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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
WRIT PETITION NO.1949 OF 2018**

Reliance Naval and Engineering Ltd.

...Petitioner.

V/s

Oil and Natural Gas Corporation

....Respondent.

Mr. J.J. Bhatt, Senior Counsel alongwith Mr. Sarosh Bharucha, Mr. Tushad Kakalia, Mr. D.J. Kakalia, Ms. Bhavna Singh, Ms. Raghavi Sharma i/b M/s. Mulla & Mulla & Craigie Blunt & Caroe for the Petitioner.

Mr. Navroz Seervai, Senior Counsel alongwith Mr. Rohan Agrawal, Ms. Swati Deshpande, Mr. Prakash Shinde I/b M/s MDP and Partners for Respondent No.1.

CORAM: B. R. GAVAI &

RIYAZ I. CHAGLA, JJ.

DATE: 30th NOVEMBER, 2018

P.C.:-

1] Petitioner has approached this Court, being aggrieved by the communication dated 07/06/2018 vide which, the Respondent has informed the Petitioner that the contract awarded in its favour stands terminated from 31/05/2018.

2] Factual position giving rise to the present Petition is as under:-

3] Respondent invited tenders for construction and supply of 12 Off Shore Support Vessels (“OSVs”) in the year 2008. As per the conditions in the tender, a party bidding for the tender was required to have Memorandum of Understanding (“MOU”) with technical experts in the field. Accordingly, the Petitioner, who, at that time, was known as “Pipavav Shipyard Limited”, entered into MOU with Jurong Shipyard Pte. Ltd., Singapore (“JSPL”) and submitted its bid. Petitioner's bid was accepted on 26/06/2009. The agreement came to be entered into between the Petitioner and the Respondent on 16/10/2009. Undisputedly, as per the contract, vessels were to be supplied within a period of 30 months from the date of the contract.

4] Petitioner's name undergone a change on three occasions and lastly, Petitioner's name was changed to the present name i.e. Reliance Naval and Engineering Limited. As per the contract, a fresh MOU was required to be entered into with JSPL, confirming that technical support agreement has been amended, so as to continue the same with the changed name of the party with which Respondent had

entered into contract.

5] It is not in dispute that the vessels were not supplied within a period of 30 months as agreed but were supplied much belatedly. As of now, out of 12 vessels, 7 have been supplied.

6] In the meantime, vide the impugned communication, the Petitioner has been informed by the Respondent that since the extension was not granted beyond 31/05/2018 and since prior to that date, the Petitioner had not submitted MOU with JSPL, confirming that its technical support agreement has been amended, so as to continue the same with the changed name of the Petitioner, the contract stands terminated.

7] Mr. Bhatt, the learned Senior Counsel appearing on behalf of the Petitioner, submits that in view of the judgments of the Hon' ble Apex Court in the case of *ABL International Ltd and another vs. Export Credit Guarantee Corporation of India Ltd and others*¹ and in the case of *Union of India and others vs. Tania Construction Private Limited*²,

1 (2004) 3 SCC 553

2 (2011) 5 SCC 697

this Court can interfere if there is not much dispute on factual position. The learned Senior Counsel submits that, in the present case, from the conduct of the Respondent itself, it is clear that time was not an essence of the contract and that Respondent has extended the period from time to time for delivery of vessels. It is therefore submitted that five more vessels are almost ready and conduct of the Respondent in terminating the contract is unjust, requiring interference by this Court in its extraordinary jurisdiction under Article 226 of the Constitution of India.

8] Mr Seervai, the learned Senior Counsel, on the contrary submits that since after 31/05/2018, there is no extension of contract, the contract stood automatically terminated.

9] No doubt that, Their Lordships of the Hon'ble Apex Court in the case of *ABL International Ltd* (cited supra), have held that, normally, a writ petition involving disputed questions of fact, which require consideration of evidence which is not on record, would not be entertained by the High Court in its extraordinary jurisdiction under Article 226 of the Constitution of India. However, their Lordships

have also held that in all cases involving disputed question of fact, party need not be relegated to the civil suit. It has been held that in an appropriate case writ court has jurisdiction to entertain the writ petition involving disputed questions of fact. In the said case, Their Lordships further held that if the instrumentality of the State acts in an arbitrary manner, the High Court would not be powerless to issue a writ against the instrumentality of the State. In the said case, the Petition filed by the Petitioner was allowed by the learned Single Judge of the Calcutta High Court. However, Division Bench in appeal reversed the same. While allowing the SLP against the said judgment, Their Lordships of the Hon'ble Apex Court found that there were no disputed questions of fact, requiring adjudication. The only dispute that was sought to be raised by the Respondent in that case was only in respect of meaning of the clause of the insurance contract. Their Lordships found that such a dispute cannot be said to be “disputed questions of fact” and therefore reversed the judgment of the Division Bench of the Calcutta High Court and approved the judgment and order passed by the learned Single Judge of the Calcutta High Court.

10] In the case of *Union of India* (cited supra), the Union of India,

after awarding the original contract to the Respondent, awarded the Respondent/Contractor two additional works which were not forming part of the contract at the same rates and on the Contractor's refusal to do the same, the earlier contract came to be terminated. The Petition was allowed by the learned Single Judge of the Patna High Court. The view taken by the learned Single Judge of the Patna High Court was affirmed by Division Bench of the said High Court. While dismissing the SLP filed by the Union of India, affirming the view taken by the learned Single Judge and Division Bench of the Patna High Court, Their Lordships of the Apex Court found that, in view of the factual position emerging in the said case, even in spite of arbitration clause, no error could be found with the view taken by the learned Single Judge as well as Division Bench of the Patna High Court.

11] It could thus be seen that in the said cases, undisputedly, Respondent had terminated the earlier contract awarded to the Petitioner on the ground that the Petitioner had refused to undertake the additional work, which was not forming part of the old contract at old rates.

12] Undisputedly, in the present case, the vessels were not delivered to the Respondent/Employer within a period of 30 months as provided in the contract.

13] The question as to whether only on account of extensions granted on earlier occasions, the Petitioner can, as a matter of right, claim further extensions in eternity, as to whether the Respondent has suffered any damages on account of non-supply of vessels within the prescribed period or as to whether it is the Petitioner who has suffered damages on account of the alleged termination of the contract, are the questions which are required to be decided after the parties lead their respective evidence in that behalf. We are afraid as to whether such an exercise can be done in the extraordinary jurisdiction of this Court under Article 226 of the Constitution of India. We are of the considered view that this can be done in the arbitration proceedings which are provided under the contract if the parties choose to do so or in the civil suit if the Petitioner desires to take recourse to the same.

14] In that view of the matter Petition is rejected, relegating to the Petitioner to the ordinary remedy available to it in law.

(RIYAZ I. CHAGLA, J.)

(B. R. GAVAI, J.)