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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ W.P.(C) 17832/2024, CM APPL. 75889/2024 & CM APPL. 75890/2024

KCC BUILDCON PRIVATE LIMITED & ANR.Petitioners

Through: Mr. Jayant K. Mehta, Sr. Advocate
with Mr. Siddhartha Iyer, Mr.
Chhatresh Kr. Sahu, Ms. Diva Saigal
and Mr. Anshul Saxena, Advocates

versus

NATIONAL HIGHWAYS AND INFRASTRUCTURE
DEVELOPMENT CORPORATION LIMITED & ORS.

.....Respondents

Through: Ms. Ruchira Gupta, Ms. Harshita
Sharma and Mr. Abhishek Verma,
Advocates for R-1/NHIDCL
Mr. Vedansh Anand, GP for UOI
Mr. Vikram Jetly, CGSC with Ms.
Shreya Jetly and Mr. Vedansh Anand,
GP for R-2/UOI

CORAM:
HON'BLE MR. JUSTICE SANJEEV NARULA

ORDER

% **23.12.2024**

1. The present writ petition impugns the notice for 'Termination of Contract' dated 02nd December, 2024¹ and the 'Show Cause Notice for Debarment' dated 13th December, 2024,² issued by Respondent No. 1/ National Highways & Infrastructure Development Corporation Ltd.³
2. The factual background, as set forth in the Petition, leading to the present proceedings is as follows:

¹ "impugned Termination Notice"

² "impugned Show Cause Notice"

³ "NHIDCL"



2.1 Petitioner No. 1 was issued Letter of Award dated 28th February, 2020 by Respondent No. 1, for the purpose of ‘Special Protection Work on Rehabilitation and Restoration of Sinking/Sliding Zone, including widening of the road in the state of Sikkim’. In furtherance of the same, Petitioner No. 1 and Respondent No. 1 entered into a Contract agreement dated 17th March, 2020.⁴

2.2 Petitioner No. 1 encountered several impediments and challenges in executing its contracted works, and on multiple occasions between 2020 and 2023, duly notified the Respondents of such hinderances, difficulties and delays affecting the execution of the Project.

2.3 As a result of the Respondents’ failure to address and remedy the breaches and impediments, and faced with a situation where the completion of their contractual obligations had become impossible, Petitioner No. 1 was compelled to terminate the Contract through a notice dated 10th July, 2023.

2.4 Subsequently, on 1st February, 2024, the parties convened to seek an amicable resolution of their outstanding disputes. During that session, the Respondents acknowledged certain lapses on their part that had impeded Petitioner No. 1’s ability to discharge their contractual obligations. This acknowledgment is documented in Paragraph No. 7 of the minutes of meeting.

2.5 In an effort to resolve the disputes amicably and forestall future litigation, both parties agreed to terminate and foreclose the Contract by mutual consent. They further decided that Petitioner No. 1 would submit a single, all-inclusive final invoice and furnish a written declaration affirming that no additional claims would be raised beyond that invoice. Petitioner No. 1 also undertook not to initiate any legal, arbitral, or contractual proceedings

⁴ “the Contract”



against the authority/client. Additionally, the parties consented to execute a supplementary agreement to formally conclude the Contract on mutually agreed terms.

2.6 In terms of the aforesaid understanding, Petitioner No. 1 submitted an undertaking as well as the foreclosure agreement to the Respondents on 11th March, 2024. However, they did not receive a signed copy or confirmation of the agreement from them.

2.7 The Authority's Engineer, through communication dated 21st May, 2024, issued a recommendation for the release of the foreclosure final bill of INR 4,64,94,277/- to Petitioner No. 1.

2.8 Despite exchange of documentation and the understanding borne out from the Minutes of the Meeting, the Respondents issued the impugned Termination Notice on 02nd December, 2024. Furthermore, they have now arbitrarily issued the impugned Show Cause Notice, proposing to blacklist/debar Petitioner No. 1 from participating in any contracts with the Respondent, the Ministry of Road Transport & Highways, and its implementing agencies.

3. In such circumstances, the Petitioners seek the following reliefs:

"I. To issue writ in the nature of certiorari for quashing the impugned letter/termination notice NHIDCL/ Sikkim / NH10/ Sliding & Narrow Zone/ 179347 / 2019 / 2671 dated 02.12.2024 (P-1) as well as the subsequent impugned show cause notice NHIDCL / Sikkim / NH10/Sliding & Narrow Zone/179347/2019/2685 dated 13.12.2024 (P-2) of blacklisting/debarring and the proceedings arising therefrom.

II. To issue writ in nature of mandamus for directing Petitioner no. 1 to foreclose the agreement dated 17.03.2020 in compliance of mutually agreed terms as recorded in Minutes of Meeting dated 01.02.2024."

4. In their first prayer, the Petitioners seek a declaration that Petitioner No. 1 effectively terminated the Contract on 10th July, 2023, thereby rendering the subsequent Termination Notice of 2nd December, 2024 inoperative. According to Mr. Jayant K. Mehta, Senior Counsel for the



Petitioners, since the contract was already brought to an end by Petitioner No. 1 due to numerous impediments preventing its completion, the Respondents' later attempt to terminate the same contract on 2nd December 2024 has no legal effect and should be declared as such. Mr. Mehta emphasizes that the sole basis for the Petitioner's termination of the Contract was the numerous impediments, which rendered its continuation impossible. He further submits that the Minutes of Meeting recorded subsequent to the termination clearly indicate that the Respondents acknowledged and accepted the Petitioners' position, and, moreover, mutually consented to the foreclosure of the Contract. The impugned Termination Notice, which entails significant legal repercussions, ought to be quashed being arbitrary, capricious, and whimsical, warranting judicial intervention by this Court.

5. With respect to the impugned Show Cause Notice for debarment, Mr. Mehta contends that the authority responsible for issuing the impugned Termination Notice, is the same which has issued the impugned Show Cause Notice. In light of this, Mr. Mehta expresses concern about the competent authority acting with a pre-conceived bias regarding the proposed blacklisting action. This, he contends, raises concerns regarding the impartiality and fairness of the decision-making process.

6. In contrast, Ms. Ruchira Gupta, Counsel for the Respondent, strongly opposes the petition. She submits that the writ petition seeking declaratory relief with respect to the impugned Termination Notice is not maintainable. She emphasises that the Contract has already been terminated, and the necessary consequences, as stipulated therein, must follow. She submits that if Petitioner No. 1 has any grievances with respect to the Contract, the appropriate course of action is to invoke the alternative dispute resolution mechanism outlined therein. As for the Show Cause Notice, Ms. Gupta



asserts that the matter is at the preliminary stage with no final determination yet rendered. She argues that in the absence of any challenge to the jurisdiction of the competent authority issuing the notice, this Court should exercise restraint and refrain from entertaining this petition.

7. The Court has considered the submissions made by both parties. The Court notes that the Contract stands effectively determined owing to the disputes between the parties. Petitioner No. 1 contends that, on 10th July, 2023, they terminated the Contract due to multiple, unrectified lapses on the Respondents' part which rendered continued performance impossible. Thereafter, both sides agreed to "foreclose" the Contract, negating any reason for the issuance of the impugned Termination Notice issued on 2nd December, 2024. On the other hand, the Respondents insist that Petitioner No. 1 unilaterally breached and abandoned the Project, and that, in the absence of a foreclosure clause, they acted under Sub-clauses 59.1 and 59.2 of the GCC to terminate the Contract themselves.

8. In light of these conflicting contentions, the Court is of the opinion that substantial factual disputes exist between the parties underlying the termination/ foreclosure of the Contract. Whether the Petitioner was justified in terminating the Contract; or whether foreclosure is permissible under the Contract; and whether the impugned termination was warranted, are intricate issues, which require not only interpretation of the terms of the Contract, but also an examination of the underlying factual circumstances. This would require the parties to lead evidence, and therefore the writ jurisdiction is not suited to adjudicate such intricate and disputed matters of fact.

9. Moreover, the Contract between the parties clearly provides for an alternate dispute resolution mechanism. Given that the issues pertain to an entirely factual dispute, the Court is of the opinion that the matter should be



relegated to the alternative dispute resolution mechanism outlined in the Contract. Accordingly, the Court is not inclined to entertain the present petition seeking declaratory relief.

10. Turning to the second prayer concerning the Petitioner's apprehension of bias, it remains undisputed that the proposed blacklisting measure stands on a different footing than the Contract's termination. Determining whether the Petitioner should be barred from future contracts calls for a distinct inquiry into purported misconduct or breaches, a process separate from the question of how the earlier agreement ended. Thus, in principle, an authority may handle both decisions, provided they maintain impartiality. However, to allay the Petitioner's specific concern that this process has been pre-judged, the Court directs that the final determination on the impugned Show Cause Notice be undertaken by a higher authority, rather than by the same official who issued the impugned notice. It bears mention that the Court neither questions the competency of the issuing authority nor implies any preconceived bias, but simply provides this safeguard in the interest of fairness.

11. At this juncture, Mr. Mehta seeks one week accommodation for filing reply to the impugned Show Cause Notice. Accordingly, the timeline for filing the reply is extended by one week. Upon receipt of the reply, the competent authority, as directed above, shall schedule a date for personal hearing and proceed to decide the matter in accordance with the Principles of Natural Justice.

12. With the above direction, the present petition is disposed of.

SANJEEV NARULA, J

DECEMBER 23, 2024 *sapna*