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

W.P.(C) 15398/2022, CM APPL. 47851/2022 (interim stay) and CM APPL. 47852/2022 (exemption)

Reserved on : 30.11.2022
Date of Decision: 16.12.2022

IN THE MATTER OF:
KAMLADLTYYA CONSTRUCTION PVT. LTD & ANR.
..... Petitioners
Through: Mr. Rajiv Nayar and Mr. Dayan Krishnan, Sr. Advocates with Mr. Vaibhav Niti, Ms. Madhavi Agrawal and Mr. Divyanshu Agrawal, Advocates

versus
RAIL LAND DEVELOPMENT AUTHORITY & ANR.
..... Respondents
Through: Mr. R.V. Sinha, Mr. Amit Sinha and Mr. A.S. Singh, Advocates for respondent No.1

CORAM:
HON'BLE MR. JUSTICE MANOJ KUMAR OHRI

JUDGMENT

MANOJ KUMAR OHRI, J.

1. By way of the present petition filed under Article 226 of the Constitution of India, the petitioners have impugned the termination letter dated 02.11.2022 issued by respondent No.1 (hereinafter, referred to as the *'order'*).

2. Pithily put, the relevant facts are that in the year 2018, the Indian Railway Stations Development Corporation India Ltd. (IRSDC), a joint venture company of Land Development Authority and Ircon ltd., floated an

open tender on 15.03.2018 to redevelop the Bijwasan Railway Station on EPC (Engineering, Procurement and Construction) basis. The petitioners participated in the tender and were declared the successful bidder resulting in signing of an Agreement on 02.12.2019. The Agreement was executed by IRSDC. Reportedly, on closure of IRSDC, the Agreement in question was novated in favor of present respondent No.1 vide another Agreement dated 07.01.2022 on the same terms and conditions.

3. Apparently, disputes arose between the parties relating to delay in timely completion of the project. Although extension of time was sought and granted, but eventually the respondent terminated the Agreement vide the impugned order.

4. Mr. Dayan Krishnan, learned Senior Counsel for the petitioners while assailing the impugned order contended that the delay in completion of the project was entirely attributable to respondent No.1 as it defaulted in fulfilling its obligations under Clauses 4.1.6 and 9.4 of the Agreement. It was submitted that in terms of the said clauses, respondent No.1 was under obligation to provide support to the petitioners in procuring applicable permits required from any Government instrumentality for implementation of the project. It included obtaining the applicable permits for felling of trees. To buttress the submission that being the owner/occupant, the obligation was entirely of respondent No.1 learned Senior Counsel referred to Section 8 of the Delhi Preservation of Trees Act, 1994. In this regard, reference was also made to Form B to Sub-Rule (1) of Rule 4 of the Delhi Preservation of Trees Rules, 1994 which require the requisite application seeking permission for felling of trees is to be accompanied by documents

including latest *Jamabandi* of land record issued by the Tehsildar, NOCs from the concerned local body i.e., MCD/ N.D.M.C. as well as from the adjoining property owners. Though an application was made but the same was rejected on 11.01.2018 for want of necessary documents. When the petitioners sought the requisite documents from respondent No.1, a meeting was held between the parties and as per the Minutes of Meeting dated 03.08.2022 and 11.08.2022, respondent No.1 undertook to file an application seeking permission for felling/transplantation of 9 trees.

It is submitted that though the concerned authority granted the permission for felling of 9 trees on 13.10.2022 however, the delay in seeking the same also resulted in delaying the entire project. The respondent No.1 was also to process the application for felling of about further 4600 trees. Lastly, it was submitted that though the respondent granted an extension of time for completion of work upto 06.12.2023, the Agreement was terminated pre-maturely. It is thus contended that the impugned order not only suffers from the vice of illegality and arbitrariness, but also being issued for irrelevant cause.

5. Anticipating opposition from the respondents on the aspect of maintainability of a writ petition, learned Senior Counsel for the petitioners placed reliance on the decision of the Supreme Court in Harbanslal Sahnia and Another *v.* Indian Oil Corpn. Ltd. and Others reported as **(2003) 2 SCC 107**, Union of India and Others *v.* Tantia Construction Private Limited reported as (**2011) 5 SCC 697**, Unitech Limited and Others *v.* Telangana State Industrial Infrastructure Corporation (TSIIC) and Others reported as **2021 SCC OnLine SC 99** and M.P. Power Management Company Limited,

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Jabalpur *v.* Sky Power Southeast Solar India Private Limited and Others reported as **2022 SCC OnLine SC 1591.**

6. Meeting the petitioners' anticipation and opposing the submissions made on their behalf, Mr. R.V. Sinha, learned counsel for the respondents vehemently argued for dismissal of the writ petition on account of non-maintainability. It was contended that neither the respondent, which is a statutory Corporation under the Railways, nor the Agreement, which is a commercial contract entered into between the parties after an open tender, are amenable to the Writ jurisdiction of this Court under Article 226 of the Constitution of India. Further, it involves disputed questions of facts. Additionally, reference was also made to Clause 26.3 of the Agreement to submit that the alternate remedy lies with the petitioners in invoking the Arbitration. Learned counsel also referred to Sections 14(1)(d) and 41(ha) of the Specific Relief Act, 1963 as amended by the Specific Relief (Amendment) Act, 2018, it was contended that the agreement being terminable and in relation to an infrastructure project, no injunction can be granted.

7. On merits, it was contended that in terms of the Agreement, the obligation cast on respondent No.1 was to assist in seeking permission from the Government authorities and while petitioners have alleged only delay in seeking permission for felling/transplantation of trees, they are guilty of failing to achieve other milestones as highlighted in the impugned order. In support of his submission, learned counsel placed reliance on the decisions in Radhakrishna Agarwal and Others *v.* State of Bihar and Others reported as **(1977) 3 SCC 457**, Noble Resources Ltd. *v.* State of Orissa and Another

reported as **(2006) 10 SCC 236**, Bareilly Development Authority and Another *v.* Ajay Pal Singh and Others reported as **(1989) 2 SCC 116**, Assistant Excise Commissioner and Others *v.* Issac Peter and Others reported as **(1994) 4 SCC 104**, Pimpri Chinchwad Municipal Corporation and Others *v.* Gayatri Construction Company and Another reported as **(2008) 8 SCC 172** and Rishi Kiran Logistics Private Limited *v.* Board of Trustees of Kandla Port Trust and Others reported as **(2015) 13 SCC 233**.

8. With a fairly developed case law on the subject, maintainability of a writ petition in contractual matters is clearly established. There are no limits to High Court's jurisdiction under Article 226 of the Constitution of India jurisdiction however, under the circumstances under which this extraordinary, discretionary and equitable jurisdiction should be exercised by courts is what the court is required to decide. Often, it is the latter question that is incorrectly presented as lack of jurisdiction. Repeatedly, the Supreme Court as well as this Court has held that '*in principle*', contractual obligation of State or its instrumentality are open to judicial scrutiny in a given case regardless of the fact that it involved disputed questions of facts or a consequential relief of monetary claim is sought. However, what comes following this 'in principle' approval of the courts, is a guidance that the state's action called into question in a writ petition should be palpably unreasonable or absolutely irrational for the court to see without any requirement of a trial to establish facts. Another factor to be taken into consideration is the presence of public interest.

9. The governing principles were exposited by Supreme Court in ABL International Ltd. and Another *v*. Export Credit Guarantee Corporation of India Ltd. and Others reported as **(2004) 3 SCC 553** in following words:

> *"**27.** From the above discussion of ours, the following legal principles emerge as to the maintainability of a writ petition:*
>
> *(a) In an appropriate case, a writ petition as against a State or an instrumentality of a State arising out of a contractual obligation is maintainable.*
>
> *(b) Merely because some disputed questions of fact arise for consideration, same cannot be a ground to refuse to entertain a writ petition in all cases as a matter of rule.*
>
> *(c) A writ petition involving a consequential relief of monetary claim is also maintainable."*

10. Recently, the exposition of law propounded in ABL International Ltd. and Another (Supra) was adopted by a three-Judge Bench in State of U.P. *v*. Sudhir Kumar Singh and Others reported as **2020 SCC OnLine SC 847** and Popatrao Vyankatrao Patil *v*. State of Maharashtra and Others reported as **(2020) 19 SCC 241**. While noting so, in Unitech Limited and Others (Supra) the Supreme Court held that:

> *"**41.** Therefore, while exercising its jurisdiction under Article 226, the Court is entitled to enquire into whether the action of the State or its instrumentalities is arbitrary or unfair and in consequence, in violation of Article 14. The jurisdiction under Article 226 is a valuable constitutional safeguard against an arbitrary exercise of state power or a misuse of authority. In determining as to whether the jurisdiction should be exercised in a contractual dispute, the Court must, undoubtedly eschew, disputed questions of fact which would depend upon an evidentiary determination requiring a trial. But equally, it is well-settled that the*

jurisdiction under Article 226 cannot be ousted only on the basis that the dispute pertains to the contractual arena. This is for the simple reason that the State and its instrumentalities are not exempt from the duty to act fairly merely because in their business dealings they have entered into the realm of contract. Similarly, the presence of an arbitration clause does oust the jurisdiction under Article 226 in all cases though, it still needs to be decided from case to case as to whether recourse to a public law remedy can justifiably be invoked. The jurisdiction under Article 226 was rightly invoked by the Single Judge and the Division Bench of the Andhra Pradesh in this case, when the foundational representation of the contract has failed. TSIIC, a state instrumentality, has not just reneged on its contractual obligation, but hoarded the refund of the principal and interest on the consideration that was paid by Unitech over a decade ago. It does not dispute the entitlement of Unitech to the refund of its principal."

11. Although many other decisions were cited at the bar however, need is not felt to multiply the authorities especially when the legal principles were again recently expounded in M.P. Power Management Company Limited, Jabalpur (Supra) when Supreme Court after going through the entire conspectus of law on the aspect of determining factors to be taken into account while considering the maintainability of the writ petition in contractual matters including its earlier decision in Joshi Technologies International INC *v.* Union of India and Others reported as **(2015) 7 SCC 728**, laid down the following parameters:

*"**60.** We may cull out our conclusions in regard to the points, which we have framed:*

i. It is, undoubtedly, true that the writ jurisdiction is a public law remedy. A matter, which lies entirely within a private realm of affairs of public body, may not lend

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itself for being dealt with under the writ jurisdiction of the Court.

ii.The principle laid down in Bareilly Development Authority (supra) that in the case of a non-statutory contract the rights are governed only by the terms of the contract and the decisions, which are purported to be followed, including Radhakrishna Agarwal (supra), may not continue to hold good, in the light of what has been laid down in ABL (supra) and as followed in the recent judgment in Sudhir Kumar Singh (supra).

iii. The mere fact that relief is sought under a contract which is not statutory, will not entitle the respondent-State in a case by itself to ward-off scrutiny of its action or inaction under the contract, if the complaining party is able to establish that the action/inaction is, per se, arbitrary.

iv. An action will lie, undoubtedly, when the State purports to award any largesse and, undoubtedly, this relates to the stage prior to the contract being entered into [See R.D. Shetty (supra)]. This scrutiny, no doubt, would be undertaken within the nature of the judicial review, which has been declared in the decision in Tata Cellular v. Union of India.

v. After the contract is entered into, there can be a variety of circumstances, which may provide a cause of action to a party to the contract with the State, to seek relief by filing a Writ Petition.

vi. Without intending to be exhaustive, it may include the relief of seeking payment of amounts due to the aggrieved party from the State. The State can, indeed, be called upon to honour its obligations of making payment, unless it be that there is a serious and genuine dispute raised relating to the liability of the State to make the payment. Such dispute, ordinarily, would *include the contention that the aggrieved party has not fulfilled its obligations and the Court finds that such a contention by the State is not a mere ruse or a pretence.*

vii. The existence of an alternate remedy, is, undoubtedly, a matter to be borne in mind in declining relief in a Writ Petition in a contractual matter. Again, the question as to whether the Writ Petitioner must be told off the gates, would depend upon the nature of the claim and relief sought by the petitioner, the questions, which would have to be decided, and, most importantly, whether there are disputed questions of fact, resolution of which is necessary, as an indispensable prelude to the grant of the relief sought. Undoubtedly, while there is no prohibition, in the Writ Court even deciding disputed questions of fact, particularly when the dispute surrounds demystifying of documents only, the Court may relegate the party to the remedy by way of a civil suit.

viii. The existence of a provision for arbitration, which is a forum intended to quicken the pace of dispute resolution, is viewed as a near bar to the entertainment of a Writ Petition (See in this regard, the view of this Court even in ABL (supra) explaining how it distinguished the decision of this Court in State of U.P. v. Bridge & Roof Co., by its observations in paragraph-14 in ABL (supra)].

ix. The need to deal with disputed questions of fact, cannot be made a smokescreen to guillotine a genuine claim raised in a Writ Petition, when actually the resolution of a disputed question of fact is unnecessary to grant relief to a writ applicant.

x. The reach of Article 14 enables a Writ Court to deal with arbitrary State action even after a contract is entered into by the State. A wide variety of circumstances can generate causes of action for invoking Article 14. The Court's approach in dealing *with the same, would be guided by, undoubtedly, the overwhelming need to obviate arbitrary State action, in cases where the Writ remedy provides an effective and fair means of preventing miscarriage of justice arising from palpably unreasonable action by the State.*

xi. Termination of contract can again arise in a wide variety of situations. If for instance, a contract is terminated, by a person, who is demonstrated, without any need for any argument, to be the person, who is completely unauthorised to cancel the contract, there may not be any necessity to drive the party to the unnecessary ordeal of a prolix and avoidable round of litigation. The intervention by the High Court, in such a case, where there is no dispute to be resolved, would also be conducive in public interest, apart from ensuring the Fundamental Right of the petitioner under Article 14 of the Constitution of India. When it comes to a challenge to the termination of a contract by the State, which is a non-statutory body, which is acting in purported exercise of the powers/rights under such a contract, it would be over simplifying a complex issue to lay down any inflexible Rule in favour of the Court turning away the petitioner to alternate Fora. Ordinarily, the cases of termination of contract by the State, acting within its contractual domain, may not lend itself for appropriate redress by the Writ Court. This is, undoubtedly, so if the Court is duty-bound to arrive at findings, which involve untying knots, which are presented by disputed questions of facts. Undoubtedly, in view of ABL Limited (supra), if resolving the dispute, in a case of repudiation of a contract, involves only appreciating the true scope of documentary material in the light of pleadings, the Court may still grant relief to an applicant. We must enter a caveat. The Courts are today reeling under the weight of a docket explosion, which is truly alarming. If a case involves a large body of documents and the Court is called upon to enter upon findings of facts and involves merely the construction of

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the document, it may not be an unsound discretion to relegate the party to the alternate remedy. This is not to deprive the Court of its constitutional power as laid down in ABL (supra). It all depends upon the facts of each case as to whether, having regard to the scope of the dispute to be resolved, whether the Court will still entertain the petition.

xii. In a case the State is a party to the contract and a breach of a contract is alleged against the State, a civil action in the appropriate Forum is, undoubtedly, maintainable. But this is not the end of the matter. Having regard to the position of the State and its duty to act fairly and to eschew arbitrariness in all its actions, resort to the constitutional remedy on the cause of action, that the action is arbitrary, is permissible (See in this regard Kumari Shrilekha Vidyarthi v. State of U.P.). However, it must be made clear that every case involving breach of contract by the State, cannot be dressed up and disguised as a case of arbitrary State action. While the concept of an arbitrary action or inaction cannot be cribbed or confined to any immutable mantra, and must be laid bare, with reference to the facts of each case, it cannot be a mere allegation of breach of contract that would suffice. What must be involved in the case must be action/inaction, which must be palpably unreasonable or absolutely irrational and bereft of any principle. An action, which is completely malafide, can hardly be described as a fair action and may, depending on the facts, amount to arbitrary action. The question must be posed and answered by the Court and all we intend to lay down is that there is a discretion available to the Court to grant relief in appropriate cases.

xiii. A lodestar, which may illumine the path of the Court, would be the dimension of public interest subserved by the Court interfering in the matter, rather than relegating the matter to the alternate Forum.

xiv. Another relevant criteria is, if the Court has entertained the matter, then, while it is not tabooed that the Court should not relegate the party at a later stage, ordinarily, it would be a germane consideration, which may persuade the Court to complete what it had started, provided it is otherwise a sound exercise of jurisdiction to decide the matter on merits in the Writ Petition itself.

xv. Violation of natural justice has been recognised as a ground signifying the presence of a public law element and can found a cause of action premised on breach of Article 14. [See Sudhir Kumar Singh (supra)].

xxx xxx xxx

95. Therefore, on a conspectus of the case law, we find that the concept of overwhelming public interest has essentially evolved in the context of cases relating to the award of contract by the State. It becomes an important consideration in the question as to whether then the State with whatever free play it has in its joints decides to award a contract, to hold up the matter or to interfere with the same should be accompanied by a careful consideration of the harm to public interest. We do not go on to say that consideration of public interest should not at all enter the mind of the court when it deals with a case involving repudiation of a claim under a contract or for that matter in the termination of the contract. However, there is a qualitative difference in the latter categories of cases. Once the State enters into the contract, rights are created. If the case is brought to the constitutional court and it is invited to interfere with State action on the score that its action is palpably arbitrary, if the action is so found then an appeal to public interest must be viewed depending on the facts of each case. If the aspect of public interest flows entirely on the basis that the rates embodied in the contract which is arbitrarily terminated has with the passage of time become less appealing to the State or that because of the free play of market forces or other developments, there is a fall in the rate of price of the *services or goods then this cannot become determinative of the question as to whether court should decline jurisdiction. In this case, it is noteworthy that the rates were in fact settled on the basis of international competitive bidding and in which as many as 182 bidders participated and the rate offered by the first respondent was undoubtedly the lowest. The fact that power has become cheaper in the market subsequently by itself should not result in non-suiting of the complaint of the first respondent, if it is found that a case of clear arbitrariness has been established by the first respondent.*

96. In other words, public interest cannot also be conflated with an evaluation of the monetary gain or loss alone."

12. Coming to the facts of the present case, the parties entered into an Agreement on 02.12.2019. Clause 10.3.1 of the Agreement provided that 730th day from the appointed date would be the scheduled completion date. Apparently, the respondent, vide various communications pointed out the delay in execution of work and time specific milestones. Admittedly, on a request made by the petitioner and in terms of the provisions for the extension of time, the respondent through letter dated 23.05.2022 extended the completion period upto 06.12.2023 by observing that delay was neither attributable to the petitioner or the respondent.

13. A perusal of the material placed on record would show that a meeting was held on 03.08.2022 at the project site to review the progress of work. The respondent flagged the slow pace of work resulting in delay in execution of works. Another review meeting was also held on 11.08.2022 and on the said date as well, the issues relating to delay were highlighted. A notice came to be issued by the respondent on 17.08.2022 followed by

further communications dated 02.09.2022, 19.09.2022, and 20.09.2022. raising their grievance on non-adherence to the timelines.

14. To all these communications/notices, the petitioner filed their reply and sought to justify the delay. During the course of submissions, learned Senior Counsel vehemently stressed that the entire delay was on account of respondent's inaction qua permission for felling of trees. The parties are governed by the terms and conditions set out in the Agreement. On a prima facie reading, it is apparent that as per clause 3.1.7(a), it was the Contractor i.e., the petitioner who, at his cost and expense, had to make, or cause to be made necessary applications to the relevant Government instrumentalities for obtaining the applicable permits as set forth in Schedule F and obtain and keep in force and effect such Applicable permits in conformity with the applicable laws. The Schedule F not only all enlisted all the applicable permits, but also outlined as to who would obtain the same. Para 1.1(vii) specifically dealt with the onus of the Contractor to obtain the permit relating to the 'Forest clearance for cutting trees."

15. On 12.10.2022, the respondent issued a show cause notice for termination of the Agreement thereby specifying that on a review of the progress of work as many 5 milestones were not achieved and other 2 milestones were also not likely to be achieved by due date. Although the petitioners replied to the show cause notice however, dissatisfied with the progress of the project, vide the impugned letter dated 02.11.2022, the agreement was terminated under clause 23.1.2 of the Agreement. The same reads as under:

> *"1) We are receipt of your letter no. NIL dated 26.10.2022 in reply of the Notice issued vide letter no. RLDA/HQ/*

Novation/Bijwasan/KCPL/776/2022 dated 12.10.2022. The para-wise reply of your letter is as under:

Para No.	*KCPL Letter dated 26.10.2022*	*RLDA Reply*
1	*With reference to your above mention letter, you have raised concern regarding milestone, revise program with resources* *As you are aware we have already submitted a work program on at 14/09/2022 where in it was requested to give hindrance free Track Side and City Side area so that we can start construction activities on all front. Same hindrances are again reproduced below for your ready reference and early resolution*	*The program submitted vide your letter dated 14.09.2022 and again on 19.09.2022 was incomplete and required correction as informed vide RLDA letter dated 19.09.2022 in the said matter. The corrected program is still awaited from your end.* *There is no hindrance on the track side area and work as per the program submitted by you vide letter dated 22.03.2022 could have taken up. However, while you have supposed to complete 100% of the Concourse area work (upto Concourse Level), only 3% of the progress of have been achieved till date. City Side area is having no hindrance attributable to RLDA.* *Factually there is no hindrance in execution of the work either on the Track Side or on the City Side area except for the trees falling in the vehicular circulation and parking area which is an outcome of non-fulfilment of your responsibility as per the provisions of the Contract Agreement as already explained vide RLDA letter dated 02.09.2022.*
2	*Track Side Hindrances-We had also raised issue of phased handover track side area i.e. Platforms including foundation of PF Shelter and PCC, Vertical Circulation Elements to be constructed (where only filing is in our scope) Subways etc. in various meetings and also vide our letter no Dt. 18/04/2022 copy attached.*	*The Track Side work involved Concourse work and Platform Shelter Work. The present position of work executed is as under;* *1) The Construction Reference Drawing of the Concourse Foundation was submitted by you on 04.10.2022 for execution and only one no. footing i.e. CF5 Footing was casted on 06.10.2022. It must be noted that the milestone for the construction of footing has lapsed on 29.05.2022 and the milestone for completing structural work up to concourse level lapsed on 06.09.2022.* *2) The Platform Shelter Structural Drawing which is part of the scope of your work, is yet to be submitted by you for further action in the matter.* *From above facts, it can be seen that you have miserably failed to progress the work as desired*

		and you just indulging into the infructuous communication and not showing the desired intention to complete the work.
3	*<u>City Side Hindrances</u>-In continuation to above, we would also like to highlight that authority is well raised that we are unable to start any construction activity on city side i.e. external development including Road Hardscape and Landscape because till date hindrance free circulating area was not made available to us.*	*The area in City Side is free from permanent hindrance except for a small area of 2000 Sqm presently occupied by Northern railway for the Office purpose. RLDA vide letter dated 20.10.2022 already noted and requested to your goodself for the submission of program to take up work in the occupied area so that phased vacation of office space can be planned vide RLDA letter dated 20.10.2022 in the said matter. The response to the said letter is still awaited.* *Further, permission for Felling/ Transplant Trees (if any) falling in the vehicular circulation area is to be obtained by M/s KCPL as per provision in Schedule-F of the Contract Agreement. This has also been acknowledged at your end but the action is inordinately delayed on your part.*
4	*An outline of the program has already been submitted but actual progress can only be worked out once site is fully handed over to us.* *We would like to request you to kindly give us the dates when the site will be handed over to us i.e. hindrance free so that all required additional front can be worked out and submitted to your goodself.*	*The Work Programme is to be submitted as per Clause 10.1.3 the Contract which is still not submitted with complete detail even after several reminders. The Outline Program submitted is incomplete and also requires correction (refer RLDA letter dated 19.09.2022 in the said matter).* *IRSDC vide letter no. IRSDC/HQ/Civil/776/2164 dated 27.12.2019 had already handed over encumbrance free site to you and further handing over of the site again is not applicable under the contract.*
5	*In continuation to our letter Dt. 06/10/2022 for extending date of milestone we had submitted our concern for reviewing the dates with remarks for your kind consideration as well as approval. You are requested to look into this and extend the date of milestone, this will enable us to expedite the work as you are aware that there are numbers of milestones which*	*The details submitted vide email dated 10.10.2022 for shifting of Milestone(s) date for the Deliverable work is not supported with the revised work program along with the S-Curve and mobilisation of additional Resources and Labour for completion of the work within the stipulated date.* *Further, in the attached Annexure to the letter dated 06.10.2022 of yours which states as -* *"This is clear that the time allowed between the milestone is not taken as per the time actual*

	are affecting our cash flow and in the interest of project this needs to be addressed amicably to achieve the target of completion of work in stipulated time. Even as on date there are still valid reasons which are affecting the progress of work like tree transplantation approval for the whole project. Northern railway work dependency, Water logging due to heavy rain and formation of sludge in excavated footing etc. The binding of steel work was completed and we have to attend this multiple time, northern railway contractor office and stores in front of terminal building etc.	*required at site and during execution above activities will impact the milestone dates. We are trying to complete the work by 22.08.2023 whereas it is clear that due to unavoidable circumstances this work completion date may vary due to following points;* *1. Subway handing over is pending from RLDA and Northern railway and we are unable to start the finishing work.* *2. Northern railway contractor has made site offices near station building and we can take up the work once site office is shifted.* *3. Platform Shelter work could not start as foundation of platform shelter is yet to be handed over to us.* *4. Due to heavy rainfall in last few months' work was hamper due to collection of water and mud in concourse footing as no drainage system is placed at site.* *5. Work for Development and other connected activities could not be started due to pending approval of trees transplantation/cutting etc.* *6. Work held up by Forest Deptt.* *On perusal of the points submitted by you, following facts are appended below;* *1. The finishing Milestone No. 13 of the station is due for completion on 25.12.2022 and non-handing over of subway will apply to that milestone only. However, 07 consecutive milestones have not been achieved till date.* *2. Kindly refer para no.3 of RLDA reply above.* *3. Kindly refer para no.2 of RLDA reply above for the same.* *4. Please refer RLDA letter no.RLDA/HQ/ Novation/Bijwasan/KCPL/776/2022 dated 02.09.2022 which clarifies the matter that the same cannot be considered as a reason in the performance failure.* *5. Kindly refer Schedule F or the agreement which clearly states that responsibility of arranging tree felling permission lies with the EPC contractor. However, you have failed in applying the tree felling permission even after passing of 3 years of the contract.*

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<tr><td></td><td></td><td>6. Kindly refer point 5 above, the hindrance is attributable to you only. Moreover, the work was affected for the period from 26.05.2022 to 07.06.2022 only which is also attributable to your poor performance and failure in obtaining tree felling permission as per provisions of the contract.

From the above it can be seen that the you have failed in performing the contractual obligations to complete the work and such communication at this stage cannot be considered.</td></tr>
<tr><td>6</td><td>Considering your letter dtd. 12/10/2022 we are submitting our proposal with schedule dates, locations material and manpower regarding terminal building
and Concourse Milestone Number 3,4, 5 and 6, 7, 8, 9.

Please find enclosure as follows;</td><td></td></tr>
<tr><td>6(a)</td><td>Annexure A
Milestone no 3: "Upon Completion of
Basic Footing/ Raft Casting" (Schedule to be achieved by 29/5/2022). As you are aware that we have already given our program to complete milestone 3 and proposed revised milestone date is 08/12/2022 to complete the work as detail attached. Though you are aware that 9 nos. of trees are there at site for which approval to transplant these trees was received on at 15/10/22 i.e. after receiving you letter on dtd.12/10/2022

So, you are well aware of the reason of delay of 134 days as</td><td>The performance of the Project Progress is hereby again reiterated for assessing the current status of work. The progress of work as compared with the stipulated Milestone for Deliverable work is as under;
<table>
<tr><th>SN</th><th>Deliverable Work</th><th>Revised Milestone Date</th><th>Status as on01.11. 2022/ Physical Progress achieved</th><th>Status as on date/ Remarks</th></tr>
<tr><td>1</td><td>Preparation of Design Basis Report for Civil and MEPF works</td><td>21/10/2021</td><td>Achieved</td><td></td></tr>
<tr><td>2</td><td>Prepar</td><td></td><td>Achieve</td><td>The revised</td></tr>
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<td rowspan="4">mentioned in your letter but still pointing it out and giving 15 days' notice is not justified.
Further to remind you that Grid 1 to 6 was on hold by RLDA and was cleared on dtd. 11/07/2022in the meeting held with Etude Services which hampered the progress of work and restricted us to complete these footing which resulted in delay. This is not attributable to us.

Further there has been continuous rain which has resulting in water logging and formation of sludge in the area due to which the footing work could not be taken up.

Further it is to submit that the permission for shifting 9 nos. of tree is received to us without any coordinates to transplant the trees.</td>
<td></td>
<td>ation of Detailed project schedule</td>
<td>20/11/2021</td>
<td>d</td>
<td>Work Program, Three Month Rolling Program, Three Week Rolling Program not submitted.</td>
</tr>
<tr>
<td>3</td>
<td>Upon completion of basic footing/ raft casting</td>
<td>29/05/2022</td>
<td>71% approx completed of this work</td>
<td>Even after encumbrance free area was available from 21.04.2022 onwards, there is insignificant progress of balance foundation work till date. There is a delay of 152 days in completion of the Milestone.</td>
</tr>
<tr>
<td>4</td>
<td>Upon completion of structural work up to plinth level</td>
<td>08/07/2022</td>
<td>31% approx. completed of this work</td>
<td>There is a delay of 112 days in completion of the Milestone. It is further stated that encumbrance free site is available for progressing the work.</td>
</tr>
<tr>
<td>5</td>
<td>Upon completion of</td>
<td>06/09/2022</td>
<td>NIL</td>
<td>Although Milestone Was scheduled to</td>
</tr>
</table>

			structural work to concourse level			*tie achieved on 06/09/2022 however, work has not started till date.*
		6	*Upon completion of structural \work complete*	*06/09/2022*	*NIL*	
		7	*Upon completion of brick work and plastering*	*26/09/2022*	*NIL*	*Although Milestone was scheduled to be achieved on 26/09/2022 however, work has not started till date.*
		8	*Upon Structural Glazing*	*16/10/2022*	*NIL*	*Although Milestone was scheduled to be achieved on16/10/2022 however, work has not started till date.*
		9	*Upon Completion of Water Supply-Internal*	*16/10/2022*	*NIL*	
		10 to 24	*Upon completion of brick work and plasteri*	*25/11/2022- 22/08/2023*	*NIL*	

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</table>
In connection with the area "ON HOLD', it is stated that the progress of work in the areas (such as Concourse area Foundation etc.) where it could have been taken up is far below the targets set by yourself and performance is not commensurate either with the commitment or with the desired targets for completion of work in time.
The reason of water logging and formation of sludge in the Foundation area is not tenable as the reason for delay in the work and has already been explained in the RLDA letter dated 02.09.2022.
The subsequent transplantation of Trees after obtaining permission is already explained vide RLDA letter dated
19.10.2022 in the said matter.
The proposal of shifting the milestones at this stage i.e. after passage of 03 years of the award of contract, without any due support of the Revised proper programme to complete the work as per clause 10.1.3 of the agreement including resource chart and S-curve, cannot be accepted.
</td>
</tr>
<tr>
<td>6(b)</td>
<td><u>Annexure B</u>
Milestone no 4: "Upon Completion of
Structural work upto Plinth Level"
(Schedule to be achieved by 08/07/2022). We have proposed 10/01/2023 as completion of milestone 4 considering that henceforth the site will be hindrance free but further milestone is dependent on milestone 3 as these activities are interdependent</td>
<td>The extended Date for Completion of Milestone No.4 is not supported with the mobilisation of adequate additional Resources & Labour. Hence, extension of Milestone date without assigning adequate resources and reasons for the delay does not hold good and cannot be considered.</td>
</tr>
</table>

6(c)	***Annexure C*** ***Milestone no 5***: "Upon Completion of Structure work to Concourse Level" (Schedule to be achieved by 06/09/2022) and proposed revised milestone date is 21/04/2023 to complete the work as detail attached. The clearance to leave dowel in the footing was given to us on dt 22/09/2022 and you are well aware of the fact that despite of re-scheduling the milestone for the reason well known to you, we are being given 15 days' notice again.	***Milestone no. 5***: The "Good For Construction" Drawing for the Concourse Foundation has been submitted to RLDA on 04 10 2022 and subsequently the concreting work was taken up for one no. CF-5 Footing. The reasons for delay in the Concourse Foundation work is solely because of late submission of detailed structural design and drawings and lack of resources & labour at site.
	Milestone no 6: "Upon Completion of Structure work Complete" (Schedule to be achieved by 08/09/2022). Proposed revised milestone date is 30/05/2023 to complete the work as detail attached We will submit fabrication drawing for Terminal Building by 15th Nov. 2022 to RLDA for approval and Terminal Building Steel Structure work will be completed by 30 March 2023 Whereas for Concourse we will submit fabrication drawings by end of Nov 2022.	***Milestone no 6***: The commitment made earlier to achieve the targets have failed and the targets set for the structural work will also not be achieved because the Structural Drawing is still to be submitted to RLDA. The extension of date without duly supported by adequate resources & labour allocation chart and committed month wise expenditure at site is not relevant at this juncture wherein there is little time left to float within the available target date.
	Milestone no 7: "Upon Completion of Brickwork and Plastering" (Schedule to	***Milestone no 7 to 9***: The request for extension of Milestone Date without duly supported by adequate resources & labour allocation chart and committed month wise expenditure is of no

	be achieved by 25/09/2022). Proposed revised milestone date is 30/05/2023 as every milestone is interdependent. We will start brick work and Plastering from 1st week of Nov. 2022 and same will be completed before 30/05/2023. ***Milestone no 8**: "Upon Structural Glazing" (Schedule to be achieved by 16/10/2022). Proposed revised milestone date is 15/08/2023. We have already requested dt 6/10/2022 to revised milestone as the milestone is not feasible as per construction activity.* *We will start terminal Building Glazing work from 1st April 2023 and material shall be procured by end of Feb 2023 and Concourse work shall be started after completion of Roofing and Glazing will be finished by 15/8/2023.* ***Milestone no 9**: "Upon Completion of Water Supply-internal" (Schedule to be achieved by 16/10/2022). Proposed revised milestone date is 25/06/2023 We will start Water supply Internal work from 1st Jan 2023 and same shall be completed by 25/06/2023.*	*relevance and could not be considered.*
7	*We will increase manpower and from 1 week of Nov. 2022 in consequence with the site activities and progress &*	*Refer the various MoM's and the commitment made from your end for increase in manpower. In the MoM's dated 08.09.2022, it was committed that the manpower will be increased to 350 nos.*

	proposal to shift the mile stone. Considering above proposal we assure you that we will complete the work within time with resources and manpower as mentioned.	*by 10.09.2022 and 500 Nos. by 20.09.2022.* *The labour deployed at site has always been inadequate and you have been continuously failing in deploying adequate resources commensurate to the requirement to complete the work within the stipulated/extended period of completion.*
8	*Whereas our footing work is connected to Northern Railway Ramp and Dowels are coming into column and a letter was written by us on dtd 17th Oct 2022 to consider rebar option to keep quality of RCC and this will help to avoid honeycombing also. We can take up the work of casting column of concourse based on your clearance to proceed.*	*The reply of the letter has already been sent by RDA letter dated 19.10.2022. All the reason in your letter dated 26.10.2022 is only to digress the attention from the failure on your part to achieve the required progress and does not hold good to be considered.*
9	*Chronology of events for hold portion of terminal building between grid 1-6, Tree cutting and CF6 footing attached for your ready reference.* *You are requested to consider our submission and extend the mile stone dates so that we can plan accordingly.*	*Noted.*

Therefore, your request for shifting/extending the milestone is not justified and hence cannot be accepted. Despite being provided opportunities to make the progress good, you have resorted to engage in infructuous communications and the content of your letter is devoid of any substance and shows lack of intention to complete the work within the stipulated period of completion.

2) The milestones No. 3,4,5,6,7,8 and 9 have not been achieved and already lapsed by 152, 112, 56, 56, 36,16 and 16 days respectively which will have consequential adverse *effect on the subsequent milestones and eventually on the project.*

3) It is reiterated that you have been issued 15 days' notice earlier on 17.08.2022 for showing adequate progress of the work and to achieve the milestones. However, you have been provided with the opportunity vide this office letter dated 02.09.2022 to submit revised program of work along with the resource chart plan for making good the shortfall in the progress and to complete the work by stipulated completion date. Further it was also mentioned that the progress will be reviewed after 15 days. The progress was reviewed on 10.10.2022 after providing sufficient time for showing adequate performance. However, it is regretted to state that you did not show due diligence and intention to accelerate the progress of work in the above period. Therefore, 15 days' notice have been issued to you under clause 23.1.2 of the agreement on 12.10.2022. The contents of the letter dated 12.10.2022 are self-explanatory.

4) However, you have again failed to show the adequate progress of the work in the 15 days notice period provided to you vide this office letter dated 12.10.2022. Further you have also not provided the revised programme along with resource allocation chart as per clause 10.1.3 of the contract agreement. This shows either complete lack of interest or lack of resources at your end to complete the work.

5) Since time is the essence of contract and you have failed to show the satisfactory performance at every stage, RLDA is constrained to determine the contract under Article 23.1.2 of the Contract Agreement.

6) In view of above, the Contract hereby stands terminated due to default at your end under Article 23.1.2 of this Contract Agreement No. IRSDC/HQ/RFP/38/2018/ Bijwasan/1762 dated 02.12.2019 with immediate effect.

7) In pursuant to Article 23.6, RLDA shall encash and appropriate the Performance Security and the Retention Money.

8) You are advised to depute your representative on 07/11/2022 at 12:00 PM under intimation to this office for the joint record of the available inventory at the site and measurement of the unpaid works as per Clause 23.5 of the Contract Agreement.

9) You are requested to comply and conform the requirements after Termination as mentioned in Article 23.4 of the Contract Agreement."

16. The order impugned mentioned as many as 9 milestones and has alleged delay on the part of the petitioner to complete the milestones. The delay attributed for not obtaining permission for cutting of trees in time is only one of them. A comprehensive response is given by the respondent to each of the allegations made by the petitioner against the respondent that the petitioner alleges prevented them to meet the schedule of construction. A plain reading of the order would show that it involves intricate labyrinth of disputed questions of facts, that to my mind, should be put to a full fletched trial, before leaning in favour of any side. It would be unfair to make a quick summary judgment against the respondent without giving them an opportunity to lead evidence to counter the allegations. Likewise, it would not be appropriate to uphold respondent's decision without requiring the petitioner to lead evidence to prove his challenge. In Clause 26.3 of the Agreement provides for arbitration as a dispute resolution mechanism that the parties have agreed to. Parties must resort to dispute resolution mechanism agreed upon by them to get the disputes adjudicated in a more detailed a comprehensive manner on all the issues.

17. There is another reason for this court not to interfere in the matter of termination of a contract. Section 14 (1) (c) read with Section 41 (e) of the Specific Relief Act, prevents courts from enforcing a contract that is by nature determinable. I notice that under Clause 23 of contract, parties have a right to terminate the contract. If the petitioner were to pursue arbitration, the petitioner would be required to deal with Section 14 (1) (c) and Section 41(e) to before seeking setting aside of termination order by the respondent. Merely by filing a writ petition the Petitioner cannot avoid rigours of The Specific Relief Act.

18. I do not find the impugned order to be palpably arbitrary and un reasonable of the nature that will persuade this court to intervene by issuing a writ.

19. For the aforesaid reasons, the petition is hereby dismissed. Miscellaneous applications also stand disposed of. Petitioner is free to take recourse to Clause 26.3 of the Agreement for resolution of disputes.

20. None of the observations of fact and law made in this order shall prejudice either party in any legal proceedings.

(MANOJ KUMAR OHRI)
JUDGE

DECEMBER 16, 2022
na

Digitally Signed
By:SANGEETA ANAND
Signing Date:16.12.2022
16:37:30