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

+ **W.P.(C) 9131/2018**

**AMMA CONSTRUCTION INDIA PVT. LTD.** ..... Petitioner  
Through: Mr Chandra Shekhar, Mr Saurabh  
Upadhyay, Mr Prashant Gaur and Mr  
Vipul Sharma, Advocates.

versus

**HINDUSTAN STEEL WORKS CONSTRUCTION LTD.**  
**AND ORS.** ..... Respondents  
Through: Mr Ripu Daman Bhardwaj and Mr T.  
P. Singh, Advocates for R-2 & R-  
4/UOI.

**CORAM:**  
**HON'BLE MR. JUSTICE VIBHU BAKHRU**  
**ORDER**  
% **31.08.2018**

**C.M. No. 35218/2018**

1. Allowed, subject to all just exceptions.

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2. Issue notice. The learned counsel appearing for the respondents accept notice.

3. The petitioner has filed the present petition, *inter alia*, praying as under:-

“a) Issue a writ of mandamus, directing the respondent no 1 and respondent no. 3 to withdraw the show cause notice dated 07-08-2018. OR

- b) Issue a writ of prohibition, prohibiting the respondent no.1 and respondent no. 3 from taking any action against the petitioner in pursuance of show cause notice dated 07.08.2018.
- c) Issue a writ of mandamus directing a respondent to return the sum of Rs. 1,62,00,827/-, encashed by invocation of bank guarantees submitted by the petitioner toward NIT 63, NIT 68 and NIT 84.”

4. The petitioner is engaged in the business of carrying out civil construction. The petitioner states that the petitioner was awarded ten separate contracts for construction by respondent no.3 (NBCC) or Hindustan Steel Works Construction Ltd. (respondent no.1 – hereafter ‘HSCL’) which has since been taken over by NBCC. The petitioner claims that these contracts were awarded during the period 2011 to 2015 and the petitioner had successfully completed all the aforesaid contracts except the contract relating to construction of road under the Pradhan Mantri Gram Sadak Yojna (PMGSY) NIT-68 (hereafter ‘NIT-68’). The petitioner claims that the petitioner could not complete NIT-68 for various reasons which are not attributable to the petitioner.

5. The petitioner further states that an aggregate amount of ₹8,05,67,450/- is recoverable from NBCC in respect of the works executed by the petitioner in respect of various contracts.

6. The grievance of the petitioner is that NBCC has invoked the bank guarantees submitted by the petitioner in respect of other contracts on the allegation of non performance of NIT-68.

7. In addition, it is claimed that the contracts entered into between the parties do not provide for an arbitration clause and the dispute resolution clause has been rendered unworkable, as the respondents have not appointed

the competent authority, who is to decide the disputes at the initial stage.

8. On 07.08.2018, HSCL issued a show cause notice alleging that the petitioner had failed to maintain the road in question during the defect liability period and had further failed to hand over the same to PWD, Government of Tripura, during the defect liability period of 5 years including the extended period. In the aforesaid context, the petitioner has been called upon to show cause as to why the works be not carried out at the petitioner's risk and cost. The relevant extract of the said show cause notice reads as under:-

“As you have failed to maintain the road including its handling over to PWD, Govt. of Tripura during defect liability period of 5 years including its extended period, you are hereby issued a show cause notice why the same will not be carried out at your own risk and cost; and the amount with HSCL and/or from any amount of yourself whatever is due to HSCL as per clause 43.4 of agreement, clause 52.2, clause 53.1, and point no.26 of the contract data, clause 44 of section 4 part-I of GCC also be applicable for incomplete works within 7 days of receipt of the same failing which necessary action as per agreement will be taken.”

9. The learned counsel appearing for the petitioner states that although a show cause notice has been issued; in fact, NBCC has already taken a decision to recover the amounts. He contended that this is also evident from the fact that the NBCC has invoked the bank guarantees furnished by the petitioner in respect of other contracts as well.

10. It is seen from the above that the disputes between the parties are, essentially, contractual disputes. It is also apparent that the controversy involved in the present case would involve disputed questions of fact.

Further, the matter is still at the stage of show cause notice. In the aforesaid view, this Court does not consider it apposite to entertain the present petition.

11. Having stated the above, it is also apposite to refer to the Dispute Resolution Clause as included in the contract in question. The said clause reads as under:

**“24. Dispute Redressal System**

24.1 If any dispute or difference of any kind whatsoever shall arises in connection with or arising out of this Contract or the execution of Works or maintenance of the Works there under; whether before its commencement or during the progress of Works or after the termination, abandonment or breach of the Contract, it shall, in the first instance, be referred for settlement to the competent authority within 45 days of arising the dispute or difference, described along with their powers in the Contract Data, above the rank of the Engineer. The competent authority shall, within a period of forty-five days after being requested in writing by the Contractor to do so, convey his decision to the Contractor. Such decision in respect of every matter so referred shall, subject to review as hereinafter provided, be final and binding upon the Contractor. In case the Works is already in progress, the Contractor shall proceed with the execution of the Works, including maintenance thereof, pending receipt of the decision of the competent authority as aforesaid, with all due diligence.”

12. The contention of the petitioner that NBCC/HSCL is also required to constitute a Competent Authority as well as the Standing Empowered Committee for redressal of the disputes in terms of Clause 24 of the contract in question, is merited.

13. In view of the aforesaid clause, NBCC is directed to constitute a Competent Authority and Standing Empowered Committee, if not constituted earlier. The petitioner would also be entitled to take recourse to

the said dispute resolution clause, if otherwise so entitled. Needless to state that if the petitioner approaches them, the said authorities shall take a decision in accordance with law.

14. This Court is of also of the view that since show cause notice has been issued to the petitioner, the petitioner may respond to the same. If the petitioner avails the opportunity to do so, NBCC/HSCL shall take a considered decision on the contentions raised by the petitioner uninfluenced by any prior decision.

15. The petition is disposed of with the aforesaid observations.

**AUGUST 31, 2018**  
**MK**

**VIBHU BAKHRU, J**