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

+ **W.P.(C) 7945/2018 & CM 30489/2018**

M/S SRICO PROJECTS PVT. LTD.

..... Petitioner

Through Mr R.M. Sinha, Mr P.M. Sinha,
Advocates.

versus

NBCC (INDIA) LIMITED

..... Respondent

Through

CORAM:

HON'BLE MR. JUSTICE VIBHU BAKHRU

ORDER

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31.07.2018

1. The petitioner has filed the present petition impugning a communication dated 12.07.2018 (hereafter 'the impugned communication'), whereby the contract awarded to the petitioner for construction of 'Aayakar Bhawan' at Kochi, Kerala (hereafter 'the Contract') was terminated by the respondent (hereafter 'NBCC').

2. The aforesaid contract was awarded to the petitioner at a contract value of ₹43,87,42,868/-, by a letter of award (LOA) dated 14.03.2018 pursuant to competitive bidding. In terms of the tender conditions, the petitioner was required to deposit the performance guarantee within a period of 30 days and was to enter into a formal agreement within a period of 45 days, thereafter. Admittedly, there were some delays in furnishing of the performance bank guarantee.

3. It is the petitioner's case that although it took all efforts to commence the construction, it was delayed for reasons attributable to NBCC. It is claimed that NBCC had submitted Good for Construction (GFC) drawings but the same did not match the situation at the site. It is stated that the petitioner had repeatedly informed the same to NBCC. The petitioner states that on one hand, NBCC had indicated that the Consultant would visit the site and take a decision but on the other hand, it had simultaneously issued letters alleging delay on the part of the petitioner.

4. On 22.06.2018, NBCC issued a show cause notice calling upon the petitioner to show cause as to why the action be not taken for termination of the Contract and for forfeiture of the earnest money and the performance bank guarantee. The principal allegation against the petitioner was that it had failed to mobilize manpower and machinery at site and had, further, failed to commence the construction within the time as stipulated.

5. By a letter dated 10.07.2018, the petitioner responded to the aforesaid show cause notice giving its explanation as to the delay caused and indicating the measures already taken for commencing construction.

6. Apparently, there are serious disputes as to the explanation given by the petitioner. First of all, it is stated that the petitioner was required to commence the foundation work in May, 2018; however, the petitioner had given the sub-contract for the work only recently. It is also contended that notwithstanding the issues raised by the petitioner, there was sufficient site available with the petitioner to carry out construction activity.

7. NBCC did not find the explanation to be satisfactory and, therefore,

proceeded to issue the impugned communication terminating the Contract.

8. There is no dispute that there have been delays in commencing the construction. The controversy mainly revolves around the question whether the delay is attributable to the respondent and/or beyond the control of the petitioner. This Court is of the view that it would not be apposite to examine the said controversy in the present petition, as it involves several disputed questions of fact which may require a trial.

9. The learned counsel appearing for the petitioner has referred to the decision of the Constitution Bench of the Supreme Court in ***S.N. Mukherjee v. Union of India : (1990) 4 SCC 594*** in support of his contention that the respondent was required to give detailed reasons for the impugned action for terminating the Contract. He submitted that the impugned communication did not deal with any of the explanations submitted by the petitioner.

10. This Court is not persuaded to accept the aforesaid contention. The decision in the case of ***S.N. Mukherjee (supra)*** is of no assistance in the facts of the present case. The said decision related to proceedings under the Army Act, 1950. The observation, made by the Supreme Court in the said case and as referred to by the petitioner, have little application in the case of contractual matters. The scope of judicial review under Article 226 of the Constitution of India in matters relating to commercial contracts is very limited. Unless the Court finds that the action is *ex-facie* perverse and unreasonable so as to fail the *Wednesbury* test – that is, no sensible person could, in the given facts, arrive at such a decision – no interference by this Court would be warranted. The State has a much larger elbow room in

contractual matters. Its decision in contractual matters cannot be tested on the principles that are applicable to the decisions of a quasi judicial authority.

11. In view of the above, the present petition is dismissed leaving it open for the petitioner to take such remedies as may be advised in law. It is clarified that all rights and contentions of the parties are reserved and nothing stated in this order should be construed as an expression of opinion (*prima facie* or otherwise) on the merits of the controversy between the parties.

12. The pending application is also disposed of.

13. Order *dasti* under the signature of Court Master.

VIBHU BAKHRU, J

JULY 31, 2018

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