

**IN THE HIGH COURT OF JUDICATURE AT CALCUTTA
CIVIL APPELLATE JURISDICTION
APPELLATE SIDE**

HEARD ON: 08.04.2025

DELIVERED ON: 08.04.2025

**CORAM:
THE HON'BLE CHIEF JUSTICE T.S. SIVAGNANAM
AND
THE HON'BLE JUSTICE CHAITALI CHATTERJEE (DAS)**

**M.A.T. 487 of 2025
With
I.A. No. CAN 1 of 2025**

**Mahnar Infratech Private Limited
Vs.
Union of India & Ors.**

Appearance:-

**Mr. Kallol Basu
Mr. Samik Sarkar
Mr. Sunil Gupta
Ms. Swapna Jha
Ms. Supriti Sarkhel
Mr. Shwetank S. Prasadfor the appellant**

**Mr. Rajkumar Gourisaria
Mr. Arijit Bakshi for the Union of India**

(Judgment of the Court was delivered by T.S. SIVAGNANAM, C.J.)

1. This intra-Court appeal by the writ petitioner is directed against the order dated March 21, 2025 in W.P.A. 3687 of 2025. The writ petition was filed by the appellant praying for a direction upon the respondents 1 and 4 to provide the approved drawings to the appellant to enable it to complete the work as per the contract agreement dated May 16, 2023 and for a consequential writ of Prohibition prohibiting the respondents from issuing any fresh tender for the work allotted to the appellant and from encashing the bank guarantee.

2. The learned writ Court by the impugned order rejected the prayer for setting aside the termination notice. So far as the debarment of the appellant from participating in the tender is concerned, the learned writ Court directed the railway administration to grant an opportunity of hearing to the appellant to implement the order of debarment of the appellant for participation in the tender for executing the balance work.
3. There are three limbs to the impugned decision taken by the railway administration, first of which being termination of the contract as a result of which the right to forfeit the performance guarantee/bank guarantee and the exercise of the right of debarment.
4. So far as the debarment is concerned, the learned Single Bench directed an opportunity to be granted and this has been granted and a communication has been sent by the Divisional Engineer/Central/Adra, South Eastern Railway dated April 4, 2025 stating that the railway administration will conduct a meeting with the appellant on April 8, 2025 (Today) at 4.00 P.M. to discuss the matter of participation in the tender for executing the balance work of the terminated contract. In the meantime, the performance guarantee/bank guarantee has already been forfeited.
5. As pointed out earlier, there are three issues arising out of the impugned decision of the respondents/railway administration. The first decision is termination of the contract.
6. Admittedly, in terms of clause 64 of the Indian Railways Standard General Conditions of Contract applicable from April 2022 onwards, clause 64 provides for arbitration. Clause 64 (1)(i) states that in the event of any dispute or difference between the parties hereto as to the construction or operation of the contract, or the respective rights and liabilities of the

parties on any matter in question, dispute or difference on any account or as to the withholding by the Railway of any certificate to which the Contractor may claim to be entitled to, or if the Railway fails to make a decision within 120 days, then and in any such case, but except in any of the “excepted matters” referred to in Clause 63.1 of the conditions, the Contractor, after 120 days but within 180 days of his presenting his final claim on disputed matters shall demand in writing that the dispute or difference be referred to arbitration.

7. In terms of clause 64(2), which speaks of the Obligation During Pendency of Arbitration, it is stated that work under the contract shall, unless otherwise directed by the Engineer, continue during the arbitration proceedings, and no payment due or payable by the Railway shall be withheld on account of such proceedings, provided, however, it shall be open for Arbitral Tribunal to consider and decide whether or not such work should continue during the arbitration proceedings.
8. The appellant’s contention is that the requisite drawings were not provided, as a result of which they could not complete the contract within the time period and therefore, they made a prayer in the writ petition to provide the approved drawings to enable and complete the work.
9. This being a disputed question of fact, the appellant should necessarily avail the remedy of arbitration as provided under clause 64(1) of the General Conditions of Contract. Therefore, the writ petition should not have been filed questioning the order of termination of the contract.
10. The forfeiture of bank guarantee is a consequence of termination. Therefore, if the appellant invokes the arbitration clause and ultimately succeeds in the arbitration proceedings, the order of forfeiture necessarily

will have to go. Therefore, the forfeiture of the bank guarantee would be subject to the outcome of the arbitration proceedings.

11. So far as the debarment is concerned, the authority, in terms of the order passed by the learned Single Bench had directed the appellant to participate in a hearing to be held on April 8, 2025 at 4.00 p.m. to discuss the matter regarding participation in the tender for execution of the balance work of the terminated contract.
12. The appellant is ready and willing to participate in the hearing scheduled at 4.00 p.m. today and in the hearing the railway administration shall take a proper decision bearing in mind that the appellant cannot be foreclosed from availing the arbitration remedy, which we permit the appellant to do so in this judgment and order and also to consider that bringing in a new contractor at this stage may not be a very economical decision for the railway administration.
13. For the above reasons, we dispose of the appeal by issuing the following directions:
 - (I) The appellant is directed to invoke clause 64 (1) of the General Conditions of Contract and file a demand in writing that the dispute arising out of the order of termination of contract be referred for arbitration and such application shall be filed by the appellant within 10 days from the date of receipt of server copy of this judgment and order.
 - (II) The railway administration shall proceed to follow the procedure enumerated in clause 64(1) with regard to appointment of the Arbitral Tribunal.
 - (III) The forfeiture of the bank guarantee shall be subject to the outcome of the arbitration proceedings and in the event the appellant succeeds in the

arbitration proceedings, the order of forfeiture of bank guarantee would also stand rescinded and the appellant is free to make such prayer before the learned Arbitral Tribunal.

(III) With regard to the remaining work is concerned, the appellant is directed to participate in the hearing to be held on April 8, 2025 and the railway administration shall take a balanced and reasoned decision as to whether the appellant should be permitted to complete the balance work.

(IV) With regard to the debarment is concerned, it no doubt arose out of the termination but the learned Single Bench has found that the appellant did not have adequate opportunity. Therefore, the railway administration is directed to issue a show-cause notice clearly setting out the reasons, which, according to them, would be relevant for proposing an order of debarment. The appellant should be granted a reasonable time to submit their reply, after which a reasoned decision shall be taken after affording an opportunity of personal hearing to the authorised representative of the appellant.

(V) The findings rendered by the learned Single Bench, which may affect the appellant's right before the Arbitral Tribunal stands vacated.

14. No costs.
15. Urgent photostat certified copy of this order, if applied for, be furnished to the parties expeditiously upon compliance of all legal formalities.

(T.S. SIVAGNANAM)
CHIEF JUSTICE

I agree.

(CHAITALI CHATTERJEE (DAS), J.)