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

+ W.P.(C) 10821/2017

M/S.MC NALLY BHARAT ENGINEERING CO.
LTD

..... Petitioner

Through: Counsel (appearance not given).
versus

UNION OF INDIA & ANR.

..... Respondents

Through: Ms Anju Gupta and Mr Roshan
Lal Goel, Advocates for UOI.
Mr S.C. Gupta and Mr Ankit
Gupta, Advocates for R-2/NBCC.

CORAM:

HON'BLE MR. JUSTICE VIBHU BAKHRU

ORDER

% **22.02.2019**

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

“A. Issue a writ of mandamus or any other appropriate writ, order or direction to as may be deemed fit and proper directing & commanding the Respondent No. 2 to enter into conciliation with the Petitioner Company and amicably resolve the disputes between them as per OM No. N-14070/14/2016-PPPAU dated 05.09.2016 of NITI Aayog.”

2. The petitioner relies upon the Office Memorandum dated 05.09.2016 issued by the National Institution for Transforming India (NITI Aayog). The petitioner has founded its case on Paragraph 2.4 of the said Office Memorandum, which reads as under:-

“2.4 The method of conciliation has proved more effective in settling disputes as per experience of some of the PSUs. All PSUs/ Departments issuing

public contracts may consider setting up Conciliation Committees/ Councils comprising of independent subject experts in order to ensure speedy disposal of pending or new cases. Recourse to such conciliation may be open before, during or after the Arbitration proceedings. A provision to this effect would also need to be made in the Contract Agreements in future as a mechanism for resolution of disputes.”

3. It is apparent from the above that the said Memorandum only advises concerned PSUs and departments to consider the setting up of Conciliation Committees/Councils. It also recommends that provisions for conciliation may be introduced in agreements, as a method for the resolution of disputes. Plainly, the same is in the nature of an advisory and is not binding on the parties.

4. In this view, the petitioner has no right to insist that the parties enter into conciliation proceedings. It is also well settled that recourse to remedies under Article 226 of the Constitution of India is available for enforcing a right. In this case, this Court is unable to accept that the petitioner has any right to insist that respondent no. 2 should engage in any conciliation proceedings. Thus, the relief as prayed for cannot be granted.

5. The petition is, accordingly, dismissed.

VIBHU BAKHRU, J

FEBRUARY 22, 2019
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