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

+ LPA 45/2018

SHAMBHAVI CONTRATORS (PVT) LTD Appellant
Through: Mr. Anand Prakash, Advocate with
appellant in person.

versus

NATIONAL BUILDINGS CONSTRUCTION CORPORATION
LIMITED AND ORS Respondents
Through

CORAM:

HON'BLE MR. JUSTICE S. RAVINDRA BHAT

HON'BLE MR. JUSTICE A. K. CHAWLA

ORDER

% **05.02.2018**

CM APPL. 4418/2018 (*for condonation of delay*)

For the reasons mentioned in the application, the delay in filing this appeal is hereby condoned.

Application stands disposed of.

LPA 45/2018

The appellant's grievance is that the learned Single Judge rejected the writ petition *in limine*.

The grievance articulated in the writ proceedings was that the respondent-National Buildings Construction Corporation Limited (for short 'NBCC') was appointed as a consultant by the Allahabad Bank. The respondent-NBCC defaulted in its duties and did not prepare the final bill and rather went ahead to invoke the "risk and cost" clause to award balance works to a third party. The learned Single Judge

expressed the opinion that the dispute urged was purely the subject matter of other civil proceedings and granted liberty to the appellant to exhaust such remedy.

The appellant's counsel urges that the learned Single Judge overlooked the fact that the consultant as well as the principal employer are both State entities and therefore public agencies amenable to writ proceedings. It is urged that there was no bar in the writ proceedings for a Court entertaining a class of disputes related to the performance of a contract as long as the relief claimed could be granted through reasonably simple procedure. It was urged therefore that in the writ proceedings the Court could well direct the respondents to prepare the final bill and enable the petitioner/appellant to pursue its remedies in respect of it; it was also urged that the petitioner's claim with respect to the extent of work done and other documents, could also be appropriately addressed in the writ proceedings. The appellant had relied upon the rulings of the Supreme Court in the case of *ABL International Limited vs. Export Credit Guarantee Corporation of India Limited*, (2004) 3 SCC 553; *M/s Real Estate Agencies vs. Govt. of Goa*, (2012) 12 SCC 170, and *State of Kerala vs. M.K. Jose*, (2015) 9 SCC 433.

In the field of judicial review and application of public law principles, it is reasonably well settled, for the last five decades, that up to the contract formation and finalisation stage the procedures and processes adopted by the States or its agencies are fairly the subject matter of the judicial scrutiny. Ordinarily, post contractual disputes

relating to performance of the contracts or the payment of money, extent of work done etc. are not scrutinised under Article 226 of the Constitution of India.

There have been undoubtedly some instances where exceptions have been indicated - such as in the case of *ABL International Limited* (supra) where the Court went on to observe that there is no limitation in the writ proceedings and that if necessary and the circumstances are so deemed appropriate even examination of witnesses and their cross-examination can be resorted to. At the same time, this Court notices that such situations are exceptional and cannot indicate a broad general principle of universal application.

The present case would require the Court to involve itself into detailed fact appreciation and also determining, atleast to a certain immediate extent, the rival rights of the parties. Having regard to all these factors, the Court is of the opinion that there is no error either in law or in the facts of the case with the impugned judgment of the learned Single Judge.

The appeal is therefore dismissed.

S. RAVINDRA BHAT, J

A. K. CHAWLA, J

FEBRUARY 05, 2018

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