclusive jurisdiction over matters arising out of or relating to this Agreement.”

5. The learned senior counsel for the petitioner has submitted that only upon termination of the contract, valuation of the unpaid work is calculated, the respondents could not have issued a tender for balance work on 12.03.2024 when the termination notice was issued on 24.06.2024. Accordingly, it is submitted that in view of the gross illegality committed by the respondent authorities, this Court will have jurisdiction to entertain this writ petition where arbitrariness decision making process is writ large on the face of records and in support of his contention, the learned senior counsel for the petitioner has placed reliance on the case of *N.P. Power Management Co. Ltd., Jabalpur Vs. Sky Power Southeast Solar India Pvt. Ltd. & Ors., (2023) 2 SCC 703*.

6. The Court takes note of the fact that Clause-27.1 of the contract agreement under Article-27, which is contained in internal page 286 of Vol-1 of the contract agreement between the respondent no.1 and the petitioner, is not

annexed to this writ petition.

7. As the parties are not in dispute that the Courts at Delhi shall have exclusive jurisdiction over matters arising out of or relating to the said agreement, the said clause-27.1 is also not under challenge in this writ petition and there is no pleading as to why this Court could still exercise jurisdiction in connection with the contract agreement between the parties. Therefore, the Court is of the considered opinion that the said clause-27.1 would have the effect of ouster of territorial jurisdiction of this Court.

8. Accordingly, the Court is of the considered opinion that the present writ petition would not be maintainable before this Court in view of clause-27.1 of the contract agreement (Vol-1), which is quoted hereinbefore.

9. Hence, by granting liberty to the petitioner to approach the appropriate Court having jurisdiction, this writ petition stands closed without adjudication of the matter on merit.

10. As the writ petition has been closed on account of lack of territorial jurisdiction, the interim order passed on 11.07.2024 is recalled and revoked.

JUDGE

Comparing Assistant