IN THE HIGH COURT OF ANDHRA PRADESH AT AMARAVATI

WRIT APPEAL NO: 1130 of 2026

M/s. Maytas Vasistha Varadhi Ltd., ...Appellant

Vs.

The State of Andhra Pradesh and Others ...Respondent(s)

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CORAM : THE CHIEF JUSTICE LISA GILL
SRI JUSTICE CHALLA GUNARANJAN

DATE : 5th October 2026

Present:

Advocate for Appellant: MR. C V R RUDRA PRASAD

Advocate for Respondents: GP FOR ROADS & BUILDINGS

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JUDGMENT: (per Hon'ble Sri Justice Challa Gunaranjan)

Present intra-Court appeal, under Clause 15 of Letters Patent, is directed at the instance of unsuccessful writ petitioner, assailing the order, dated 03.09.2026, in W.P. No.10913 of 2011, whereby learned Single Judge dismissed the writ petition.

2. (a) Appellant preferred subject writ petition challenging G.O.Rt.No.319, Transport, Roads and Buildings (R.1) Department, dated 16.04.2011, issued by 1st respondent, whereby it was ordered for termination of concession agreement and further invoke bank guarantee furnished by writ petitioner, besides calling for fresh

tenders, duly recasting the estimates for the work in question. The appellant, having participated in the bidding process in pursuance to tender notice, dated 26.11.2007, was awarded the contract for design, construction, finance, operation and maintenance of a two-lane bridge across Vasista Branch of River Godavari under Build, Own, and Transfer (BOT) on annuity basis (hereinafter referred to as "contract"), and accordingly, Concession Agreement, dated 09.07.2008, was entered into.

(b) As per the said Agreement, appellant had to achieve financial closure of project within 180 days from the date of Agreement, with further extension of 180 days subject to an advance weekly payment of ₹10,000/- per week or part thereof for any delay beyond initial 180 days. The appellant had furnished ₹80,00,000/- towards bid security on 14.01.2008, and later, upon execution of the Agreement, furnished Bank Guarantee for ₹1,33,14,000/- and ₹1,99,71,000/- towards Performance Security, which have been extended from time to time and valid up to 27.06.2011.

(c) Subsequently, appellant had also sought for inclusion of new member as concessionaire, which was accepted and an amended Concession Agreement, dated 20.02.2009, was entered into. Appellant failed to achieve financial closure within initial period

of 180 days, thus, extension of time was granted for further 180 days. Even then, financial closure was not achieved before 08.09.2007. However, respondents stated to have granted extension of time up to 05.01.2010. After inducting new member as concessionaire, appellant stated to have secured financial tie-up, and thereafter, at its request, the Managing Director-cum-Chief Engineer of 2nd respondent addressed letter, dated 24.06.2010, to 1st respondent for approval of the proposed modifications to terms and conditions of Concession Agreement.

(d) While the same was pending, 2nd respondent invoked Bank Guarantee on 21.09.2010, and simultaneously, Technical Committee was constituted vide G.O. Rt. No. 894, Transport, Roads and Buildings (R.I) Department, dated 21.09.2010, to examine the issue. Thereafter, impugned G.O. had been issued terminating the Agreement and also for encashment of Bank Guarantees. Aggrieved by the same, writ petition was preferred.

3. Initially, the writ petition was allowed by learned Single Judge by order, dated 13.06.2023. However, the same was set aside, by judgment, dated 31.07.2023, in Writ Appeal No.651 of 2023, and the matter was remanded to learned Single Judge. Learned Single Judge, by impugned order, dismissed the writ petition.

4. Heard Mr.C.V.R. Rudra Prasad, learned counsel for appellant and Mr.D.Yathindra Dev, learned Special Government Pleader, attached to the office of learned Advocate-General, for respondents.

5. Learned counsel appearing for appellant contended that impugned G.O. proposing to terminate the Concession Agreement was not preceded by any notice, particularly as contemplated under Clause 30.1.1 of the said contract, thus, is not only contrary to terms and conditions of the contract, but also is in violation of principles of natural justice. He further contended that when the Managing Director-cum-Chief Engineer of 2nd respondent recommended the case of appellant for further extension of time by proposing appropriate amendments to terms and conditions of contract, even before the same came to be deliberated by 1st respondent, respondents ought not to have invoked Bank Guarantee at first instance. He also submitted that as presently, proceedings are pending before NCLT against the appellant, and the matter is seized up, in view of the orders passed by NCLAT on 15.10.2018, there cannot be any adverse precipitative action against the appellant, including that of encashment of Bank Guarantee. Therefore, learned Single Judge failed to properly appreciate aforesaid aspects and

erroneously dismissed the writ petition, thus, urged to allow the appeal by setting aside the impugned order.

6. Learned Special Government Pleader appearing for respondents, while supporting the order under challenge, contended that by virtue of operation of Clause 22.4 and 22.5, the moment financial closure is not achieved within the stipulated time, the contract automatically stands cancelled in view of deeming friction, thus, question of issuing any notice does not arise. He further submitted that admittedly, the last extension of time expired by 05.01.2010, and by then, appellant had not achieved financial closure, thus, on face of it, the breach is apparent. He also submitted that respondents have, though initially took steps for invocation of Bank Guarantee on 21.09.2010, on account of constitution of Technical Committee vide G.O.Rt.No.894, dated 21.09.2010, awaited for the report before any further action is taken, and only after the recommendation of Technical Committee, decision was made to terminate the contract and invoke Bank Guarantee. According to learned Special Government Pleader, though by operation of deeming provision, the contract stood terminated, yet Government had issued impugned G.O. having regard to the constitution of Technical Committee for evaluating the said issue. Further, it is

submitted that mere pendency of proceedings before NCLT would in no manner affect the termination of contract or, for that matter, invocation of bank guarantee which was done much before the initiation of such proceedings. Lastly, it is submitted that appellant, instead of availing the remedy as envisaged under the contract by resorting to arbitration and conciliation, filed writ petition, which is clearly not entertainable, thus, pleaded for dismissal of appeal.

7. We have given our anxious consideration to the submissions of learned counsels and perused the record.

8. Appellant was awarded the contract, and Concession Agreement was entered into on 09.07.2008. Clause 22 of the contract, dealing with financing arrangements, envisages that appellant had to achieve financial closure within 180 days from the date of signing of the Agreement. If, in case, appellant failed to achieve within aforesaid time, it is entitled to a further period of 180 days, subject to an advance weekly payment of a sum of ₹10,000/- per week or part thereof for any delayed period beyond initial 180 days. Thus, in all, the Agreement envisaged an outer limit of 360 days for financial closure, failing which consequences have been clearly set out in Clause No. 22.4 and 22.5, which read as under:

> "**22.4.** Notwithstanding anything to the contrary contained in this Agreement, if the Financial Close shall not occur within 360 (three hundred sixty) days as set forth in Clause 22.2 above, all rights, privileges, claims and entitlements, if any, of the Concessionaire under or arising out of this Agreement shall be deemed to have been waived by and to have ceased with the concurrence of the Concessionaire, and the Concession Agreement shall be deemed to have been terminated by mutual agreement of the Parties.
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> **22.5.** Upon Termination of this Agreement under any of the above Clause 22.2, 22.3, 22.4, the Client shall be entitled to encash the Performance Security, and appropriate the proceeds thereof as Damages."

9. No doubt under Clause 30.1.1, in case of default by appellant before termination of the contract, a termination notice is envisaged for curing the breach, in the given facts and circumstances, having regard to nature of breach, which is completely not capable of being cured, we are of the view that even if the said Clause is to operate, issuance of termination notice would be of no consequence. Besides that, learned Single Judge, having noticed the non-obstante clause in Clause 22.3 and 22.4, held that the same would otherwise prevail over Clause 30.1.1, which envisages issuance of termination notice. We do not find any infirmity with the view expressed by learned Single Judge.

10. Insofar as the other contention that when proposal of Managing Director-cum-Chief Engineer of 2nd respondent for further extension

of time and amendment of terms and conditions of contract were pending consideration before 1st respondent, either termination or invocation of Bank Guarantee is bad and impermissible, we are of the view that as the Technical Committee constituted to examine the issue has negated any further extension of time beyond the period stipulated in the contract, followed by issuance of impugned G.O., the same cannot be found fault with and the termination of Agreement as well as invocation of Bank Guarantee are absolutely in consonance with contractual terms, thus do not call for any interference.

11. The facts as set out and emanating from record clearly indicate that it is a simple case of breach of timelines specified in financial closure of project and grant of further extension of time in modification of terms and conditions of contract. Admittedly, even according to appellant, the timeline specified for financial closure, i.e., 180 days, and further extendable by another 180 days, expired on 04.01.2009, and even thereafter, further extension was granted till 05.01.2010, which in our view, is also beyond the time stipulated under the contract. Until and unless the terms and conditions of contract are amended, even such further extension ought not to have been granted. The issues raised before us clearly fall under the realm of contractual obligations, therefore, when once respondents initiated

steps for cancellation of contract and, consequently, invoked bank guarantee, appellant/writ petitioner, in normal course, should have availed appropriate remedy envisaged under the contract, i.e., resorting to arbitration rather than invoking writ jurisdiction. In any event, as the issue raised has already been addressed by learned Single Judge on merits, we do not see any reason for relegating appellant to avail any other remedies.

12. Though learned counsel for appellant made a half-hearted attempt by referring to the orders passed by NCLAT to contend that encashment of Bank Guarantee at this stage would be impermissible when CIRP proceedings are pending, as the very same order clearly stated that directions issued therein would not be applicable to proceedings pending in writ petition before High Courts, the said order would not be of any help to the appellant.

13. The learned Single Judge, in our considered view, has rightly decided the issues against the appellant/writ petitioner, which do not call for any interference.

14. Writ Appeal, accordingly, is devoid of merit and dismissed. No order as to costs.

As a sequel, miscellaneous petitions pending, if any, shall stand closed.

LISA GILL, CJ **CHALLA GUNARANJAN, J**

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