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HIGH COURT OF CHHATTISGARH, BILASPUR**Writ Appeal No. 339 of 2017**

{Arising out of Order dated 12.07.2017 in Writ Petition No. 399 of 2001 by the learned Single Judge}

Calcutta Iron And Steel Company A Partnership Firm Duly Registered Under The Relevant Provisions Of The Indian Partnership Act, 1932 Having Its Principal Place Of Business At 111/119 Thakurdwar Road, Mumbai - 400002, Through Its Duly Constituted Attorney Mr. K. K. Bansal.

---- Appellant**Versus**

1. Steel Authority Of India Limited (A Government of India Enterprises) Having Its Registered Office At Ispat Bhavan, Lodhi Road, New Delhi, 110003.
2. The Managing Director, Steel Authority Of India Limited, Bhilai Steel Plant, Bhilai, District Durg Chhattisgarh.

---- Respondents

For Appellant	:	Shri Shrawan Agrawal, Advocate.
For Respondent	:	Dr. N.K.Shukla, Senior Advocate with Shri Vikram Sharma, Advocate.

Hon'ble Shri Thottathil B. Radhakrishnan, Chief Justice
Hon'ble Shri Arvind Singh Chandel, Judge

Judgment on Board**Per Thottathil B. Radhakrishnan, Chief Justice****04/10/2017**

1. This appeal is by the writ petitioner. The learned Single Judge dismissed the writ petition holding that the matter is not justiciable under Article 226 of the Constitution and the writ jurisdiction cannot be resorted to in cases where disputed questions of facts relating to contracts call for adjudication.

2. We have heard the learned counsel for the appellant and the learned counsel for the respondent-Steel Authority of India Limited; for short 'SAIL' and its Managing Director.
3. The learned counsel for the appellant making reference to the decision of the Apex Court in **ABL International Ltd. v. Export Credit Guarantee Corporation of India**; (2004) 3 SCC 553, argued that the material facts relevant for the disputes between the parties are not those which can be treated as issues which call for adjudication before the Civil Court. According to him, the pleadings on record and the material documents produced by both the sides would clinch the issue raised by the petitioner before the learned Single Judge. The impugned dismissal of the writ petition is challenged as not the possible modality that ought to have been resorted to in a writ petition which was pending before this Court from 2001 till July, 2017 when it was ultimately dismissed.
4. The learned counsel for the respondents-SAIL argued that the material particulars as reflected by the documents on record would show that the impugned judgment cannot be criticized inasmuch as there were disputes between the parties on different aspects of the contract and the purchase order.
5. **ABL International Limited** (supra) delineates various aspects relating to exercise of writ jurisdiction in relation to contract matters including the question as to what could, broadly be treated as those which are not justiciable under Article 226 of the Constitution. Apart from the fact that it was a case where the learned Single Judge had come to the rescue of the writ petitioner and that verdict was overturned by the Division Bench; which was reversed by the Apex Court; the crucial aspects involved in that case were found to have been those which could have rested on an adjudication by the writ court particularly, when that had been carried out by the learned Single Judge. In the case in hand, the learned Single Judge has noted the judgment of the Apex Court in **National Highways Authority of India v. Ganga enterprises**; (2003) 7 SCC 410, and

Orissa Agro Industries Corporation Ltd. v. Bharati Industries; AIR 2006 SC

198 to conclude that on the facts of the case in hand it was not possible to have the matter adjudicated in writ jurisdiction. This is not a case merely of relegating the party to an alternate efficacious remedy. An adjudication of the issues relating to the contract between the petitioner and SAIL was not possible through a writ petition.

6. The writ petition was filed seeking a direction to SAIL and its authorities to give actual physical delivery of 266.68 MT of used/rejected steel rolls (above 10T category) on the basis of release orders/delivery orders (Annexure P/6 collectively) and restraining SAIL from giving effect to the communication (Annexure P/9) issued by it. Annexure P/9 is the reply given by SAIL to Advocate's notice issued on behalf of the petitioner. SAIL stood by the letter dated 18.12.2000 of the petitioner and contended that the petitioner had agreed to pay an amount of Rs. 1000/- per ton over and above the price indicated in the sale order; however that, the petitioner had withdrawn it. Certain other disputes are also reflected through Annexure P/9. The return filed by SAIL is accompanied by different documents on the basis of which SAIL had contended that the rate at which sale could be made, depended upon the decision of its Pricing Committee and the petitioner had no right to claim that the goods be released at the earlier rates. The fact of the matter remains that the crux of the issue between the parties is as to whether the appellant had agreed to modification of the price of the commodities which were considered for sale to the appellant by SAIL. The Purchase Committee of the SAIL had brought modifications to the price at which the type of goods agreed to be sold underwent variation. Whether the respondent-SAIL as the seller was obliged to deliver the goods by releasing them and the question raised in the writ petition as to whether SAIL continued to hold the goods only as trustee of the petitioner, are matters which involve disputed questions of facts and of law, to be decided on the basis of the pleadings, documentary evidence and conduct of the parties,

which obviously would require recording of oral evidence as well, if tendered, by either side. The liability, if any, of the appellant, to pay more amount than is covered by sale order and the rate shown therein are matters which cannot be adjudicated and decided upon in the writ jurisdiction. Performance of the contract, breach of contract, or other modes of discharge of contract between the parties, including in case of sale of goods of such nature would obviously be best left to the decision making process of the Civil Court. The learned Single Judge having taken a view in the matter and having refused to adjudicate on the disputed questions, we do not find that the exercise of discretion by the learned Single Judge to that effect warrants interference through this intra-court appeal under Section 2 of the Chhattisgarh High Court (Appeal to Division Bench) Act, 2006.

7. The appellant's submission that the writ petition having been pending for a long time, ought to have been decided on merits does not commend acceptance in view of what have been held above. That apart, the respondents had specifically raised the plea that the dispute being of civil nature, contingent upon rival claims and disputed facts, the matter is not to be decided by this Court. Such plea was promptly raised by the respondents through its return. The plea of the respondents that the issues cannot be settled through adjudication in writ jurisdiction was specifically placed alongwith its return which was on record within a period of two and a half months of the institution of the writ petition. The writ petition from which this appeal arises was presented before this Court on 16.03.2001. The respondents presented their return on 26.05.2001. The writ petitioner also placed rejoinder as well. The plea in that regard is also repelled.
8. In the result, this writ appeal fails and hence is dismissed.

Sd/-

(Thottathil B. Radhakrishnan)
CHIEF JUSTICE

Sd/-

(Arvind Singh Chandel)
JUDGE