



\$~34

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

+ **LPA 394/2024 & CM APPL. 30138/2024**

UP STATE BRIDGE CORPORATION LIMITED Appellant

Through: **Mr. Puneet Taneja, Mr. Anil Kumar
and Mr. Amit Yadav, Advocates**

versus

**NATIONAL HIGHWAYS AND INFRASTRUCTURE
DEVELOPMENT CORPORATION LIMITED** Respondent

Through: **Mr. Kunal Tandon and Ms. Niti Jain,
Advocates**

%

Date of Decision: 20th May, 2024

CORAM:

HON'BLE THE ACTING CHIEF JUSTICE

HON'BLE MS. JUSTICE MANMEET PRITAM SINGH ARORA

JUDGMENT

MANMOHAN, ACJ: (ORAL)

CM APPL. 30139/2024 (for exemption)

Allowed, subject to all just exceptions.

Accordingly, the present application stands disposed of.

LPA 394/2024 & CM APPL. 30138/2024

1. Present Letters Patent 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 impugned judgment



dated 08th May, 2024, passed in W.P.(C) No. 3256/2024, whereby the learned Single Judge declined to entertain the said writ petition on the ground of disputed question of facts and availability of alternate efficacious remedy of arbitration to the Appellant and consequently, dismissed the writ petition.

2. The underlying writ petition was filed by the Appellant seeking quashing of the order dated 09th February, 2024, passed by the Respondent declaring the Appellant as a 'Non-Performer' resulting in a bar against the Appellant from participating in any bid with Ministry of Road, Transport and Highways ('MoRTH') or its executive agencies, till such time the Appellant completes the project.

3. Learned counsel for the Appellant states that it is settled legal principle that the public law remedy by way of writ proceedings can be invoked if the Appellant is aggrieved by an order, which is not purely private in character and the Respondent is a State. He states that the effect of the impugned order dated 09th February, 2024, passed by the Respondent has a chilling effect on the Appellant who is deprived of participating in the upcoming contract works. He states that such an order is in effect a blacklisting order and it is settled law that a writ against such an order is entertainable. He states that the impugned order dated 09th February, 2024 has been issued in violation of principles of natural justice and the Respondent has overlooked its own omissions during the performance of the contract. He states that there was a delay in handing over encumbrance free sites by the Respondent which has delayed the completion of the project.

3.1. He states that without prejudice to the aforesaid submissions, the Appellant is willing to take recourse to the arbitration clause and the remedy



of filing a petition under Section 9 of the Arbitration and Conciliation Act, 1996 ('Act of 1996'), however, the Appellant seeks protection for a limited period until it approaches the appropriate Court. He states that the learned Single Judge while relegating the Appellant to avail the remedy under the Act of 1996, has however, made observations in paragraph 18 of the impugned judgment which will prejudice the Appellant in the said proceedings and the Appellant has therefore, been left remediless.

4. In reply, learned counsel for the Respondent states that there is no error in the impugned judgment and the Appellant is at liberty to take recourse under the Act of 1996 in accordance with Clauses 26.3 and 26.4 of the contract agreement. He states that on merits the impugned order dated 09th February, 2024, does not suffer from any error of violation of principles of natural justice. He states that the show cause notice was issued 24th November, 2022 and despite a lapse of more than fifteen (15) months, the Appellant was unable to cure the defects pointed out to it.

4.1. He states that the impugned order dated 09th February, 2024 has been passed on the basis of a Circular dated 06th October, 2021. He states that in the facts of the case, the declaration of the Appellant as a Non-Performer is justified and the effect of the order is for a limited period inasmuch as, as soon as the Appellant achieves the milestones of the contract, its status as Non-Performer will be withdrawn.

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

6. At the outset, we may note that the writ petition was filed by the Appellant assailing the Respondent's communication dated 09th February, 2024, which is admittedly in effect a debarment order. The impugned order



dated 9th February, 2024, as per the case of the Respondent, has been passed in furtherance to the MoRTH circular dated 06th October, 2021, and in its implementation, the impugned order operates beyond the contract agreement. The Appellant's challenge to the said impugned order declaring it a Non-Performer on the principles settled by this Court would, therefore, be liable to be entertained in writ proceedings. The Respondent being a State and since the said impugned order has the effect of preventing the Appellant from participating in contracts issued by MoRTH and other executing agencies, admittedly has civil consequences, therefore, such an order is amenable to judicial review. (Re: *M/s Erusian Equipment & Chemical Ltd. v. State of West Bengal and Anr.*¹)

7. However, in view of the submission of the Appellant that it is willing to avail the remedy under the Act of 1996 and is only seeking interim protection until it approaches the appropriate Court; with a view to expedite the comprehensive adjudication of the rival pleas of the parties, we hereby direct the Appellant to approach the appropriate Court under Section 9 of the Act of 1996 within a period of ten days and invoke the dispute resolution clause within 30 days in accordance with law. To balance the interest of the parties, it is directed that in the interregnum the Respondent's impugned communication dated 09th February, 2024 shall remain stayed for a period of 10 days.

8. It is clarified that we have not expressed any opinion on the merits of the dispute and the rights and contentions of both the parties are left open. It is directed that the appropriate Court when approached shall decide the rival pleas of the parties uninfluenced by the observations made by the learned

¹ (1975) 1 SCC 70



Single Judge in the impugned judgment dated 08th May, 2024 and this order.

9. With the aforesaid directions, the present appeal along with applications stand disposed of.

ACTING CHIEF JUSTICE

MANMEET PRITAM SINGH ARORA, J

MAY 20, 2024/msh/aa