

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

Date of decision: 13<sup>th</sup> APRIL, 2023

IN THE MATTER OF:

+ **LPA 736/2022 & CM APPLs. 55816/2022 & 310/2023**

**KAMLADITYYA CONSTRUCTION PVT. LTD & ANR.**

.....Appellants

Through: Mr. Navaniti Pd Singh, Sr. Advocate  
and Mr. Dayan Krishnan, Sr.  
Advocate with Mr. Vaibhav Niti, Mr.  
Madhavi Agrawal and Mr. Divyanshu  
Agrawal, Advocates.

versus

**RAIL LAND DEVELOPMENT AUTHORITY & ANR.**

..... Respondents

Through: Mr. R.V. Sinha, Mr. A.S. Singh and  
Mr. Amit Sinha, Advocates for R-1.

**CORAM:**

**HON'BLE THE CHIEF JUSTICE**

**HON'BLE MR. JUSTICE SUBRAMONIUM PRASAD**

**JUDGMENT**

**SATISH CHANDRA SHARMA, C.J.**

1. The present appeal has been preferred by the Appellants against the judgment dated 16.12.2022 passed by the Ld. Single Judge in WP (C) 15398/2022 whereby the Ld. Single Judge has rejected the petition titled “Kamaladityya Constructions Pvt. Ltd. v. Rail Land Development Authority & Anr”, filed by the Appellant herein seeking quashing and setting aside of the letter dated 02.11.2022 terminating the EPC Agreement dated 02.12.2019 issued by the Respondent No. 1 herein.

2. The Appellant No.1/Kamaladittya Construction Pvt. Ltd./ (hereinafter “KCPL”) company is a civil infrastructure projects construction company, whereas the Appellant No. 2 is a director and shareholder in the Appellant no. 1 company and its authorised representative. As part of a national railway upscaling project, the Ministry of Railways had entrusted the IRSDC, which was an erstwhile joint venture between Respondent No.1 and IRCON, for redevelopment works at railway station Bijsawan, Sector 21, Dwarka. Sometime in 2022, IRSDC became defunct pursuant to which a novation to the contract dated 02.12.2019 was executed on the same terms. At the time of this appeal, the Respondent No.1/Rail Land Development Authority is the primary body to oversee the redevelopment project at Bijsawan Railway Station, which is to be done on railway lands owned by the Respondent No.2 Ministry.

3. It is the main grouse of the Appellant company that as per clause 8.1 and 8.3 of the EPC contract, the Respondent No. 1 failed to meet the responsibility of securing right of way for the Appellants for completion of the project. by not obtaining permission to transplant/fell encumbering tree which are stated to be in the way of the Appellant company’s tasks, by not seeking permission from the concerned authorities under Sections 8 and 9 of the Delhi Preservation of Trees Act, 1994, and due to this reason the Appellants could not proceed with milestones of work orders.

4. The facts, shorn of details leading to the filing of the instant appeal are as under:

- a) Redevelopment work for the railway station at Bijsawan, Sector 21, Dwarka, New Delhi was entrusted to Indian Railways Station Development Corporation Limited (“IRSDC”), a joint

venture between IRCON and Respondent No.1. The development project is stated to be done on lands entrusted by the Respondent No.2/Ministry of Railways, spanning an area of 359.266 acres.

- b) It is stated that in order to proceed with mixed use construction for redevelopment on the project site, it was deemed expedient to fell/relocate trees in and around the project site which were encumbering the project site and causing hindrances in construction works.
- c) Clause 3.1.7(a) of the EPC Contract casts an obligation on the contractor to make applications before government authorities to obtain necessary permits listed under Schedule F annexed to the EPC Contract. Prior permission for felling of trees was required from the Forest Authorities as per provisions of Delhi Preservation of Trees Act, 1994 and its accompanying rules. Accordingly, an application seeking felling permissions was sent to the Deputy Conservator of Forests (West) on 30.03.2016. The Respondent No.2 through its instrumentality Northern Railways sent a fresh representation letter seeking permission, along with an inventory of trees required to be cleared from the project site. This application was rejected by the Deputy Conservator for the reason that documents under Form B to Delhi Preservation of Trees Rules, 1996 were not submitted in the application as required. Pending a decision on the application, the erstwhile project authority, IRSDC, through the Northern Railways sent a letter dated to the Forest authority

for obtaining transplantation of trees in 198.64 acres of the project land.

- d) The office of the Deputy Commissioner of Forests issued an order rejecting the application requesting for necessary permission to fell/transplant trees situated on the project site and causing encumbrances in substantial portions, for the want of necessary documents under Form B of the DPT neither did their application mention the number of trees required to be felled, nor were the proposed trees marked as required. The Deputy Conservator of Forest *vide* an order dated 11.01.2018 dismissed the Railways' application for being incomplete, denying felling permissions, as sought for. On 15.02.2018, Northern Railways submitted a fresh application to the forest authority, which was subsequently also rejected in February 2022.
- e) Thereafter, sometime in March, 2018, the Appellant participated in and was declared successful bidder for award of the contract, in terms of the RFP document issued by IRSDC sometime in 2018, for redevelopment of Bijsawan Railway Station at New Delhi, to be carried out as per the Engineering Procurement and Construction ("EPC") contract agreement dated 02.12.2019, executed between KCPL and erstwhile project authority, the IRSDC.RFP document extrapolates the scope of work contracts to cover Civil, MEPF and Development work at the project site.

- f) Being declared the successful bidder, the Appellant No. 1 company was issued Letter of Award *vide* communication dated 30.12.2019 for a total contractual value of Rs. 2,70,82,00,000/- with a provisional sum of Rs. 7,00,00,000/-., consequent to which the EPC Agreement was duly executed. A total of 60.9 acres of area was allotted to KCPL for redevelopment construction work. In 2021, KCPL commenced work on the RMC plant which was installed and operational on the website. It is also stated that according to the project site drawings and plans, there was an interdependency of work between Northern Railways and KCPL, as the former was assigned to the task of constructing 4 subways at the station, while the latter had undertaken to complete finishing work. It is stated that on the project site, in areas encroached by trees, no activities could be undertaken without prior approval, for which the Respondent authorities refused to cooperate by providing copies of necessary documents, thereby causing delays in completion of targets.
- g) Upon the IRSDC becoming defunct, a novation to the contract was executed between KCPL and Respondent No. 1, and the Respondent No.1 was replaced as the primary project authority. Pursuant to the novation, Performance Bank Guarantee to the tune of Rs. 8.12 crores was refurnished by KCPL.
- h) It is stated that M/s Etube Services, a third-party consultant, sent a letter to Respondent No.1 dated 21.03.2022, to apprise the Respondent No.1 of the Forest Department's directions that

a fresh and complete application be submitted by the EPC contractor, and requested copies of documents believed to be in the possession of Respondent No.1, so as to commence work on the project site.

- i) A tri-partite review meeting was held between KCPL, Respondent No. 1 and M/s Etube Services for reviewing the progress with respect to completion of project milestones. KCPL was advised to obtain necessary permissions from the Forest Department so as to not let hindrances cause any further delays in completion of the project. *Inter-alia*, and with respect to specific milestones such as work on PF foundation, concourse and flooring work in subways, the issues with respect to pending approval for certain tasks were also raised. Accepting KCPL's request for extension of deadlines, the Respondent No.1 *vide* a letter dated 26.05.2023 extended last date for completion of each milestone was extended to 22.08.2023.
- j) Upon checking online forest portal for necessary documents and details to be submitted for obtaining permissions, KCPL requested Respondent No.1 for in order to submit a fresh application for obtaining necessary permits from the Forest Authority. The letter reads as under:

*"Dear Sir*

*With reference to our contract agreement number  
IRSDC/HQ/RFP/38/2018/Bijwasan/1762 dated*

*02/12/2019 and its EPC schedule we had checked the E forest portal for submission of trees cutting permission vide e forest portal following data and details are required (attached as annexure 'A'). We had completed our tree survey and enumeration list along with KMZ file attached here with for your ready references.*

*Kindly made all desired information available as soon as possible, so we can proceed further in this regard."*

- k) Replying to this representation letter, Respondent No.1 took the stance that with respect to documents as sought for, *inter-alia*, the latest jamaband records issued by the Tehsildar as well as NOC from MCD/NDMC were not required to be shared.
- l) Pursuant to the receipt of the abovementioned communication, KCPL re-furnished Respondent No.1 with details such as geocoordinates, location, tree numbers and girth; in a tabularized form, including details of trees to be transplanted for removal of encumbrances from project site. The Respondent No. 1 was thereby requested to forward the complete set of documents to the Forest Department to obtain necessary permissions, on behalf of KCPL, for continuing construction in areas encumbered by trees. Acting on this request, the Respondent No.1 applied for, and successfully obtained permission as per Form 'E' under Rule 6 of the Delhi Preservation of Trees Act from the Forest Department, albeit only for clearing 9 trees encumbering the area where KCPL

was supposed to carry out building and concourse work. This permission was granted to Respondent No.1 on 13.10.2022, and communicated to the Appellants on 15.10.2022

- m) The Forest Department *vide* an order dated 14.06.2022 raised a penalty sum of Rs. 5,93,70,967/- crores on Respondent No.1, for the offence of felling of trees at the Bijwasan site, for the reason that no prior permission was taken pursuant to felling down of trees. Respondent No.1 preferred an appeal before the Forest, which was also rejected, which was communicated to the Appellants in a communication dated 17.06.2022. As an interim measure, the fine was deposited on behalf of the Appellants by the Respondent No.1, which amount was to be recovered from the Appellants with a 20% interest. It is stated that once the penalty was deposited, and as an act of vengeance, the Respondent No.1 started sending multiple letters alleging slow work while at the same time staying mute supplying requisite documents for felling permissions, without which necessary work could not have been carried out. The Respondent No.1 was subsequently restrained from recovering the penalty amount from the Appellant company *vide* an order of the Hon'ble Court in W.P. (C) 10940/2022, which was filed to challenge letters issued by Respondent No.1 seeking to recover the penalty amount.
- n) KCPL in a communication addressed to the Respondent No.1 took the stance that KCPL had at the direction of Respondent No.1 submitted details for forwarding in the application to be

made before the Forest Authorities. However, despite compelling reminders, the Respondent No.1 had not yet fulfilled their obligation under clause 9.4 of the EPC Agreement, of assisting KCPL in obtaining permissions by providing documents as requested, and therefore requested Respondent No. 1 to supply documents such as occupancy papers, property with khasra nos, boundary description, etc, all enumerated in a list which was communicated to the Respondent No.1 *vide* a letter dated 23.07.2022.

- o) A Show Cause Notice was issued by the Respondent No.1 *vide* letter dated 12.10.2022. While referring to the incomplete revised work program submitted by KCPL, the notice demanded reasons from KCPL as to why the EPC contract may not be terminated, due to the delay in completion of milestone targets, specifically, for the works of: basic footing/raft casting, structural work up-to plinth level, structural work up to concourse level, brickwork, plastering, structural glazing and water supply. The Appellants in a reply to the Show Cause Notice invited attention, pertinently, to revised work program submitted to the Respondent No.1 on 14.09.2022 highlighting track and city side hindrances. This letter also contained revised details such as last date of completion, materials, location and manpower required for work milestones, which would require extension of timelines.
- p) Thereafter the Respondent No.1 apprised KCPL of delay in completion of milestones to the project, through multiple

communication letters. The impugned letter dated 02.11.2022 terminating the contract under clause 23.1.2 of the EPC Contract categorically replied to the grievances highlighted by KCPL's reply to the Show Cause Notice, reasoning that the delay in construction was caused due to the Appellant not obtaining necessary permission under Schedule F to the EPC Agreement.

- q) On 04.11.2022, Respondent No.1 encashed the PBGs amounting to Rs. 8.12 crores, seemingly to recover the penalty amount of Rs. 5.93 crores, and to avoid payment of Rs. 2.62 crores, which amount was raised in a bill in favour of KCPL, in lieu of payment for completion of construction work.
- r) KCPL challenged the letter of termination by taking recourse to filing WP (C) 15398/2022, taking the stance that invoking the Disputes Resolution clause in the EPC Agreement would not provide efficacious and effective remedy against the illegal and arbitrary termination of the works contract. *Inter-alia*, KCPL prayed for refund of PBGs encashed by the Respondent No.1, and for directions to Respondent No.1 to supply requisite documents for seeking tree felling permissions under the Delhi Preservation of Trees Act read with its rules. Further prayers were also sought for extension of work timelines.
- s) The Ld. Single Judge dismissed the aforesaid petition *vide* final judgment dated 16.12.2022, impugned herein. In the impugned judgment, the Ld. Single Judge while relying on the termination letter dated 02.11.2022, observed that the delay in not obtaining

permissions was only one of the many reasons for delay as per construction schedules as the present dispute involved a myriad web of complicated facts, and was thus of the view that it would not be appropriate to conclusively rule in favour of either party without leading any evidence, thereby opining that the parties may refer the dispute to the extant dispute redressal mechanism provided for in the EPC Agreement. The Ld. Single Judge in the impugned judgment also observed that Section 14(1)(c) read with Section 41(e) of the Specific Relief Act, would preclude courts from enforcing a determinable contract. Clause 23 of the EPC Agreement provides for termination of the contract. In light of the foregoing, the Ld. Single Judge left open the remedy of invoking clause 26.3 of the EPC Agreement for resolution of disputes, and thereby dismissed the Petition.

5. The case of the Appellants, as pressed by Mr. Navaniti PD Singh and Mr. Dayan Krishnan, learned senior counsels appearing on behalf of the Appellants, is that a perusal of the record shows that it is on account of the default on part of the Respondents that the Appellant could not achieve the milestones required to be completed under the EPC contract. Attention of this Court has been drawn to the fact that Respondent No. 1 failed to provide Right of Way in terms of Clauses 8.1 and 8.2 of the EPC contract by not being able to procure the requisite permissions and clearances from the Tree Officer to fell trees. It has been submitted that it is in view of not having such permission that Respondent No. 1 had itself granted extension of time for completion of the project up to 22.08.2023. He further states that even

upon requesting the Respondents to provide the requisite documents mentioned under Rule 4, Form B to the Delhi Preservation of Trees Rules, 1996 to apply for the necessary clearances themselves, the Respondents have failed to do so. Reliance has been placed on letters dated 28.05.2022 and 23.07.2022 to buttress this submission. It is also alleged that the complete site has not been handed over by the Respondents to Appellant and requests in this regard had been made by the Appellant vide letters dated 19.11.2021 and 03.12.2021 but to no avail. Further submissions have been made to the effect that it was the Respondents themselves which had issued a Stop Work Order on 07.04.2022 to halt construction work until permission from Tree Officer had been received and the Respondents have conveniently ignored this fact while attributing the delay on part of the Appellants. The sum and substance of the Appellants' case, therefore, is that it is *ipso facto* discernible that conduct of the Respondents is the reason behind the delay in completion of the project and their termination of the EPC contract is outrightly arbitrary. The Appellants opine that interference by this Court is warranted in view of such actions.

6. Per contra, Mr. R.V. Sinha, learned counsel appearing on behalf of the Respondents, has at the very outset, stated that this Court ought not to interfere in the present matter in view of the fact that it involves disputed questions of fact which need to be examined by the alternate efficacious forum, being the arbitral tribunal, as envisaged under the dispute resolution clause, i.e., Clause 26.3 of the EPC contract. He proceeds to submit that insofar this issue of permission for felling of trees is concerned, Respondent No. 1 was only required to assist the Appellant in seeking permission. He invites attention to the termination letter dated 02.11.2022 in terms of which

the Respondents cancelled the EPC contract on account of non-completion of a total of 9 milestones. It is his contention that the Appellants are the sole culprit for delay in respect of these milestones.

7. Heard the learned counsels for the parties and perused the material on record.

8. The focal aspects for determination before this Court are, firstly, whether a case for interference by this Court is made out in the present matter considering there maybe disputed questions of fact which are better suited to be adjudicated by means of the alternate efficacious remedy, which in this case is arbitration, and secondly, if a case for interference is made out, whether the Respondents erred in terminating the EPC contract.

9. It is well settled that the power of judicial review bestowed upon this Court under Article 226 of the Constitution is a discretionary power that is to be exercised sparingly. While there exists no bar upon a writ court to entertain and even interfere in contractual matters involving public authorities, writ courts have consistently placed self-imposed restrictions on their own powers to do so. Such interference may be practiced along well-defined contours that have been laid down by the Hon'ble Apex Court in a catena of judgments.

10. In M.P. Power Management Co. Ltd. v. Sky Power Southeast Solar India (P) Ltd., (2023) 2 SCC 703, the Apex Court has observed as under:

*"77. It is while dealing with the said case that this Court no doubt proceeds to, inter alia, lay down as following after adverting to ABL [ABL International Ltd. v. Export Credit Guarantee Corpn. of India Ltd., (2004) 3 SCC 553] also : (Joshi Technologies case [Joshi Technologies International Inc. v. Union of India, (2015) 7 SCC 728] , SCC pp. 766-68, paras 69-*

70)

*“69. The position thus summarised in the aforesaid principles has to be understood in the context of discussion that preceded which we have pointed out above. As per this, no doubt, there is no absolute bar to the maintainability of the writ petition even in contractual matters or where there are disputed questions of fact or even when monetary claim is raised. At the same time, discretion lies with the High Court which under certain circumstances, it can refuse to exercise. It also follows that under the following circumstances, “normally”, the Court would not exercise such a discretion:*

*69.1. The Court may not examine the issue unless the action has some public law character attached to it.*

*69.2. Whenever a particular mode of settlement of dispute is provided in the contract, the High Court would refuse to exercise its discretion under Article 226 of the Constitution and relegate the party to the said mode of settlement, particularly when settlement of disputes is to be resorted to through the means of arbitration.*

*69.3. If there are very serious disputed questions of fact which are of complex nature and require oral evidence for their determination.*

*69.4. Money claims per se particularly arising out of contractual obligations are normally not to be entertained except in exceptional circumstances.*

*70. Further, the legal position which emerges from various judgments of this Court dealing with*

*different situations/aspects relating to contracts entered into by the State/public authority with private parties, can be summarised as under:*

*70.1. At the stage of entering into a contract, the State acts purely in its executive capacity and is bound by the obligations of fairness.*

*70.2. State in its executive capacity, even in the contractual field, is under obligation to act fairly and cannot practise some discriminations.*

*70.3. Even in cases where question is of choice or consideration of competing claims before entering into the field of contract, facts have to be investigated and found before the question of a violation of Article 14 of the Constitution could arise. If those facts are disputed and require assessment of evidence the correctness of which can only be tested satisfactorily by taking detailed evidence, involving examination and cross-examination of witnesses, the case could not be conveniently or satisfactorily decided in proceedings under Article 226 of the Constitution. In such cases the Court can direct the aggrieved party to resort to alternate remedy of civil suit, etc.*

*70.4. Writ jurisdiction of the High Court under Article 226 of the Constitution was not intended to facilitate avoidance of obligation voluntarily incurred.*

*70.5. Writ petition was not maintainable to avoid contractual obligation. Occurrence of commercial difficulty, inconvenience or hardship in performance of the conditions agreed to in the contract can provide no justification in not*

*complying with the terms of contract which the parties had accepted with open eyes. It cannot ever be that a licensee can work out the licence if he finds it profitable to do so : and he can challenge the conditions under which he agreed to take the licence, if he finds it commercially inexpedient to conduct his business.*

*70.6. Ordinarily, where a breach of contract is complained of, the party complaining of such breach may sue for specific performance of the contract, if contract is capable of being specifically performed. Otherwise, the party may sue for damages.*

*70.7. Writ can be issued where there is executive action unsupported by law or even in respect of a corporation there is denial of equality before law or equal protection of law or if it can be shown that action of the public authorities was without giving any hearing and violation of principles of natural justice after holding that action could not have been taken without observing principles of natural justice.*

*70.8. If the contract between private party and the State/instrumentality and/or agency of the State is under the realm of a private law and there is no element of public law, the normal course for the aggrieved party, is to invoke the remedies provided under ordinary civil law rather than approaching the High Court under Article 226 of the Constitution of India and invoking its extraordinary jurisdiction.*

*70.9. The distinction between public law and private law element in the contract with the State is getting blurred. However, it has not been totally*

*obliterated and where the matter falls purely in private field of contract, this Court has maintained the position that writ petition is not maintainable. The dichotomy between public law and private law rights and remedies would depend on the factual matrix of each case and the distinction between the public law remedies and private law field, cannot be demarcated with precision. In fact, each case has to be examined, on its facts whether the contractual relations between the parties bear insignia of public element. Once on the facts of a particular case it is found that nature of the activity or controversy involves public law element, then the matter can be examined by the High Court in writ petitions under Article 226 of the Constitution of India to see whether action of the State and/or instrumentality or agency of the State is fair, just and equitable or that relevant factors are taken into consideration and irrelevant factors have not gone into the decision-making process or that the decision is not arbitrary.*

*70.10. Mere reasonable or legitimate expectation of a citizen, in such a situation, may not by itself be a distinct enforceable right, but failure to consider and give due weight to it may render the decision arbitrary, and this is how the requirements of due consideration of a legitimate expectation forms part of the principle of non-arbitrariness.*

*70.11. The scope of judicial review in respect of disputes falling within the domain of contractual obligations may be more limited and in doubtful cases the parties may be relegated to adjudication of their rights by resort to remedies provided for adjudication of purely contractual disputes.”*

78. *In State of Kerala v. M.K. Jose* [State of Kerala v. M.K. Jose, (2015) 9 SCC 433] , the specific question with which we are concerned with, namely, entertaining a writ petition in a contractual matter and where the specific question was the validity of the termination of the contract, fell for consideration. We may notice the following : (SCC p. 441, para 13)

“13. A writ court should ordinarily not entertain a writ petition, if there is a breach of contract involving disputed questions of fact. The present case clearly indicates that the factual disputes are involved.”

79. Thereafter, the Court in *M.K. Jose* [State of Kerala v. M.K. Jose, (2015) 9 SCC 433] went on to consider in detail the judgment of this Court in *ABL* [ABL International Ltd. v. Export Credit Guarantee Corpn. of India Ltd., (2004) 3 SCC 553] and found that it was a case where the Court granted relief as the facts were absolutely clear from the documentary evidence and it pertained to interpretation of such clauses of the contract of insurance. We need notice only para 20 in *M.K. Jose* [State of Kerala v. M.K. Jose, (2015) 9 SCC 433] . It reads as under : (*M.K. Jose* case [State of Kerala v. M.K. Jose, (2015) 9 SCC 433] , SCC p. 446, para 20)

“20. We have referred to the aforesaid authorities to highlight under what circumstances in respect of contractual claim or challenge to violation of contract can be entertained by a writ court. It depends upon facts of each case. The issue that had arisen in *ABL International* [ABL International Ltd. v. Export Credit Guarantee Corpn. of India Ltd., (2004) 3 SCC 553] was that an instrumentality of a State was placing a

*different construction on the clauses of the contract of insurance and the insured was interpreting the contract differently. The Court thought it apt merely because something is disputed by the insurer, it should not enter into the realm of disputed questions of fact. In fact, there was no disputed question of fact, but it required interpretation of the terms of the contract of insurance. Similarly, if the materials that come on record from which it is clearly evincible, the writ court may exercise the power of judicial review but, a pregnant one, in the case at hand, the High Court has appointed a Commission to collect the evidence, accepted the same without calling for objections from the respondent and quashed [M.K. Jose v. State of Kerala, 2014 SCC OnLine Ker 28346] the order of termination of contract.” (emphasis supplied)*

**80.** *In State of U.P. v. Sudhir Kumar Singh [State of U.P. v. Sudhir Kumar Singh, (2021) 19 SCC 706 : 2020 SCC OnLine SC 847] , the first respondent the successful tenderer had worked the contract for a year when he was visited with cancellation. This Court exhaustively referred to the earlier case law including ABL [ABL International Ltd. v. Export Credit Guarantee Corpn. of India Ltd., (2004) 3 SCC 553] and Joshi Technologies [Joshi Technologies International Inc. v. Union of India, (2015) 7 SCC 728] and held, inter alia, as follows : (Sudhir Kumar Singh case [State of U.P. v. Sudhir Kumar Singh, (2021) 19 SCC 706 : 2020 SCC OnLine SC 847] , SCC para 26)*

*“26. It may be added that every case in which a citizen/person knocks at the doors of the writ court for breach of his or its fundamental rights is a matter which contains a “public law element”, as opposed to a case which is concerned only with*

*breach of contract and damages flowing therefrom. Whenever a plea of breach of natural justice is made against the State, the said plea, if found sustainable, sounds in constitutional law as arbitrary State action, which attracts the provisions of Article 14 of the Constitution of India — see Nawabkhan Abbaskhan v. State of Gujarat [Nawabkhan Abbaskhan v. State of Gujarat, (1974) 2 SCC 121 : 1974 SCC (Cri) 467] , SCC para 7. The present case is, therefore, a case which involves a “public law element” in that the petitioner (Respondent 1 before us) who knocked at the doors of the writ court alleged breach of the audi alteram partem rule, as the entire proceedings leading to cancellation of the tender, together with the cancellation itself, were done on an ex parte appraisal of the facts behind his back.”*

*81. We have already concluded that PPA is not a statutory contract. However, that would not be the end of enquiry. Dr A.M. Singhvi, learned Senior Counsel, would point out that the contract, not being a statutory contract, assumes relevance only for the purpose of deciding as to whether the Court should relegate the writ applicant, to alternate remedies. In other words, while the Court would retain its discretion to entertain the petition or decline to do so, in the facts of each case, there is no absolute taboo against the Court granting relief, even if the challenge to the termination of a contract is made in the case of a contract, which is not statutory in nature, when the offending party is the State. In other words, the contention is that the law in this field has witnessed an evolution and, what is more, a revolution of sorts and a transformatory change with a growing realisation of the true ambit of Article 14 of the Constitution of India. The State, he points out,*

*cannot play the Dr Jekyll and Hyde game anymore. Its nature is cast in stone. Its character is inflexible. This is irrespective of the activity it indulges in. It will continue to be haunted by the mandate of Article 14 to act fairly. There has been a stunning expansion of the frontiers of the Court's jurisdiction to strike at State action in matters arising out of contract, based, undoubtedly, on the facts of each case. It remains open to the Court to refuse to reject a case, involving State action, on the basis that the action is, per se, arbitrary.*

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

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

**82.2.** *The principle laid down in Bareilly Development Authority [Bareilly Development Authority v. Ajai Pal Singh, (1989) 2 SCC 116] 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 [Radhakrishna Agarwal v. State of Bihar, (1977) 3 SCC 457], may not continue to hold good, in the light of what has been laid down in ABL [ABL International Ltd. v. Export Credit Guarantee Corpn. of India Ltd., (2004) 3 SCC 553] and as followed in the recent judgment in Sudhir Kumar Singh [State of U.P. v. Sudhir Kumar Singh, (2021) 19 SCC 706 : 2020 SCC OnLine SC 847].*

**82.3.** *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.*

**82.4.** *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 Ramana Dayaram Shetty [Ramana Dayaram Shetty v. International Airport Authority of India, (1979) 3 SCC 489] ). 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 [Tata Cellular v. Union of India, (1994) 6 SCC 651] .*

**82.5.** *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.*

**82.6.** *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.*

**82.7.** *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.*

**82.8.** *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 [ABL International Ltd. v. Export Credit Guarantee Corpn. of India Ltd., (2004) 3 SCC 553] explaining how it distinguished the decision of this Court in State of U.P. v. Bridge & Roof Co. (India) Ltd. [State of U.P. v. Bridge & Roof Co. (India) Ltd., (1996) 6 SCC 22] , by its observations in SCC para 14 in ABL [ABL International Ltd. v. Export Credit Guarantee Corpn. of India Ltd., (2004) 3 SCC 553] ].*

**82.9.** *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.*

**82.10.** *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.*

*82.11. 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 [ABL International Ltd. v. Export Credit Guarantee Corpn. of India Ltd., (2004) 3 SCC 553] , 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 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 [ABL International Ltd. v. Export Credit Guarantee Corpn. of India Ltd., (2004) 3 SCC 553] . 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.*

*82.12. 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 Shrilekha Vidyarthi v. State of U.P. [Shrilekha Vidyarthi v. State of U.P., (1991) 1 SCC 212 : 1991 SCC (L&S) 742] ). 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 mala fide, 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.*

*82.13. 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.*

*82.14. 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.*

*82.15. 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 [State of U.P. v. Sudhir Kumar Singh, (2021) 19 SCC 706 : 2020 SCC OnLine SC 847] )."*

11. As per the aforementioned judgments, it ought to be examined by this Court whether on an enquiry *simpliciter* into the facts of the present case it can be *ipso facto* established that the conduct of the Respondent has been so arbitrary as to violate the fundamental rights of the Appellants. However, in the event it is ascertained that there exist disputed questions of facts which require determination by leading evidence, this Court ought not to delve into the merits of the matter and relegate the parties to avail the efficacious remedy.

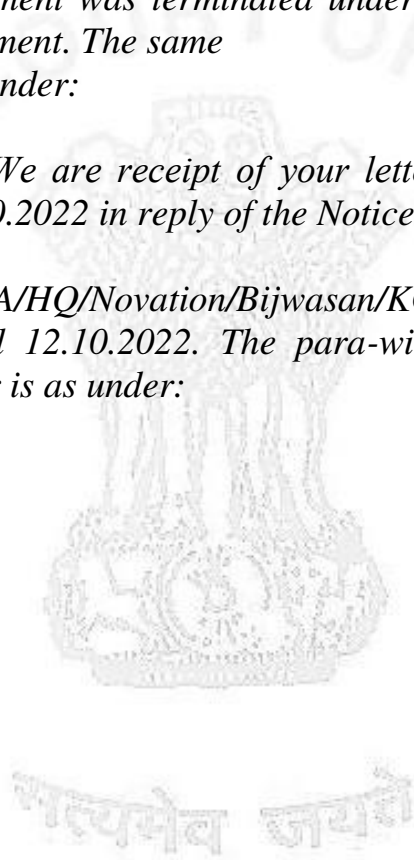
12. The Ld. Single Judge has duly considered the material on record and proceeded to examine the letter dated 02.11.2022 which had been impugned by the Appellants. The relevant excerpt of the letter, as also found in Para 15

of the Impugned Judgment, is reproduced hereunder: -

*"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:*



| <b>Para No.</b> | <b>KCPL Letter dated 26.10.2022</b>                                                                                                                                                                                                                                                                                                                                                                                                                               | <b>RLDA Reply</b>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                         |
|-----------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <b>1</b>        | <p><i>With reference to your above mention letter, you have raised concern regarding milestone, revise program with resources</i></p> <p><i>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</i></p> | <p><i>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.</i></p> <p><i>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.</i></p> <p><i>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.</i></p> |
| <b>2</b>        | <p><i><u>Track Side Hindrances</u>-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.</i></p>                                                                                                                  | <p><i>The Track Side work involved Concourse work and Platform Shelter Work. The present position of work executed is as under;</i></p> <p><i>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.</i></p> <p><i>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.</i></p> <p><i>From above facts, it can be seen that you have miserably failed to progress the work as desired</i></p>                                                                                                                                                                                                    |

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|   |                                                                                                                                                                                                                                                                                                                                                                                          | and you just indulging into the infructuous communication and not showing the desired intention to complete the work.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                |
| 3 | <p><i>City Side Hindrances-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.</i></p>                                           | <p><i>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.</i></p> <p><i>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.</i></p> |
| 4 | <p><i>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.</i></p> <p><i>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.</i></p>           | <p><i>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).</i></p> <p><i>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.</i></p>                                                                                                                                                                                                                                                                           |
| 5 | <p><i>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</i></p> | <p><i>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.</i></p> <p><i>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</i></p>                                                                                                                                                                                                                                                                                 |

|                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                               |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                       |
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| <p>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.</p> | <p>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;</p> <ol style="list-style-type: none"> <li>1. Subway handing over is pending from RLDA and Northern railway and we are unable to start the finishing work.</li> <li>2. Northern railway contractor has made site offices near station building and we can take up the work once site office is shifted.</li> <li>3. Platform Shelter work could not start as foundation of platform shelter is yet to be handed over to us.</li> <li>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.</li> <li>5. Work for Development and other connected activities could not be started due to pending approval of trees transplantation/cutting etc.</li> <li>6. Work held up by Forest Deptt.</li> </ol> <p>On perusal of the points submitted by you, following facts are appended below;</p> <ol style="list-style-type: none"> <li>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.</li> <li>2. Kindly refer para no.3 of RLDA reply above.</li> <li>3. Kindly refer para no.2 of RLDA reply above for the same.</li> <li>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.</li> <li>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.</li> </ol> |
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|      |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                | <p>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.</p> <p>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.</p>                                                                                                                                  |                                                     |                            |                        |                                                     |                            |   |                                                             |            |          |  |   |        |  |         |             |
|------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------|----------------------------|------------------------|-----------------------------------------------------|----------------------------|---|-------------------------------------------------------------|------------|----------|--|---|--------|--|---------|-------------|
| 6    | <p>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.</p> <p>Please find enclosure as follows;</p>                                                                                                                                                                                                                                                                                                                  |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                     |                                                     |                            |                        |                                                     |                            |   |                                                             |            |          |  |   |        |  |         |             |
| 6(a) | <p>Annexure A</p> <p><b>Milestone no 3:</b> "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</p> <p>So, you are well aware of the reason of delay of 134 days as</p> | <p>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;</p> <table><tr><th>S N</th><th>Deliverable Work</th><th>Revised Milestone Date</th><th>Status as on 01.11.2022/ 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></table> | S N                                                 | Deliverable Work           | Revised Milestone Date | Status as on 01.11.2022/ Physical Progress achieved | Status as on date/ Remarks | 1 | Preparation of Design Basis Report for Civil and MEPF works | 21/10/2021 | Achieved |  | 2 | Prepar |  | Achieve | The revised |
| S N  | Deliverable Work                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                               | Revised Milestone Date                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                              | Status as on 01.11.2022/ Physical Progress achieved | Status as on date/ Remarks |                        |                                                     |                            |   |                                                             |            |          |  |   |        |  |         |             |
| 1    | Preparation of Design Basis Report for Civil and MEPF works                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                    | 21/10/2021                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                          | Achieved                                            |                            |                        |                                                     |                            |   |                                                             |            |          |  |   |        |  |         |             |
| 2    | Prepar                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                         |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                     | Achieve                                             | The revised                |                        |                                                     |                            |   |                                                             |            |          |  |   |        |  |         |             |

|  |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                              |   |                                                       |            |                                    |                                                                                                                                                                                                            |
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|  | 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. 11/07/2022 in 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.<br><br>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.<br><br>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. |   | ation of Detailed project schedule                    | 20/11/2021 | d                                  | Work Program, Three Month Rolling Program, Three Week Rolling Program not submitted.                                                                                                                       |
|  |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                              | 3 | Upon completion of basic footing/raft casting         | 29/05/2022 | 71% approx completed of this work  | 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. |
|  |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                              | 4 | Upon completion of structural work up to plinth level | 08/07/2022 | 31% approx. completed of this work | 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.                                                        |
|  |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                              | 5 | Upon completion of                                    | 06/09/2022 | NIL                                | Although Milestone Was scheduled to                                                                                                                                                                        |

|  |  |          |                                              |                       |     |                                                                                                        |
|--|--|----------|----------------------------------------------|-----------------------|-----|--------------------------------------------------------------------------------------------------------|
|  |  |          | 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 on 16/10/2022 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 plastering | 25/11/2022-22/08/2023 | NIL |                                                                                                        |

|      |                                                                                                                                                                                                                                                                                                                                                                      |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                               |  |  |  |
|------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--|--|--|
|      |                                                                                                                                                                                                                                                                                                                                                                      | ng —<br>After<br>final<br>comple<br>tion<br>of work                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                           |  |  |  |
|      |                                                                                                                                                                                                                                                                                                                                                                      | <p><i>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.</i></p> <p><i>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.</i></p> <p><i>The subsequent transplantation of Trees after obtaining permission is already explained vide RLDA letter dated 19.10.2022 in the said matter.</i></p> <p><i>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.</i></p> |  |  |  |
| 6(b) | <p><b><u>Annexure B</u></b></p> <p>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</p> | <p>The extended Date for Completion of Milestone No.4 is not supported with the mobilisation of adequate additional Resources &amp; Labour. Hence, extension of Milestone date without assigning adequate resources and reasons for the delay does not hold good and cannot be considered.</p>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                |  |  |  |

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|------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 6(c) | <p><b><u>Annexure C</u></b></p> <p><b>Milestone no 5:</b> "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.<br/>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.</p> <p><b>Milestone no 6:</b> "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<br/>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.</p> <p><b>Milestone no 7:</b> "Upon Completion of Brickwork and Plastering" (Schedule to</p> | <p><b>Milestone no. 5:</b> 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 &amp; labour at site.</p> <p><b>Milestone no 6:</b> 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 &amp; 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.</p> <p><b>Milestone no 7 to 9:</b> The request for extension of Milestone Date without duly supported by adequate resources &amp; labour allocation chart and committed month wise expenditure is of no</p> |
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|   | <p>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.</p> <p><b>Milestone no 8:</b> "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.</p> <p>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.</p> <p><b>Milestone no 9:</b> "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.</p> | <p>relevance and could not be considered.</p>                                                                                                                                                  |
| 7 | <p>We will increase manpower and from 1 week of Nov. 2022 in consequence with the site activities and progress &amp;</p>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                       | <p>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.</p> |

|   |                                                                                                                                                                                                                                                                                                                                                       |                                                                                                                                                                                                                                                                                                        |
|---|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
|   | <i>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.</i>                                                                                                                                                                                | <i>by 10.09.2022 and 500 Nos. by 20.09.2022.</i><br><br><i>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.</i> |
| 8 | <i>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.</i> | <i>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.</i>                           |
| 9 | <i>Chronology of events for hold portion of terminal building between grid 1-6, Tree cutting and CF6 footing attached for your ready reference.</i><br><br><i>You are requested to consider our submission and extend the mile stone dates so that we can plan accordingly.</i>                                                                       | <i>Noted.</i>                                                                                                                                                                                                                                                                                          |

*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.” "*

13. It is clear that as per the termination letter dated 02.11.2022, delay in completion of a total of 9 milestones has been cited by the Respondents to terminate the EPC contract. This has been noted by the Ld. Single Judge in Para 16 of the Impugned Judgment. The Appellants essentially contend that delay in completion of various other milestones is by virtue of a compounding effect borne out of the inability of the Respondents to procure permission for their Right of Way under the EPC contract, while also issuing Stop Work Orders and delaying approval of site plans and drawings. In our considered opinion, such a contention falls short for the purposes of satisfying the standard laid down by the Hon'ble Apex Court for interference by a writ court in such matters. Here again, we find substance in

the observation of the Ld. Single Judge who has correctly stated that the present matter involves an ‘intricate labyrinth of disputed questions of facts’ which ought to be put to a full-fledged trial with evidence being led by both sides in response to the allegations made against them. It is amply clear that a writ court need not exercise its discretionary powers in cases where end of justice will be secured only when evidence is led.

14. Clause 26.3 of the EPC contract provides for arbitration as the dispute resolution mechanism. It is apposite that the parties resolve this dispute by referring the dispute to arbitration in the manner and method prescribed therein. There being no case made out for interference, we are not required to delve into the merits of the matter.

15. In view of the above, the Judgment passed by the learned Single Judge refusing to entertain the writ petition under Article 226 of the Constitution of India does not require any interference. Resultantly, the appeal is dismissed, along with pending application(s), if any.

**SATISH CHANDRA SHARMA, C.J.**

**SUBRAMONIUM PRASAD, J**

**APRIL 13, 2023**

*S. Zakir/SS*