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

Date of decision: 20th April, 2021

+ **W.P.(C) 4888/2021**

M/S SQUIRREL DESIGN HOUSE Petitioner
Through: Mr. Asheesh Lal, Advocate.

versus

NATIONAL FERTILIZERS LIMITED AND ORS. Respondents
Through: Mr. Deepak Khurana, Mr. Vineet
Tayal & Ms. Nishtha Wadhwa,
Advocates for R-1&2 (M9811231287)
Mr. Jatin Puniyani, GP for UOI.
Mr. Akshay Amritanshu & Mr. Jatin,
GP for R-3 (M-9931282222)

CORAM:
JUSTICE PRATHIBA M. SINGH

Prathiba M. Singh, J.(Oral)

1. This hearing has been done through video conferencing.

CM APPL. 15049/2021 (for exemption)

2. Allowed, subject to all just exceptions. Application is disposed of.

W.P.(C) 4888/2021 & CM APPLs. 15050/2021 (for interim stay)

3. The present petition has been filed in respect of a Work Order dated 24th May, 2019 allotted to the Petitioner by the Respondent i.e., the National Fertilizers Limited (*hereinafter*, “NFL”), for renovation of the Zonal Marketing Office of the NFL at Bhopal. The total contract value was Rs.1,25,76,721.83/-.

4. A tender was floated for the renovation of the Zonal Marketing Office at Bhopal in November, 2018 and the Petitioner submitted its bid. The Work

Order was awarded on 24th May, 2019, as recorded above. The date of commencement of the contract was to be April, 2019 and the entire work was to be completed within seven months.

5. It is submitted that there was a clear delay by the Respondent and the site was finally handed over in June, 2019. The seven month period, even if counted from June, 2019 would go up till January, 2020 and thereafter, 100 days' extension was also granted to the Petitioner. However, in between, the Covid-19 lockdown was imposed. The Petitioner was short on labour and despite having very good intentions, the work could not be completed.

6. The submission of Id. Counsel for the Petitioner is thus, that the termination letter issued on 16th September, 2020 fails to take note of various facts. After terminating the contract, the Respondent invited a tender on 11th December 2020 for 'Renovation of the Zonal Marketing Office Bhopal' in respect of the balance work. This according to the Petitioner would cause prejudice to the Petitioner and hence quashing of the letter of termination dated 16th September 2020 is prayed for.

7. On behalf of the Respondents, it is submitted that the Petitioner is guilty of suppression and concealment of material facts. The Petitioner, in fact, gave an undertaking in its letter dated 22nd February, 2021, which letter has not been annexed on record. It was because of the assurances given by the Petitioner that the 100 days' extension was given, in addition to the 7 months period, which had already elapsed. Id. counsel further submits that in terms of the settled law as per the Supreme Court in the judgment of ***Joshi Technologies International Inc. v. UOI & Ors., (2015) 7 SCC 728***, if no issue of public interest is involved, a contractual dispute ought not to be entertained in writ jurisdiction. It is further submitted that the LOI in respect

of the balance work has already been issued to the new contractor yesterday i.e., 19th April, 2021.

8. The Court has considered the matter. A perusal of the Work Order dated 24th May 2019 shows that the period of the contract was seven months and the date of start of work and period of the contract, as per the Work Order, was as under:

“1.0 Date of Start:

The Scheduled date of start of the work shall be considered from The Scheduled date of start of the work shall be considered from 10th day of the issue of LOI or from the date of handing over of site to take up the work in hand, whichever is later.

2.0 Period of contract:

The entire job is to be completed within 07 (Seven) Months from the date of start of work as per clause no.1.0 of work order.

3.0 Termination:

The contract can be terminated as per Clause 1.38 of General Terms and Conditions of the Contract given in the NIT”

9. It is also relevant to point out that there is an arbitration clause, which reads as under:

“18.0 Arbitration

Except where otherwise provided in the contract all matters, questions, disputes or differences whatsoever, which shall at any time arise between the parties hereto, touching the construction, meaning, operation or effect of the contract, or out of the matters relating to the contract or breach thereof, or the respective rights or liabilities of the parties, whether during or after completion of works or whether before or after termination shall after written notice by either party to the contract be referred to

Chairman & Managing Director, National Fertilizers Limited for appointment of Arbitrator.

The Arbitration proceedings shall be governed by the Arbitration & Conciliation Act, 1996. The Arbitration & Conciliation (Amendment Act, 2015) or any further statutory modification or re-enactment thereof and the rules made thereunder.

If the arbitrator to whom matter is referred, vacates his/her office by any reason whatsoever then the next arbitrator to appointed by the authority referred above may start the proceedings from where his predecessor left or at any such stage he may deem fit. It is agreed by and between the parties that in case a reference is made to the Arbitrator or the Arbitral Tribunal for the purpose of resolving the disputes/differences arising out of the contract by and between the parties hereto, the Arbitrator or the Arbitral Tribunal shall not award interest on the awarded amount more than the rate SBI PLR/Base Rate applicable to NFL, on the date of award of contract.”

10. The case of the Petitioner is that it had not defaulted in any manner and there were various defaults by the Respondents. On the other hand, the case of the Respondents is that the Petitioner has only completed 5% of the work, despite receiving a substantial sum and the Respondent had no option but to terminate the contract.

11. Though the NFL may be a public sector undertaking, the contract in question is clearly a commercial contract. There is no public law element or issue of public interest involved. In view of the settled law in **Joshi Technologies (supra)** and the subsequent judgments of the Supreme Court, it is clear that this is not a case where this Court ought to exercise writ jurisdiction.

12. The issue as to the circumstances in which the extension was given to the Petitioner and as to whether there was any delay by the Petitioner or by the Respondent ought to be adjudicated in terms of the redressal mechanism provided in the contract itself. These are factual issues for the resolution of which writ jurisdiction ought not to be invoked by parties. The same would have to be adjudicated upon by invoking the mechanism provided in the contract.

13. In view of the above discussion, the writ petition is liable to be dismissed. However, the parties are permitted to invoke their remedies, as permissible under the contract/work order dated 24th May 2019. The issues on merits are left open as this Court has not given any opinion on the same.

14. In view of the above discussion, the present petition is liable to be dismissed, with liberty as aforesaid. Ordered accordingly. The pending application is also disposed of.

**PRATHIBA M. SINGH
JUDGE**

APRIL 20, 2021
dk/MW/T

(Corrected and uploaded on 29th April 2021)