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

% ***Date of Decision: 24.03.2025***

\+ **W.P.(C) 3143/2021**

M/S YASHODA INN PVT LTD & ANR. .....Petitioners

Through: Mr. Kumar Shashwat, Advocate.

versus

RAIL LAND DEVELOPMENT AUTHORITY .....Respondent

Through: Mr. Ashok Singh, Advocate.

CORAM:
HON'BLE MR. JUSTICE SACHIN DATTA

SACHIN DATTA, J. (ORAL)

1. The petitioners in the present petition primarily seek redressal of two grievances *viz.* forfeiture of bid security amounting to Rs.20,00,000/- by the respondent *vide* letter dated 05.07.2018 and deduction of Rs. 35,38,000/- by the respondent against the Goods and Service Tax (GST) from the partial lease premium paid by the petitioners.

2. The present petition has arisen in backdrop of a Letter of Acceptance (LOA) dated 13.11.2017 which was issued to the petitioners by the respondent for the work of 'developing multifunctional complex at the Kancharapara railway station site' (hereinafter '*the project*') for a period of 45 years. The terms and conditions stipulated in LOA reads as under:-

"LETTER OF ACCEPTANCE (LOA)

Sub: Development of Multi-Functional Complex (MFC) at Kancharapara Railway Station.

Ref: 1. RFP No. RLDA/RFP/MFC/3 of 2017 dated 04.08.2017

2. Your Eligibility proposal and Financial Proposal opened on 17.10.2017 and 08.11.2017 respectively

1. In reference to the Bid Document mentioned at ref (1) above, it is informed that your Eligibility proposal and Financial Proposal opened on 17.10.2017 and 08.11.2017 respectively has been accepted at your offered value of Rs.4,90,00,000/- (Rupees Four Crore and Ninety Lacs only) towards Lease Premium Rs. 2,45,000/- (Rupees Five Crore Nine Lacs Forty Five Thousand only) towards Annual Lease Rent and Rs. 5,09,57,550/- (Rupees Five Crore Nine Lacs Fifty Seven Thousand Five Hundred and Fifty only) towards Present Value of all the installments of Lease Premium and Annual Lease Rent over the full Lease period of 45 years by the Competent Authority towards Lease of 3043.05 sqm of railway land at Kancharapara Railway Station for Development of Multifunctional Complex (MFC) involving 4868.88 sqm Built Up Area as specified in the Bid Document.

2. As per Bid Form 12 of Part-III (instructions to Bidders and Bid Forms) of RLDA LDHB you are requested to pay Rs. 2,31,28,000/- (Rupees Two Crore Thirty One Lacs and Twenty Eight Thousand Only) towards the payment of first installment of Lease Premium alongwith Goods and Service Tax within 60 (sixty) days from the date of issue of this letter. The details are given below.

SI No.	*Description*	*Amount (in ₹)*
1.	*1st instalment of Lease Premium*	*1,96,00,000/-*
2.	*GST @ 18%*	*35,28,000/-*
	Total	*2,31,28,000/-*

3. As per clause 10 of Part-III (Instructions to Bidders and Bid Forms). You are also requested to make payment of Stage-I of Success Fee along with applicable Goods and Service Tax within 30 days of issue of this letter to RLDA's consultant, M/s JLL through RLDA.

4. You are requested to fulfill the conditions as per Article 26.0 of Part-I (Regulations for Bids and Lease Agreement) read with clause 11 of part-III (Instructions to Bidders and Bid Forms) between of the Bid Documents leading to execution of Lease Agreement will Rail Land Development Authority (RLDA) and all other conditions of the Bid Document referred above.

5. Till such time the Lease Agreement is executed between RLDA and the Special Purpose Company (SPC) created by you (hereby referred to as the "Lessee") this Letter of Acceptance (LOA) shall constitute a binding *contract with you for fulfilling the requirement of execution of Lease Agreement.*

6. The courts at Delhi alone shall have exclusive jurisdiction on matters pertaining of arising from this LOA.

7. You are requested to sign and return the duplicate copy of this Loa as a token of acceptance within 07 (seven) days of receipt of this LOA.

3. It is stated that pursuant to the issuance of LOA, the petitioner no.1 (a company engaged in the business of real estate development and hospitality industry across India) incorporated petitioner no.2 (Special Purpose Company) in compliance of the terms and conditions of the tender documents solely for the purpose of executing work awarded by the respondent.

4. Learned counsel on behalf of the petitioners submits that prior to the issuance of LOA, the petitioner no.1 deposited bid security of Rs. 20,00,000/- on 11.10.2017 with the respondent for the project.

5. It is further submitted that upon inspecting the project site, the petitioners on 17.11.2017 informed the respondent that the completion of development work is being hampered/hindered due to encroachment and unauthorized construction prohibiting any entry to the project site. It is averred in the petition that despite the aforesaid hinderances, since the respondent insisted on partial payment of the first instalment of the lease premium under the garb of expediting the removal of encroachments, the petitioners deposited Rs.1.5 crores towards part payment of lease instalment. It is further averred in the petition that although a joint inspection was conducted on 21.12.2017 and directions were passed by the respondent for removal of the encroachments, the encroachment remained intact and the

land was never handed over to the petitioners.

6. It is submitted that despite repeated reminders and communications made to the respondent by the petitioners, no action was under taken by the respondent to remove the hinderances from the project site and instead *vide* a letter dated 05.07.2018, the respondent cancelled the LOA awarded to the petitioner no.1 and also forfeited the bid security amount on account of non-payment of the first instalment of the lease premium. Furthermore, the respondent while refunding the partial lease premium paid by the petitioner deducted/withheld an amount of Rs. 35,38,000/- against GST and directed the petitioner to approach the GST authorities for its refund.

7. The learned counsel on behalf of the petitioners has submitted that the deduction of GST amount by the respondent is arbitrary and illegal inasmuch as:

i. According to paragraph- 2 of the LOA, towards the first instalment of lease premium the petitioner was required to make a payment of Rs. 2,31,28,000/- (i.e., first instalment of lease premium amounting to Rs. 1,96,00,000/- + GST of Rs. 35,28,000/-). The said paragraph reads as under:

"2. As per Bid Form 12 of Part-III (instructions to Bidders and Bid Forms) of RLDA LDHB you are requested to pay Rs. 2,31,28,000/- (Rupees Two Crore Thirty One Lacs and Twenty Eight Thousand Only) towards the payment of first instalment of Lease Premium alongwith Goods and Service Tax within 60 (sixty) days from the date of issue of this letter. The details are given below.:

SI No.	*Description*	*Amount (in ₹)*
1.	*1st instalment of Lease Premium*	*1,96,00,000/-*
2.	*GST @ 18%*	*35,28,000/-*
	Total	*2,31,28,000/-*

It is the case of the petitioner that the petitioner has merely made a part payment (Rs.1,50,00,000/-) against the first instalment of lease premium and no payment was made towards GST. It is also stated that no service was ever provided by the petitioner in terms of the contract executed between the parties.

ii. It is further submitted that the petitioner no.2 being a Special Purpose Company cannot avail return from GST and the amount appropriated towards GST by the respondent is not in accordance with law.

8. It is also averred in the petition that the tender of the petitioner was cancelled and security amount was forfeited by the respondent without providing the petitioner with an opportunity of hearing.

9. In the counter-affidavit filed on behalf of the respondent, a preliminary objection has been raised to the effect that the present writ petition is not maintainable inasmuch as Article 23 of General Conditions of Lease Agreement Part -II, Land Development Handbook (Rail Land Development Authority) (hereinafter 'GCLA'), specifically prescribes the procedure for dispute resolution. The same is in the following terms-

> *"23.2 Conciliation:-In the event of any Dispute between the Parties that is not settled mutually in terms of Article 23.1 above, either Party may call upon the Vice Chairman (or in his absence the Chairman) of RLDA and upon such reference the Dispute shall be referred to the Conciliation Committee. The Conciliation Committee shall be fully empowered to deal with all aspects of such reference including withdrawal, compromise or settlement of such Dispute or any part thereof. Upon such reference, the representatives of the Lessee and members of RLDA's Conciliation Committee shall meet no later than 10 (ten) days from the date of reference to discuss and attempt to amicably resolve the Dispute. If such meeting does not take place within the 10 (ten) day period or the Dispute is not amicably settled within 15 (fifteen) days of the meeting or the Dispute is not resolved as evidenced by the signing of written terms of*

settlement within 60 (Sixty) days of the reference to the Conciliation Committee in writing or such longer period as may be mutually agreed by the Parties, either Party may refer the Dispute to arbitration in accordance with the provisions of Article 23.5.

23.5.1 :-Arbitration:-In the event of any Dispute between the Parties hereto as to the construction or operation of this Agreement, or the respective rights and liabilities of the Parties on any matter in questions, Dispute on any account or as to the withholding by RLDA of any certificate to which the Lessee may claim to be entitled to, or if RLDA fails to take a decision within the time specified in this regard and in any such case, but except in any of the Excepted matters referred to in Article 23.4 of these conditions, the Lessee, after the time specified in this regard of its presenting its final \ claim on Dispute matters shall demand in writing that the Dispute or Difference be referred to arbitrations.

23.5.2:- The demand for arbitration shall specify the matters which are in question, or subject of the Dispute as also the amount of total and item wise claim. Only such Dispute, in respect of which the demand has been made, together with counter claims or set off, given by RLDA, shall be referred to arbitration and other matters shall not be included in the reference."

10. It is submitted by the learned counsel for the respondent that it is open for the petitioner to avail the aforesaid prescribed dispute resolution mechanism for release of its bid security amount and for adjudication of any other outstanding disputes between the parties, subject to the respondent's objections as regards maintainability of the claims in question.

11. Learned counsel on behalf of the petitioner contends that it is well settled that an alternate remedy under Arbitration and Conciliation Act, 1996 does not completely bar the jurisdiction of a High Court under Section 226 of the Constitution of India.

12. In ***Radha Krishna Industries vs State of Himachal Pradesh***, 2021 SCC OnLine SC 334 the Supreme Court has considered the scope of exercise of jurisdiction under Article 226 of the Constitution of India, in the

context of contractual disputes where there exist an alternate efficacious remedy. The relevant observations therein are as under:

> *"27. The principles of law which emerge are that:*
>
> *27.1. The power under Article 226 of the Constitution to issue writs can be exercised not only for the enforcement of fundamental rights, but for any other purpose as well.*
>
> *27.2. The High Court has the discretion not to entertain a writ petition. One of the restrictions placed on the power of the High Court is where an effective alternate remedy is available to the aggrieved person.*
>
> *27.3. Exceptions to the rule of alternate remedy arise where : (a) the writ petition has been filed for the enforcement of a fundamental right protected by Part III of the Constitution; (b) there has been a violation of the principles of natural justice; (c) the order or proceedings are wholly without jurisdiction; or (d) the vires of a legislation is challenged.*
>
> *27.4. An alternate remedy by itself does not divest the High Court of its powers under Article 226 of the Constitution in an appropriate case though ordinarily, a writ petition should not be entertained when an efficacious alternate remedy is provided by law.*
>
> *27.5. When a right is created by a statute, which itself prescribes the remedy or procedure for enforcing the right or liability, resort must be had to that particular statutory remedy before invoking the discretionary remedy under Article 226 of the Constitution. This rule of exhaustion of statutory remedies is a rule of policy, convenience and discretion.*
>
> *27.6. In cases where there are disputed questions of fact, the High Court may decide to decline jurisdiction in a writ petition. However, if the High Court is objectively of the view that the nature of the controversy requires the exercise of its writ jurisdiction, such a view would not readily be interfered with."*

13. Further, the Supreme Court in ***Empire Jute Co. Ltd. v. Jute Corpn. of India Ltd.***, (2007) 14 SCC 680 has also held as under:

> *"18. The power of judicial review vested in the superior courts undoubtedly has wide amplitude but the same should not be exercised when there exists an arbitration clause. The Division Bench of the High Court took recourse to the arbitration agreement in regard to one part of the dispute but proceeded to determine the other part itself. It could have*

refused to exercise its jurisdiction leaving the parties to avail their own remedies under the agreement but if it was of the opinion that the dispute between the parties being covered by the arbitration clause should be referred to arbitration, it should not have proceeded to determine a part of the dispute itself.

19. Similar question arose for consideration in Bisra Lime Stone Co. Ltd. *v.* Orissa SEB *[(1976) 2 SCC 167 : AIR 1976 SC 127] wherein it was held that the High Court may refuse to exercise its jurisdiction, if there exists a valid arbitration clause stating : (SCC p. 174, para 24)*

> *"24. It is then submitted that this Court should not use its discretion in favour of arbitration in a matter where it is a pure question of law as to the power of the Board to levy a surcharge. This submission would have great force if the sole question involved were the scope and ambit of the power of the Board under Sections 49 and 59 of the Act to levy a surcharge, as it was sought to be initially argued. The question in that event may not have been within the content of Clause 23 of the agreement. But all questions of law, one of which may be interpretation of the agreement, need not necessarily be withdrawn from the domestic forum because the court has discretion under Section 34 of the Arbitration Act or under Article 226 of the Constitution and that the court is better posted to decide such questions. The arbitration Clause 23 is a clause of wide amplitude taking in its sweep even interpretation of the agreement and necessarily, therefore, of Clause 13 therein. We are, therefore, unable to accede to the submission that we should exercise our discretion to withhold the matter from arbitration and deal with it ourselves."*

20. A similar view was taken by this Court in Sanjana M. Wig v. Hindustan Petroleum Corpn. Ltd. [(2005) 8 SCC 242] holding : (SCC p. 247, paras 12-13)

> *"12. The principal question which arises for consideration is as to whether a discretionary jurisdiction would be refused to be exercised solely on the ground of existence of an alternative remedy which is more efficacious. Ordinarily, when a dispute between the parties requires adjudication of disputed question of facts wherefor the parties are required to lead evidence both oral and documentary which can be determined by a domestic forum chosen by the parties, the Court may not entertain a writ application. (See Titagarh Paper Mills Ltd. v. Orissa SEB [(1975) 2 SCC 436] and Bisra Lime Stone Co. Ltd. v. Orissa SEB [(1976) 2 SCC 167 : AIR 1976 SC 127].)*

> *13. <u>However, access to justice by way of public law remedy would not be denied when a lis involves public law character and when the forum chosen by the parties would not be in a position to grant appropriate relief.</u>"*

21. Relying on some of the earlier decisions of this Court, this Court held: (Sanjana M. Wig case [(2005) 8 SCC 242], SCC p. 248, para 18)
"18. It may be true that in a given case when an action of the party is dehors the terms and conditions contained in an agreement as also beyond the scope and ambit of the domestic forum created therefor, the writ petition may be held to be maintainable; but indisputably therefor such a case has to be made out. It may also be true, as has been held by this Court in Amritsar Gas Service [Indian Oil Corpn. Ltd. v. Amritsar Gas Service, (1991) 1 SCC 533] and E. Venkatakrishna [E. Venkatakrishna v. Indian Oil Corpn., (2000) 7 SCC 764] that the arbitrator may not have the requisite jurisdiction to direct restoration of distributorship having regard to the provisions contained in Section 14 of the Specific Relief Act, 1963; but <u>while entertaining a writ petition even in such a case, the court may not lose sight of the fact that if a serious disputed question of fact is involved arising out of a contract qua contract, ordinarily a writ petition would not be entertained. A writ petition, however, will be entertained when it involves a public law character or involves a question arising out of public law functions on the part of the respondent."</u>

22. The legal position has undergone a substantial change, having regard to Section 5 of the Arbitration and Conciliation Act, 1996 visà-vis provisions of the Arbitration Act, 1940. The said provision reads as under:

> *"5. Extent of judicial intervention.— Notwithstanding anything contained in any other law for the time being in force, in matters governed by this Part, no judicial authority shall intervene except where so provided in this Part."*

14. In the present case, the adjudication of the controversy between the parties would involve an intricate factual inquiry for the purpose of attribution of breach of contract. The same would also involve interpretation of the terms of the contract, which is best left to be done by the authority contemplated under the contract itself *viz.* a duly constituted Arbitral

Tribunal.

15. In the circumstances, this Court is not inclined to bypass the contractually prescribed mechanism for dispute resolution and embark upon an adjudicatory exercise in exercise of jurisdiction under Article 226 of the Constitution of India.

16. In the circumstances, the present petition is disposed of with liberty to the parties to take recourse to the contractually prescribed dispute resolution mechanism, in accordance with law.

17. All rights and contentions of the parties on the merits of the *inter se* controversy, are left open to be considered in appropriate proceedings.

SACHIN DATTA, J

MARCH 24, 2025/*at/sl*