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

+ **LPA 195/2024 & CM APPL. 13482/2024**

M/S PRACHI INFRA AND ROADS PVT. LTD. Appellant
Through: Mr. Ajay Kumar, Advocate

versus

M/S KANTI PRASHAD MITTAL & ORS. Respondents
Through: Mr. Manish Gupta, Mr. Neelmani
Guha, Ms. Harshal Gupta, Ms. Deepti
Verma, Mr. Pramod Chandra Gupta,
Advocates for R-1
Mr. Jivesh Tiwari, SPC with Mr
Vedansh Anand, Govt Pleader for R-
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Date of Decision: 4th March, 2024

CORAM:

HON'BLE THE ACTING CHIEF JUSTICE

HON'BLE MS. JUSTICE MANMEET PRITAM SINGH ARORA

J U D G M E N T

MANMOHAN, ACJ: (ORAL)

CM APPL. 13483/2024 (For exemption)

Allowed, subject to all just exceptions.

Accordingly, present application stands disposed of.

LPA 195/2024 & CM APPL. 13482/2024

1. Present appeal has been filed under Clause X of the Letters Patent of the then High Court of Judicature at Lahore, which stands extended to the High Court of Delhi, challenging the judgment dated 16th February, 2024, whereby the learned Single Judge has directed CBI to conduct an enquiry



into the issue of the sub-contracting of the project work (by Respondent No.1) to M/s Prachi Infra and Roads Private Limited i.e., the Appellant herein and thereafter, dismissed the W.P. (C) 9575/2023 ('writ proceedings') filed by M/s. Kanti Prashad Mittal i.e., the Respondent No. 1 herein.

2. The facts of the case are that the Union of India, Ministry of Transport i.e., Respondent No. 2 through the Public Works Department ('PWD'), Government of Assam had issued a Request for Proposal No. NHC/BR/21/2018/Pt/18, dated 12th September, 2019 to carry out work of - a) strengthening of pavement from KM 61/00 to KM 69/00 and; b) widening of 1.5 meter paved shoulder on either side and strengthening from KM 103/00 to KM 106/00 of NH-39 under Annual Plan for the year of 2018-19 under Golaghat NH Division in the State of Assam on EPC Mode ('project work').

2.1 As per the records, Respondent No. 1 submitted its bid for the said project work and vide letter of award dated 25th October, 2019, the project work was awarded to Respondent No. 1. Consequently, Respondent No. 1 and Respondent No. 2 entered into a contract agreement bearing no. 02/CE/NH(BR)/NCB 2019-20, dated 27th November, 2019 for the completion of the project work for the contract price of Rs. 22,31,67,000/-.

2.2 It is stated that the Respondent No. 1 by its letter dated 1st December, 2019, offered the work of the sub-contractor to the Appellant for the said project work. Subsequently, Respondent No. 1 issued a letter dated 10th December, 2019 to Respondent No. 4/Executive Engineer, PWD, Assam, thereby proposing the name of the Appellant as the sub-contractor for the said project work, as per Clause 4.2(iii) of the contract agreement dated 27th



November, 2019.

2.3 It is stated that the project work was completed by the Appellant on 25th August, 2020, four (4) months before the scheduled completion date of 25th December, 2020 and consequently, a completion certificate dated 25th August, 2020 was issued to Respondent No. 1 by Assistant Executive Engineer, PWD, Assam i.e., Respondent No. 5. Material on record, shows that on 24th March, 2020, a Performance Certificate for a sum of Rs. 12,89,13,850/- and another Performance Certificate dated 10th September, 2020 was issued by the Respondent No.3 to the Appellant.

2.4 It is stated that since the Respondent No. 1 did not make the payment of Rs. 8,17,98,747/- to the Appellant, the Appellant herein filed a FIR bearing no. 70/2020 against the Respondent No. 1 at Police Station - Shanti Pur, Borpathar, Karbianglong, Assam alleging cheating and a suit for recovery of monies was also filed against the Respondent No. 1, before Civil Judge, Senior Division, Diphu, Karbianglong, Assam, for recovery of balance payment.

2.5 It is stated that at this juncture, the Respondent No. 1, in order to avoid the aforesaid legal proceedings, filed the writ proceedings before this Court, challenging the speaking Order dated 15th June, 2023, passed by the Respondent No. 4 herein. Respondent No. 4 by the said Order has justified the grant of Performance Certificate(s) to the Appellant. The learned Single Judge by its impugned judgment dismissed the writ petition with a direction to CBI to conduct an enquiry into the issue of the sub-contracting of the project work to the Appellant herein.

2.6 The grievance of the Appellant herein is that the Appellant is aggrieved by the findings returned by the learned Single Judge in the



impugned judgment, more specifically paragraph nos. 3, 4, 15, 16, 17, 18, 19 and 24.

3. The learned counsel for the Appellant states that the Appellant is the sub-contractor duly engaged by the Respondent No. 1 and therefore, was authorised to complete 49% of the project work. He states that the learned Single Judge at paragraph no. 4 of the impugned Judgment erroneously recorded that the Performance Certificate dated 10th September, 2020 was issued for a sum of Rs. 22,31,67,000/-. He states that a perusal of entry no. 8 in the said certificate clearly records that the certificate issued in favour of the Appellant was to the extent of Rs. 10,93,51,830/-, which is 49% of the contract price.

3.1. He states that Respondent No. 4 by its letter dated 16th March, 2020 had approved the Appellant as sub-contractor, only for 49% of the said project work. He further submits that Performance Certificate(s) dated 24th March, 2020 and 10th September, 2020, also support its contention that the Appellant was authorized to do 49% of the project work. He states that Respondent No. 1 has already paid 70% amount out of the total monies payable to the Appellant. He states that the Appellant is an experienced person who earlier carried on the same business as a proprietorship firm for the past five-six (5-6) years, which was thereafter taken over by the present Company.

3.2. He states that a Power of Attorney dated 25th November, 2019 was admittedly executed by Respondent No. 1 in favour of the Director of the Appellant herein inter-alia duly authorizing him to carry out the work. He states that the stand of Respondent No. 1 that there was no sub-contracting permitted by it, is false and contrary to the record. He relies upon the letter



dated 16th March, 2020 addressed to Respondent No. 1 by the Executive Engineer on the issue of engagement of sub-contractor. He relies upon the note dated 31st July, 2023, prepared on this issue by Chief Engineer, PWD.

3.3. He states that the appointment of the Authority Engineer and the Authorized Representative was duly notified vide order dated 28th November, 2019. He states that therefore, all decisions taken by the Authority Engineer were in accordance with the terms of the contract agreement. He states that similarly, the order dated 15th June, 2023 was taken by the Executive Engineer, in accordance with the directions issued by the Chief Engineer vide letter dated 08th June, 2023.

4. In reply, the learned counsel for Respondent No. 1 states that the engagement of the Appellant as the sub-contractor for the said project work is unauthorised and is not in accordance with Clause no. 4.2 of the contract agreement dated 27th November, 2019. He states that Appellant is not qualified to be engaged as a sub-contractor. He submits that the Respondent No. 1 has not issued any letter or made any proposal to the concerned authorities, stating that the Appellant is the sub-contractor for the said project work. He states that Respondent No. 1 is not aware about the documents evidencing the appointment of the Appellant as the sub-contractor. He states that Respondent No. 1 has engaged with the Appellant for procurement of machines and supply of labour force, for which the payments were also duly made by the Respondent No. 1 to the Appellant.

4.1 He states that Respondent No.2's officials are hand-in-gloves with the representatives of the Appellant. He states that in this regard, the Respondent No. 1 by its letter dated 29th April, 2023 has informed the Respondent No. 5, that the Respondent No. 5's office cannot approve the



Appellant as sub-contractor, unless the conditions stipulated in Clause nos. 4.2 (ii) & (iii) of the contract agreement are fulfilled by the Appellant. By the said letter, the Respondent No. 1 has also requested the Respondent No. 5 to forward the matter to Chief Vigilance Officer to conduct an enquiry whether the Respondent's officials are hand-in-glove with the representatives of the Appellant. He states that a request to conduct CBI enquiry in the present matter was made by the Respondent No. 1 during the writ proceedings and the impugned judgment passed by the learned Single Judge is reasonable.

4.2 He has also handed over a copy of the paper-book of the writ petition including the replies and rejoinder.

5. After some arguments, learned counsel for the Appellant states that the Appellant has no grievance if the CBI enquiry is conducted in the present matter. He states that however, this Court may clarify that neither party should be entitled to rely upon the experience of the subject Project Work pending the enquiry and the role of Respondent No. 1 should also be expressly examined by CBI. The learned counsel for the Respondent No.1 states that he has no objection to the said prayers of the Appellant.

6. We have heard the learned counsel for the parties and perused the record.

7. The rival submissions of the Appellant and Respondent No. 1 as regards (i) engagement of Appellant by Respondent No.1 as the sub-contractor and (ii) extent of work executed by the Appellant, raises disputed questions of fact and therefore, we do not deem it appropriate to express any opinion on the rival contentions of the parties in this appeal. This is also for the reason that the Chief Engineer in the counter affidavit dated 02nd



November, 2023, filed in the writ proceedings on behalf of Respondent Nos. 2 to 7 has expressed an opinion that engagement of the Appellant herein as the sub-contractor, has been made in violation of the provisions of contract agreement. It is needless to state that the role of the Respondent No.1 i.e., M/s Kanti Prashad Mittal, will also be duly examined by CBI in the enquiry proposed to be undertaken in this matter.

8. In view of the controversy in the present matter and directions issued by the learned Single Judge at paragraph no. 15, it is clarified that neither the Appellant nor Respondent No. 1 can rely upon the experience of having performed the subject contract, since, the extent of performance (or lack of it) by the Respondent No. 1 is an issue, specifically arising for consideration in the enquiry.

9. In view of the aforesaid observations, the present appeal is dismissed along with the application.

ACTING CHIEF JUSTICE

MANMEET PRITAM SINGH ARORA, J

MARCH 4, 2024/hp/MG