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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **LPA 249/2024 & CM APPL. 18657/2024 CM APPL. 18658/2024**
E5 INFRASTRUCTURE PRIVATE LIMITED Appellant

Through: **Mr. Arvind K Nigam Sr. Advocate**
with Mr. Puneet Agarwal, Mr. Prem
Kandpal, Mr. Chetan Kumar Shukla,
Mr. Agnish Aditya, Advocates

versus

NATIONAL HIGHWAYS AUTHORITY OF INDIA

..... Respondent

Through: **Mr. Santosh Kumar and Mr. Devansh**
Malhotra, Advocates

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Date of Decision: 28th March, 2024

CORAM:

HON'BLE THE ACTING CHIEF JUSTICE

HON'BLE MS. JUSTICE MANMEET PRITAM SINGH ARORA

JUDGMENT

MANMOHAN, ACJ : (ORAL)

CM APPL. 18659/2024(for exemption)

Allowed, subject to all just exceptions.

Accordingly, the present application stands disposed of.

LPA 249/2024

1. The present appeal has been filed under Clause X of the Letters Patent of the Lahore High Court, as applicable to the High Court of Delhi, assailing the judgment dated 16th February, 2024 ('impugned judgment') passed in W.P.(C) No. 9235/2022, whereby the learned Single Judge dismissed the



writ petition filed by the Appellant herein and declined to set aside the Show Cause Notice and Debarment Order passed by the Respondent.

2. Under an Agreement dated 06th August, 2020, the Appellant was appointed as a contractor by Respondent for construction of foot-over bridges in a designated section falling in the States of Haryana and Rajasthan on EPC mode. M/s URS Scott Wilson India Pvt. Ltd. ('the Authority Engineer'), was appointed in terms of Article 18 of the said Agreement to supervise the Project awarded to the Appellant.

3. The Respondent issued the impugned Show Cause Notice dated 29th September, 2021 and the subsequent impugned Debarment Order dated 02nd November, 2021 debarring the Appellant on account of an incident involving murder of an employee, namely, Sh. R.K. Chawla of M/s URS Scott Wilson India Pvt. Ltd. The investigation by police which followed the incident of murder implicated the Managing Director and Senior Management Employees of the Appellant in connection with disputes arising out of the supervision of the Agreement dated 06th August, 2020.

4. The incident of murder occurred on 26th August, 2021 outside the office premises of the Respondent at Jaipur, where a meeting was scheduled between the parties for discussing issues pertaining to extension of time for completion of the Project, sought by the Appellant. On 27th August, 2021, an F.I.R. bearing no. 318/2021 was registered at PS Vaishali Nagar under Sections 302 and 34 of the Indian Penal Code, 1860 against the Managing Director of the Appellant, namely, Mr. Karandeep Sheoran and other employees of the Appellant; and, who have been since arrested by the police for the said murder. The police after investigation have filed a chargesheet



dated 23rd November, 2021 and the involvement of the Managing Director, Mr. Karandeep Sheoran and the other employees of the Appellant has been set out in the said chargesheet. The chargesheet states that the murder was a planned criminal conspiracy by the said Managing Director and he has been named as the main accused. Pertinently, the motive for murder ascribed in the chargesheet is with respect to disputes pertaining to payments and execution of the Agreement dated 06th August, 2020. The bail applications filed by the said Managing Director, Mr. Karandeep Sheoran have been dismissed by the High Court of Rajasthan *vide* orders dated 08th July, 2022 and 21st April, 2023.

5. It is also a matter of record that M/s URS Scott Wilson India Pvt. Ltd. has exited from its contract invoking force majeure i.e., due to the death of their its employee Mr. R.K. Chawla and citing safety and security of its personnel.

6. In the aforesaid facts, the Respondent stated before the learned Single Judge that it has strong justification to believe that the Appellant's management was involved in the murder; and in the interest of the public safety and other projects, it was justified in not allowing the Appellant to participate in future contracts. And therefore, the impugned Debarment Order was reasonable and justified.

7. Before the learned Single Judge, the Respondent raised a preliminary objection to entertaining of the writ petition on the ground that since Article 26 of the Agreement dated 06th August, 2020 provides an efficacious dispute resolution mechanism, which includes arbitration, the Appellant should be directed to avail the said contractual remedy.



8. The learned Single Judge by the impugned judgment examined the merits of the challenge laid by the Appellant and declined to interfere in the Debarment Order dated 02nd November, 2021; and the present Letters Patent Appeal challenges the dismissal of the said writ petition.

9. The Appellant has stated that the Managing Director, Mr. Karandeep Sheoran after the incident of 26th August, 2021 disassociated himself from the company and resigned. The Appellant also expectedly denies any wrongdoing by its Managing Director or employees. However, the Respondent has stated that as per the record filed with the writ petition, Mr. Rajender Singh, father of Mr. Karandeep Sheoran, has since been appointed as the Managing Director. Thus, effectively the control is with the same individuals.

10. Having heard the learned senior counsel for the Appellant and after perusing the record, we are of the considered opinion that in the glaring facts, though pending trial, which form the basis of the issuance of the impugned Show Cause Notice and the subsequent impugned Debarment Order, the extraordinary jurisdiction of this Court under Article 226 of the Constitution of India ought not to be exercised. The Appellant has an adequate efficacious alternative remedy and the writ petition ought not to have been entertained in such shocking, though disputed, facts.

11. The power of the High Court under Article 226 of the Constitution to issue writs, though plenary in nature, is equitable and discretionary and as held by Supreme Court, the exercise of this power has to necessarily depend upon unblameworthy conduct of the person invoking this jurisdiction. Thus, even if, the writ petition is founded on the allegation of infringement of legal



rights, the Constitutional Court will not exercise this discretionary jurisdiction in favour of a party unless the Court is first satisfied that the petitioner's conduct is free from blame. In the facts of this case, the allegations against the Appellant's Managing Director and employees are grave and the reliefs sought in the writ petition cannot be entertained on the legal principle that Appellant is a separate juristic entity from its erstwhile Managing Director and employees or that the allegations are pending trial. The allegations in the chargesheet, as regards the motive of the accused persons to commit murder, have been directly linked to the execution of the Agreement dated 06th August, 2020. A juristic person such as the Appellant works through its management and the allegation that its Managing Director and Senior Management Employees have been charge sheeted for murder, for disputes arising under the Agreement dated 06th August, 2020 assumes significance. In these facts, it is not possible for this Court to hold that the Appellant is unblameworthy so as to enable the Appellant to invoke the extraordinary jurisdiction under Article 226 of the Constitution.

12. In this regard, we may refer to judgment of the Supreme Court in ***I.T.C Ltd. v. Blue Coast Hotels Ltd. and Others***¹. In the facts of that case, the writ petitioner was a debtor/borrower who had admittedly failed to repay the outstanding loan and the proceedings for enforcement of mortgage by the secured creditor were upheld by the Debt Recovery Appellate Tribunal, ('DRAT'); however, the order of the DRAT and the sale of mortgaged property was set aside by the High Court in its writ jurisdiction on the grounds of violation of the relevant statutory provisions. The Supreme Court

¹ (2018) 15 SCC 99



while setting aside the order of the High Court, observed that a writ petition ought not to be entertained at the instance of a writ petitioner whose conduct is not free from blame. The relevant paras of the said judgment read as under:

“52. We have anxiously considered the entire matter and find that the undisputed facts of the case are that a loan was taken by the debtor which was not paid, the debtor did not respond to a notice of demand and made a representation which was not replied to in writing by the creditor. The creditor, however, considered the proposals for repayment of the loan as contained in the representation in the course of negotiations which continued for a considerable amount of time. Several opportunities were in fact availed of by the debtor for the repayment of the loan after the proceedings were initiated by the secured creditor. The debtor failed to discharge its liabilities and eventually undertook that if the debtor fails to discharge the debt, the creditor would be entitled to take/realise the secured assets.

53. As held, we are of the view that non-compliance with sub-section (3-A) of Section 13 cannot be of any avail to the debtor whose conduct has been merely to seek time and not repay the loan as promised on several occasions.

54. This Court in State of Maharashtra v. Digambar [State of Maharashtra v. Digambar, (1995) 4 SCC 683] observed as follows: (SCC p. 692, para 19)

“19. Power of the High Court to be exercised under Article 226 of the Constitution, if is discretionary, its exercise must be judicious and reasonable, admits of no controversy. It is for that reason, a person's entitlement for relief from a High Court under Article 226 of the Constitution, be it against the State or anybody else, even if is founded on the allegation of infringement of his legal right, has to necessarily depend upon unblameworthy conduct of the person seeking relief, and the court refuses to grant the discretionary relief to such person in exercise of such power, when he approaches it with unclean hands or blameworthy conduct.”

It relied on the judgment of the Privy Council in Lindsay Petroleum Co. v. Hurd [Lindsay Petroleum Co. v. Hurd, (1874) LR 5 PC 221], where the Privy Council observed: (PC p. 240)

“... Two circumstances, always important in such cases, are, the length of the delay and the nature of the acts done during the interval, which



might affect either party and cause a balance of justice or injustice in taking the one course or the other, so far as it relates to the remedy.”

55. Therefore, the debtor is not entitled for the discretionary equitable relief under Articles 226 and 136 of the Constitution of India in the present case.”

(Emphasis supplied)

13. In the aforesaid judgment, the Supreme Court has referred to its earlier judgment of ***State of Maharashtra v. Digambar***², wherein the Court had held that if a writ is entertained at the instance of a party whose conduct is blameworthy, any direction, order or writ passed in favour of such a party becomes unsustainable. The relevant paras read as under:

“18. Coming to the exercise of power conferred upon the High Court under Article 226 of the Constitution for issuing orders, directions or writs for “any purpose”, such power is discretionary, being a matter well-settled, cannot be disputed.

19. Power of the High Court to be exercised under Article 226 of the Constitution, if is discretionary, its exercise must be judicious and reasonable, admits of no controversy. It is for that reason, a person's entitlement for relief from a High Court under Article 226 of the Constitution, be it against the State or anybody else, even if is founded on the allegation of infringement of his legal right, has to necessarily depend upon unblameworthy conduct of the person seeking relief, and the court refuses to grant the discretionary relief to such person in exercise of such power, when he approaches it with unclean hands or blameworthy conduct.

20. Laches or undue delay, the blameworthy conduct of a person in approaching a court of equity in England for obtaining discretionary relief which disentitled him for grant of such relief was explained succinctly by Sir Barnes Peacock, long ago, in Lindsay Petroleum Co. v. Hurd [(1874) 5 PC 221] thus:

“Now the doctrine of laches in Courts of Equity is not an arbitrary or a technical doctrine. Where it would be practically unjust to give a remedy, either because the party has, by his conduct, done that which might fairly be regarded as equivalent to a waiver of it, or where by his conduct and neglect he has, though perhaps not waiving that remedy, yet put the other party

² (1995) 4 SCC 683



in a situation, in which it would not be reasonable to place him if the remedy were afterwards to be asserted, in either of these cases, lapse of time and delay are most material. But in every case, if an argument against relief, which otherwise would be just, is founded upon mere delay, that delay of course not amounting to a bar by any statute or limitations, the validity of that defence must be tried upon principles substantially equitable. Two circumstances, always important in such cases, are, the length of the delay and the nature of the acts done during the interval, which might affect either party and cause a balance of justice or injustice in taking the one course or the other, so far as it relates to the remedy.”

.....

23. Therefore, where a High Court in exercise of its power vested under Article 226 of the Constitution issues a direction, order or writ for granting relief to a person including a citizen without considering his disentitlement for such relief due to his blameworthy conduct of undue delay or laches in claiming the same, such a direction, order or writ becomes unsustainable as that not made judiciously and reasonably in exercise of its sound judicial discretion, but as that made arbitrarily.”

(Emphasis supplied)

14. In the present case, though the Appellant denies and disputes the role of its Managing Director and employees in the murder of Mr. R.K. Chawla; however, in view of the registration of the F.I.R. and the filing of the chargesheet against the said Managing Director and employees, which is pending adjudication before the competent Court, we are unable to satisfy our judicial conscience that the Appellant before us is free from blame. This is a fit case where in the aforementioned facts, the writ petition not be entertained and the writ petitioner ought to be relegated to invoke its contractual remedy. We are not inclined to exercise our discretionary equitable jurisdiction to adjudicate the reliefs sought by the Appellant even if its allegation of breach of the General Financial Rules, 2017 ('GFR') has any merit. The said allegations can be adequately adjudicated upon under the



alternative dispute resolution mechanism.

15. We are, therefore, of the considered opinion that at the threshold itself, the writ petition ought not to have been entertained by the learned Single Judge and instead, the Appellant herein ought to have been directed to avail its remedy in accordance with law. The present appeal deserves to be dismissed on this ground alone.

16. At this stage, learned senior counsel for the Appellant prays that Appellant will avail its alternative remedy.

17. Accordingly, the present appeal is dismissed on the ground that the writ petition itself was not liable to be entertained in the facts of this case and the Appellant is at liberty to avail its remedy in accordance with law. The rights and contentions of the parties are left open. Consequently, the findings of the learned Single Judge in the impugned Judgment dated 16th February, 2024 were uncalled for and shall not bound the Court or Tribunal where proceedings are filed by the Appellant.

ACTING CHIEF JUSTICE

MANMEET PRITAM SINGH ARORA, J

MARCH 28, 2024/hp/MG