

**In the High Court at Calcutta
Constitutional Writ Jurisdiction
Appellate Side**

The Hon'ble Justice Sabyasachi Bhattacharyya

WPA 5434 of 2020

IA No: CAN 2 of 2020

**Rashmi Metaliks Limited and another
Vs.
Union of India and others**

For the petitioners	:	Mr. S.N. Mookherjee, Sr. Adv., Mr. Tilak Bose. Sr. Adv., Mr. Rajesh Gupta, Mr. Debrup Bhattacharjee, Mr. M. Mukherjee, Ms. Shivangi Thard, Ms. S. Ghosh
For the respondent nos. 2 and 3	:	Mr. S.N. Mitra, Mr. Akhil Sachar, Mr. Subhadeep Basak
For the respondent no. 4	:	Mr. Ratnanko Banerjee, Sr. Adv., Mr. D. N. Sharma, Mr. Rajnesh Rai, Mr. Anunoy Basu, Mr. Ankan Rai, Mr. Srinjoy Bhattacharya
Hearing concluded on	:	05.11.2020
Judgment on	:	20.11.2020

Sabyasachi Bhattacharyya, J:-

1. The present dispute revolves around the alleged breach of a business agreement between the petitioners and the respondent no. 2 (MMTC LIMITED) for supply

of LAM Coke by the respondent no. 4 (NINL) to the petitioner, as per the arrangement entered into by the respondents. no. 2 and 4 *inter se*.

2. In this context, a Price Circular dated February 28, 2020, annexed at page-22 of the writ petition (Annexure P-1) acquires importance. The said document indicated the sale price, inter alia, of LAM Coke and stipulated certain conditions, of which the relevant ones are as follows:

"1. Delivery will be affected against Delivery Order upon receipt of 100% payment in advance by Seller. Delivery shall be affected by Rail/Road. Invoicing will be done on actual weight as finalized by NINL in motion weighbridge / NINL static weighbridge as the case may be. In case of delivery by rail, freight will be charged as per RR on the basis of chargeable weight. Any other charges from Railways such as Demurrage, Punitive charges etc. shall be to Buyer's account.

....

5. The decision of MMTC regarding allocation of material shall be final and binding without any prejudice.

....

10. MMTC will receive all payments.

....

11. Buyer may inspect the material at NINL plant before purchasing the material.

....

13. Sale Invoices will be issued only by MMTC. Even if material is of NINL, NINL will raise Invoice on MMTC and MMTC in turn will issue Sale Invoice to the Buyers.

...."

3. The other key document, annexed at page-23 (Annexure R-3) of the affidavit-in-opposition affirmed on behalf of the respondent nos. 2 and 3 on June 30, 2020, is an Agreement for Sale/Purchase of finished products dated June 22, 2012

entered into between the MMTC and the NINL. The governing clauses thereof, in the present context, are quoted below:

"ARTICLE 3: **BUYING/SELLING ARRANGEMENT**

3.1 *It is hereby agreed by and between the parties that MMTC shall buy and NINL shall sell all the products of NINL as indicated at 1.3 and NINL shall extend 3% Trade Discount on basic price for domestic sales and a price discount as agreed between the parties from time to time on export of products."*

"ARTICLE 4: **DOMESTIC SALE**

4.1 *MMTC shall sell the Products of NINL in India.*

....

4.4 *The title to the goods shall pass on to MMTC the moment goods are delivered on Ex-plant basis to the transporter."*

"ARTICLE 6: **OBLIGATIONS OF NINL**

6.1 *ii) NINL shall arrange loading at the Plant site."*

"ARTICLE 14: **AGREEMENT ON PRINCIPAL TO PRINCIPAL BASIS**

14.1 *This agreement supersedes all agreements and understandings between the parties prior to the signing of this agreement are hereby cancelled. This agreement is a complete agreement on principal to principal basis between MMTC and NINL."*

4. All contending parties argue orally and file fresh written notes of arguments on November 5, 2020 (foregoing reliance on their previous notes).
5. The petitioners' grievance is:

- (i) In response to the Price Circular dated February 28, 2020, the petitioner no. 1 paid a sum of Rs. 31,02,75,000/-, towards purchase of 15,000 metric tons of LAM Coke, to respondent no. 2 (MMTC). MMTC issued 15 delivery orders of 1,000 MT each, all dated March 6, 2020. The delivery orders were valid up to March 31, 2020. The said orders indicate that NINL was the consignor of the product.
- (ii) After taking delivery of 2003.63 MT of LAM Coke, the petitioners allegedly found the same to be of inferior quality and pointed out the same vide an e-mail dated March 11, 2020, indicating further that, unless the quality was rectified, the petitioners would not lift the balance material. No response was received from the respondents.
- (iii) Thereafter, due to the COVID 19 outbreak and ensuing lockdown and other restrictions, the petitioners partially shut down their operations and requested MMTC to refund the balance amount of Rs. 26,88,29,913/-, being the advance amount paid for 12996.37 MT of LAM Coke, which was not lifted from the NINL site.
- (iv) MMTC allegedly replied that the steel sector was exempt from the lockdown and the un-lifted quantity was lying at the plant of NINL, requesting the petitioners to arrange transportation of such balance at the earliest. MMTC also refused to refund the advance.

(v) On April 17, 2020, the petitioners informed MMTC that the petitioners had arranged for transportation and requested confirmation of loading. MMTC allegedly informed that delivery would take time due to the pandemic situation.

6. Learned senior counsel for the petitioners argues that, by virtue of the communications, as indicated above, which took place after March 31, 2020, the MMTC treated the delivery orders to be valid and subsisting.
7. The petitioners describe NINL as a subsidiary of MMTC, being under the administrative and supervisory control of MMTC. With reference to the affidavits-in-opposition filed by the respondents, the petitioners argue that MMTC is the promoter of NINL, admittedly with 49.78 percent share-holding in the latter, while 32.47 percent shares of NINL are owned by the Government of Odisha through IPICOL and OMC. MMTC is also the managing promoter of NINL and has full control over the affairs of NINL, as admitted by the latter. NINL has also pleaded in its opposition that MMTC has 100 percent control over the sales made by NINL.
8. Learned senior counsel for the petitioners submits, by citing the case of *ABL International Ltd. and another vs. Export Credit Guarantee Corporation of India Ltd. and others*, reported at (2004) 3 SCC 553, that once the State or its instrumentality is a party to a contract, it has obligations in law to act fairly, justly and reasonably in terms of Article 14 of the Constitution of India. A writ court can

issue suitable directions to set right arbitrary actions in that regard and can also grant relief with regard to money claims.

9. In the instant case, it is argued that MMTC is an instrumentality of the State and has acted arbitrarily by not delivering the contracted goods or refunding the advance amount received for delivery of such goods, thereby violating Article 14 of the Constitution, which can be set right by this court under its writ jurisdiction.
10. The payment of the entire consideration amount by the petitioners to MMTC is undisputed. It is also reflected from the minutes of a meeting dated August 13, 2020, held between the representatives of the Government of India and the Government of Odisha (as disclosed by MMTC in its supplementary affidavit dated September 16, 2020) that the NINL would immediately seek assistance of the Odisha Government to discharge the materials to buyers in terms of delivery orders from MMTC. The petitioner no. 1 is holding delivery orders from MMTC for supply to be made by NINL and is, thus, entitled to get either delivery of the materials or, in the alternative, refund of the money paid in advance, at least for the undelivered amount.
11. According to the petitioners, the alleged financial hardship of NINL, due to reduction in working capital limits or due to disputes *inter se* with regard to the payments between the NINL and MMTC, is not contemplated in the minutes

dated August 13, 2020 and, as such, is not tenable in the eye of law as a valid defence against non-performance of the business agreement with the petitioner.

12. The argument of NINL, that the validity of the delivery orders expired on March 31, 2020, is belied by the fact that such orders stood extended by the conduct of MMTC in correspondence with the petitioners regarding lifting of the balance LAM Coke, submits learned senior counsel for the petitioners.
13. Accordingly, MMTC and NINL are liable either to deliver the contractual quantity of LAM Coke or refund the advance amount paid by the petitioners for delivery of the said product. In support of the proposition, learned senior counsel for the petitioners cites the judgments of *Chairman, Life Insurance Corp'n. and others vs. Rajiv Kumar Bhasker* reported at (2005) 6 SCC 188 and *Holmes Wilson and Co. Ltd. vs. Bata Kristo De* reported at AIR 1927 Cal 668.
14. Another cardinal argument of respondent nos. 2 and 3 is that the writ petition is not maintainable since the same arises from a contractual dispute, involving a business contract, and there is no public element involved.
15. In this context, learned senior counsel for the respondent nos. 2 and 3 cites the following judgments:
 - (i) *State of Bihar and others vs. Jain Plastics and Chemicals Ltd.* reported at (2002) 1 SCC 216 ;
 - (ii) *National Textile Corp'n. Ltd. and others vs. Haribox Swalram and others* reported at (2004) 9 SCC 786;

- (iii) *Joshi Technologies International Inc. vs. Union of India and others* reported at (2015) 7 SCC 728;
- (iv) *Ipjacket Technology India Private Limited vs. M.D. Uttar Pradesh Rajkiya Nirman Nigam Ltd.* reported at 2019 SCC OnLine ALL 2244.

16. The Price Circular dated February 28, 2020, it is argued, makes it clear that the payments shall be received by the respondent no. 2 and deliveries made by respondent no. 4 in respect of the product-in-question.
17. The writ petitioners, it is argued, sought to wriggle out of the contract from the very beginning, although they were required to arrange for the transport of the purchased LAM Coke from the plant of respondent no. 4, as admitted, particularly in paragraph no. 8, of the writ petition. Immediately after issuance of the delivery orders on March 6, 2020, the petitioners sent, on March 7, 2020, an e-mail complaining about the quality of the product, although no material was lifted by the petitioners till then. The writ petitioners, instead of taking steps for lifting the materials, continued to send various e-mails, complaining about the quality of the goods. Thereafter, the petitioners lifted only a portion of the total purchased goods between March 6, 2020 and March 23, 2020. The nationwide lockdown was declared on and from March 24, 2020, whereas the delivery orders were valid up to March 31, 2020. As such, the respondent nos. 2 and 3 argue that the petitioners could easily have lifted the materials before commencement of lockdown, if they were willing to do so.

18. As per the sale/purchase agreement dated June 22, 2012 between the respondent nos. 2 and 4, it was specified that NINL shall arrange loading at the site. As such, learned senior counsel for the respondent nos. 2 and 3 submits, it was obligatory on the part of the respondent no. 4 (NINL) to ensure that the process of loading was carried out duly. It was also clarified in Clause 17 of the Price Circular dated February 28, 2020 that dispatches/delivery of materials shall be done by NINL only. Moreover, the delivery orders expressly envisaged that respondent no. 4 was the consignor, which provision was acted upon by the respondent no. 4 on various occasions.
19. The stand of the respondent no. 4, that the LAM Coke to be supplied to the petitioners had been hypothecated with the State Bank of India and other consortium banks, as mentioned in the affidavits dated September 24, 2020 and October 16, 2020 affirmed on behalf of the respondent no. 4, were, according to respondent nos. 2 and 3, mere afterthought.
20. Learned senior counsel for the respondent nos. 2 and 3 also argues that, as per the minutes of the meeting dated August 13, 2020, held under the Chairmanship of the Minister of Commerce and Industry, the Odisha Government would assist NINL, upon such assistance being sought by NINL, in discharge of the materials to the buyers with delivery orders from MMTC. The said decision was accepted unconditionally by respondent no. 4 and as such, according to the respondent nos. 2 and 3, prayer (b) of the writ petition, pertaining to mandamus

commanding the respondents to forthwith complete delivery of 13,001.37 MT of LAM Coke in terms of the delivery orders dated March 6, 2020, may be granted at the most.

21. Learned senior counsel for the respondent nos. 2 and 3 next enters into certain disputes pending between the respondent nos. 2 and 4 in respect of the balance of accounts between the said respondents. However, such arguments are not gone into in details, not being the subject-matter of the present writ petition in any event.
22. Learned senior counsel appearing for the respondent no. 4 also harps on the mutual disputes between the respondent nos. 2 and 4, refuting the allegations in that regard levelled by the respondent nos. 2 and 3.
23. Since the delivery orders were issued by MMTC, which apparently received the entire payments, the remedy in the present writ petition, if at all, lies against MMTC and not NINL, it is submitted.
24. It is argued on behalf of the respondent no. 4 that the respondent no. 4 has no direct obligation for delivery of materials to the writ petitioners.
25. Learned senior counsel appearing for the respondent no. 4 further argues that the delivery orders dated March 6, 2020, which form the basis of the present claims of the writ petitioners, were valid only up to March 31, 2020 and as such, cannot now be enforced.

26. The minutes of the meeting dated August 13, 2020, it is argued, is neither relevant nor assists the cause of the petitioners. The obligations laid down in the said high-level meeting operated on a reciprocal basis between the respondent nos. 2 and 4 and cannot be unilaterally enforced against the respondent no. 4.
27. Moreover, the contention of the respondent no. 2 that a sum of Rs. 3211/- crores is allegedly due from the respondent no. 4, is not tenable in law since the entire liability, as reflected in the books of the respondent no. 4, towards respondent no. 2, is fully secured and covered under the Corporate Guarantee issued by the respondent no. 4 in favour of the respondent no. 2. Hence, learned senior counsel for the respondent no. 4 squarely refutes the claims of the respondent no. 2 against his client.
28. It is further submitted on behalf of the respondent no. 4 that the State Bank of India is a necessary and proper party and unless the disputes between the respondent nos. 2 and 4 are adjudicated in presence of the said bank, the petitioners cannot obtain any relief in the current writ petition.
29. It is argued by respondent no. 4 that the writ petitioners have been set up by the respondent no. 2 in order to obtain indirectly what the respondent no. 2 could not claim directly against the respondent no. 4. The writ petition, it is argued, is a device to adjudicate the dispute between the respondent nos. 2 and 4 by compelling the respondent no. 4 to deliver the goods, which it is not obliged

under the law to do in view of the substantial outstanding claims of respondent no. 4 against the respondent no. 2.

30. By placing reliance on the judgment of *Rajasthan State Industrial Development and Investment Corporation and another vs. Diamond & Gem Development Corporation Limited and another* reported at (2013) 5 SCC 470, learned senior counsel for the respondent no. 4 argues that the writ petition is not maintainable for enforcement of a contract between the two parties, which falls within the realm of private law and is not a statutory contract.

31. The writ petition is, thus, not maintainable on the alleged breach of contractual obligations. The grievances of the petitioners against the respondent no. 4 are not legally enforceable, also since the respondent no. 4 is not a party to any contract between the petitioners and the respondent no. 2. There cannot be any specific performance of the contract between the respondent nos. 2 and 4 at the behest of the petitioners.

32. In this regard, *Joshi Technologies (supra)* is also relied on by the respondent no. 4.

33. Upon hearing the arguments of all contending parties, it is evident at the outset that the adjudication of the disputes between the respondent nos. 2 and 4 *inter se* are beyond the purview of adjudication in the present writ petition. Such dispute, if any, cannot be decided, in any event, at the behest of the petitioners even indirectly, since the petitioners have no *locus standi* to ventilate the grievance of any of the respondents, on their behalf against the other(s).

34. As far as the maintainability of the writ petition is concerned, *ABL International (supra)* clearly defines the periphery of interference by High Courts in writ jurisdiction, although it was held that merely because a dispute arose out of a contractual obligation, the same ought not to be refused to be entertained in the writ jurisdiction. It was held therein, inter alia, that it will depend on the facts and circumstances of each case as to whether such jurisdiction can be invoked in a contractual dispute. Although ordinarily the court, sitting in writ jurisdiction, may not examine a dispute related to contractual obligations, there can be interference if the action has some public law character attached to it. Unless there is an impact on public interest, generally such jurisdiction is not invoked in contractual matters.

35. In the circumstances, however, *ABL International (supra)* ought to be weighed in balance with the several citations in that regard, relied on by the respondent nos. 2 and 3. In all the said judgments, being *State of Bihar (supra)*; *National Textile Corpn. (supra)* and *Joshi Technologies (supra)*, the Supreme Court iterated, as did a Division Bench of the Allahabad High Court in *Ipjacket Technology (supra)*, that seriously disputed questions or rival claims of the parties with regard to breach of contract are to be investigated and determined on the basis of evidence, to be led by the parties in a properly instituted civil suit, rather than by a court exercising the prerogative power of issuing writs. For issuance of mandamus, it has to be shown that a statute imposes a legal duty and the aggrieved party has a

legal right under the statute to enforce its performance. No mandamus could be issued if the case was one of pure and simple business contract.

36. It is further evident from the judgments cited by the respondents that private law rights, even under a Government contract, without any element of public law, cannot entail invocation of the writ jurisdiction under Article 226 of the Constitution of India.

37. Taken in conjunction, the aforesaid judgments indicate that law is well-settled in the field. The writ jurisdiction can only be invoked to resolve contractual disputes in exceptional cases, if an ingredient of public law is involved and/or a statutory contract has been breached. Merely because the State or its instrumentality is a party to the contract, does not make a contractual dispute, which is private in nature, amenable to the writ jurisdiction.

38. In the present case, the dispute between the parties relates purely to alleged breach of business contract between the petitioner no. 1 and the respondents. Hence, the writ jurisdiction ought not to be exercised, even if there were to be actual breach, in view of the dispute being of a private nature, without involvement of any public law element (the commercial transactions between the petitioner no. 1 and the respondents did not arise from a statutory contract either) and since there is no violation of Article 14 of the Constitution of India or any other fundamental and/or statutory right in the present case.

39. Even as per the petitioners' allegations, the contractual dispute raised herein is entirely a private dispute involving decision on complex questions of fact, necessitating adduction of evidence. Such a dispute falls within the domain of the civil court and not of the High Court under its writ jurisdiction.
40. Besides, there is evidently an independent dispute between the respondent nos. 2 and 4 with regard to their mutual obligations, irrespective of the present controversy raised by the petitioners. Hence, the interpleader nature of the adjudication adds to the complexity on facts and inhibits the invocation of the writ jurisdiction in the matter.
41. Moreover, respondent no. 4 is correct in arguing that the cause of respondent no. 2 against respondent no. 4 cannot be canvassed by the petitioners in the form of the present writ petition. A necessary corollary of the dispute raised by the petitioners is a decision as to whether the respondent no. 4 is to deliver the goods and/or the respondent no. 2 is to refund the advance money paid by the petitioners. Until and unless the mutual obligations between the respondent nos. 2 and 4 are decided, neither any direction for delivery of products, nor of refund of money can be passed as such.
42. That apart, it is evidenced from the Price Circular dated February 28, 2020 (page-22 of the writ petition) that the buyer has a right to inspect the material at the NINL plant before purchasing the materials. It has been admitted elsewhere that the petitioner no. 1, on March 7, 2020, that is, immediately after delivery orders

being placed by MMTC on March 6, 2020, raised complaints about the purported quality of the product. This, apparently, was prior to lifting of the goods by the petitioners. The petitioners, therefore, had the option of raising such dispute seriously before the respondent no. 4 immediately, desisting totally from lifting the product (at least before such dispute was resolved or dealt with by the respondent no.4), which was never done by the petitioners. Apart from raising mechanical and vague complaints against the quality of the product, the petitioners did not approach any forum and/or refuse to take delivery of the product in its entirety. Rather, a substantial chunk of the ordered goods had already been lifted from the plant of NINL by the petitioners. In view of such provision for prior inspection of the materials, the doctrine of *caveat emptor* is attracted, since the petitioners admittedly collected a portion of the LAM Coke over a period of time despite having raised the dispute. The dispute thus runs the risk of being rendered tentative.

43. Moreover, the sale/purchase agreement between the respondent nos. 2 and 4, dated June 22, 2012, clearly specifies that the same was an agreement on principal to principal basis (Article 14 of the agreement). Article 3 of the agreement stipulates that MMTC shall buy and NINL shall sell all products of NINL as indicated therein. Regarding domestic sale, Article 4.1 specifies that MMTC shall sell the products of NINL in India. Article 4.4, on the other hand,

categorically states that the title to the goods shall pass on to MMTC the moment the goods are delivered on ex-plant basis to the transporter.

44. The petitioners admittedly took charge of the transport and NINL was only to arrange loading at the plant site, as per Article 6.1(ii) of the agreement dated June 22, 2012.
45. The aforesaid provisions in the agreement between the respondent nos. 2 and 4, which is the plinth of the present claim of the petitioners, makes it clear that it was the petitioners who were responsible for delivery (read, non-delivery in the context) of the total goods from the NINL site prior to expiry of the validity of the delivery orders dated March 6, 2020, that is, before March 31, 2020.
46. Whatever may be the disputes between the respondent nos. 2 and 4 *inter se*, the petitioners' present claim is defied by its own conduct in lifting only a portion of the materials ordered, even before their alleged claim of inferior quality was addressed at all. As far as the lockdown period is concerned, there was ample time, some of which was actually utilized by the petitioners, for taking delivery of the goods-in-question. As such, the post-lockdown rigours cannot be a valid defence for any of the parties, particularly the petitioners and the respondent no. 2, the latter having accepted the entire price of the LAM Coke at the inception. The black swan of the pandemic is barely used as a prop by the petitioner and has no reasonably proximate nexus with the controversy at hand.

47. The *inter partes* obligations, in the present case, are inextricably linked. MMTC was to acquire title in the LAM Coke at the moment of delivery of goods by NINL to the transporter; importantly, the petitioners admittedly took the responsibility of transport and NINL was only to load the goods on the vehicles concerned.
48. On the other hand, the obligation of NINL to deliver was not only circumscribed by its own business relations with MMTC but also by the last date of delivery, that is, March 31, 2020, which is admitted by all parties.
49. It was the petitioners' self-proclaimed obligation to take delivery of products from the NINL plant, which was partially exercised by the petitioners, after which, on the flimsy pretext of inferior quality, the petitioners failed to take delivery of the balance products from NINL, for which the petitioners themselves could be held responsible. The petitioners do not plead any distinguishing feature, relevant to the present dispute, between the periods prior and subsequent to the point of time when they abstained from taking further delivery.
50. The petitioners could either refuse to lift the entire amount and move the appropriate Civil Court with regard to their rights under the business contract or could have taken delivery of the entire materials with an assertive rider, in writing, to the effect that they had some specific objection(s) regarding quality of the product. If either of such recourses was opted for by the petitioners, there

would be a possibility of fixation of liability on either respondent no. 2 or respondent no. 4, or at least an intelligible apportionment of liability between the said respondents. However, the petitioners having lifted some of the materials, their claim of defective product is tarnished, particularly in view of such lifting of materials being extended over a period of time (March 6 to March 23, 2020) and apropos the Price Circular clause of prior inspection of goods by the buyers.

51. Be that as it may, such questions involve a detailed appreciation of the factual questions involved, which is impossible without adduction of elaborate evidence, falling in the domain of civil courts, as iterated above.

52. Moreover, in view of the initial view taken by this court, that no writ petition lies for the alleged breach of contract claimed by the petitioners, the writ petition cannot be decided on its merits in its present form.

53. Accordingly, WPA 5434 of 2020 is dismissed in the light of the aforesaid observations. However, it is made clear that the merits of the disputes between the parties have not been gone into by this court. The observations made herein are only for the purpose of deciding whether any violation of a constitutional or statutory right occurred prima facie, sufficient to entitle the petitioners to seek for issuance of writs under the prerogative writ jurisdiction of this court.

54. IA No: CAN 2 of 2020 is also disposed of accordingly.

55. The parties shall be free to raise their mutual disputes, raised in the present proceeding, before an appropriate civil court. If so raised, the said forum shall

decide the matter on its own merits, without being influenced on merits by the observations made herein.

56. There will be no order as to costs.

57. Urgent certified website copies of this order, if applied for, be made available to the parties upon compliance with the requisite formalities.

(Sabyasachi Bhattacharyya, J.)