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THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)

Case No. : WA/313/2024

M/S FEEDBACK INFRA PVT LTD
THROUGH RESOLUTION PROFESSIONAL RAJNEESH KUMAR AGGARWAL
HAVING ITS REGISTERED OFFICE AT 311, VARDHMAN PLAZA, POCKET7, PLOT NO. 6, SECTOR 12, DWARKA, NEW DELHI- 110078 THROUGH ITS AUTHORISED REPRESENTATIVE VISHWAJEET MALIK, AGED 52 YEARS S/O LATE M.N. MALLIK R/O RAJ AVENUE, APARTMENT DLF, SHAHIBABAD, GHAZIABAD- 201005.

VERSUS

UNION OF INDIA AND 2 ORS
THROUGH THE SECRETARY, MINISTRY OF ROAD TRANSPORT AND HIGHWAYS, TRANSPORT BHAWAN, 1, PARLIAMENT STREET, NEW DELHI- 110001.

2:NATIONAL HIGHWAYS AND INFRASTRUCTURE DEVELOPMENT CORPORATION (NHIDCL)
MINISTRY OF ROAD TRANSPORT AND HIGHWAYS
GOVT. OF INDIA
1ST AND 2ND FLOOR
TOWER- A
WORLD TRADE CENTRE
NAOROJI NAGAR
NEW DELHI- 110029.
ALSI AT- REGIONAL OFFICE- GUWAHATI
2ND FLOOR
AGNISHANTI BUSINESS PARK
OPP. AGP OFFICE
GNB ROAD
AMBANI
GUWAHATI- 781001.

3:EXECUTIVE DIRECTOR (T)
NATIONAL HIGHWAYS AND INFRASTRUCTURE DEVELOPMENT
CORPORATION (NHIDCL)
MINISTRY OF ROAD TRANSPORT AND HIGHWAYS
GOVT. OF INDIA
1ST AND 2ND FLOOR
TOWER-A
WORLD TRADE CENTRE
NAROJI NAGAR
NEW DELHI

Advocate for the Petitioner : N GAUTAM, MR. K N CHOUDHURY,

Advocate for the Respondent : DY.S.G.I., MRS. R DEVI,SC, NHIDC

BEFORE
HONOURABLE THE CHIEF JUSTICE
HONOURABLE MR. JUSTICE N. UNNI KRISHNAN NAIR

Date of Hearing : 06.03.2025

Date of Judgment : 17.03.2025

JUDGMENT & ORDER (CAV)

(N. Unni Krishnan Nair. J)

Heard Mr. K. N. Choudhury, learned Senior Counsel assisted by Mr. Rajive R. Raj, learned counsel and Mr. N. Gautam, learned counsel appearing on behalf of the appellant. Also heard Mr. K. Deka, learned counsel appearing on behalf of Ms. R. Devi, learned CGC representing the respondent no. 1 and Mr. P. J. Saikia, learned Senior Counsel along with Ms. R. Bora, learned Standing Counsel, NHIDCL representing the respondent nos. 2 & 3.

2. The appellant, by way of instituting the present intra-court appeal has presented a challenge to an order dated 23.07.2024, passed by the learned Single Judge in WP(C) No. 3368/2024, dismissing the same and thereby rejecting the prayer of the appellant for an interference with a Termination Order dated 24.04.2024, issued by the respondent no. 3 herein, terminating the contract entered into with the appellant

and its Joint Venture partner for providing "**Consultancy Services for authorities Engineer for Supervision of Widening/Improvement of 4(four) Lane with Paved Shoulder from Km 95+400 to Km 113+330 of near Ganpat Gaur Gaon to Kwaram Taro Village Section (Package 5) of NH-29 in the State of Assam under Bharatmala Pariyojana on EPC Mode".**

3. In pursuance to a Request For Proposal (RFP) dated 19.04.2021, issued by the National Highways & Infrastructure Development Corporation Limited (herein after referred as NHIDCL), for providing "**Consultancy Services for authorities Engineer for Supervision of Widening/Improvement of 4(four) Lane with Paved Shoulder from Km 95+400 to Km 113+330 of near Ganpat Gaur Gaon to Kwaram Taro Village Section (Package 5) of NH-29 in the State of Assam under Bharatmala Pariyojana on EPC Mode".** The appellant along with M/s Armenge Engg. and Management Consultant Pvt. Ltd, as a Joint Venture entity submitted its bid. The bid as submitted by the appellant and its Joint Venture partner being found to be the most suitable, came to be awarded the contract by the respondent no. 2 vide issuance of a Letter of Acceptance (LOA) dated 04.08.2021. On execution of the Contract Agreement, the respondent no. 2 vide communication dated 25.10.2021, issued the notice to proceed with the work.

4. On account of certain deficiencies identified by the respondent no. 2, the appellant and its Joint Venture partner was issued with a notice for suspension of services dated 18.02.2022. The appellant and its Joint Venture partner were required to cure the defects, failing which, it was contended that measures would be initiated for termination of the services, in terms of the provisions of the Consultancy Service Agreement. The appellant, submitted a reply against the notice for suspension dated 18.02.2022, on 28.02.2022. The respondent no. 2, not being satisfied with the reply so submitted by the appellant, proceeded to issue a show-cause notice dated 19.10.2023, requiring the appellant to remedy the failures and on failure, it was contended that the contract in question shall be terminated. The appellant, admittedly, did not submit any response to the show-cause notice dated 19.10.2023 and

accordingly, on completion of the period so mandated, the respondent no. 3 proceeded to issue communication dated 24.04.2024, terminating the contract by invoking the provisions of Clause 2.9.1 of the General Conditions of Contract (GCC) of the Contract Agreement. The said communication dated 24.04.2024, issued towards terminating the contract entered into with the appellant and its Joint Venture partner, by the respondent no. 2, was followed by a Debarment Notice dated 13.05.2024; by which, in terms of the provisions of the Contract, the Joint Venture of the appellant and its partner, came to be debarred from participating in future projects of NHIDCL either directly or indirectly for a period of 2(two) years, in accordance with the provisions of Clause 2.9.7 of the GCC as incorporated in the Contract Agreement.

5. The appellant being aggrieved by the Debarment Notice dated 13.05.2024, approached the writ Court by way of instituting a Writ Petition being WP(C) No. 2934/2024.

6. The learned Single Judge, on considering the issues arising in the matter and also upon hearing the learned counsel for the parties and on perusal of the materials brought on record, was pleased vide order dated 05.06.2024 to set aside the Debarment Notice dated 13.05.2024, as being arbitrary and hit by the provisions of Article 14 of the Constitution of India.

7. The appellant, also, instituted a Writ Petition being WP(C) No. 3368/2024 before the writ Court, assailing the Termination Order dated 24.04.2024.

8. The learned Single Judge, on consideration of the issues arising in the proceeding and also upon hearing the parties and on perusing the materials brought on record, was pleased vide order dated 23.07.2024, to dismiss the said Writ Petition being WP(C) No. 3368/2024 with liberty to the appellant to invoke the Arbitration Clause for redressal of its grievance. The operative portion of the impugned order dated 23.07.2024 is extracted herein below: -

> "***6. I have heard the learned counsels for the parties. As can be seen from the***

submissions made by the counsels for the parties and the contents of the writ petition, the petitioner was given the contract for consultancy services, for supervising the widening of a road construction work given to some other contractor. A contract agreement was signed between the petitioner and the respondent authorities on 21.10.2022 and the contract agreement was to be valid for a period of 2 years. Two days shy of the expiry of the contract period, i.e. on 19.10.2023, a show-cause notice was issued to the petitioner by the respondent Nos.2 and 3, stating that the petitioner had failed to perform its duties and responsibilities, by not mobilizing key personnel at the site to supervise the road contract. Para 11, 12, 13, 18, 19 and 20 of the show-cause notice dated 19.10.2023 are reproduced herein below as follows: -

> ***11. WHEREAS, approval conveyed vide IIQ letter no.1558 dated 29.04.2022 for replacement of Team Leader cum Sr. Highway Engineer. Resident cum Highway Engineer & St. Quality cum Material Expert. However, the consultant failed to deploy the team.***
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> ***12. WHEREAS, the by PMU-Diphu vide letter dated 21.06.2023, the actual deployment of the Team Leader cum Sr. Highway Engineer (TL) was from 22.06 2022 but the individual has been absent since 18.07.2022 to till date and having attendance only 4.3%.***
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> ***13. WHEREAS, the Resident Engineer joined the project site on 01.03.2023 but has been absent since 29.03.2023 having attendance 4.6% only. Similarly, the Senior Quality cum Material Expert joined on 21.05.2022 but has also left the project sited since 01.03.2023 having attendance 47.17%. At present there is no Key Personnel mobilized at site.***
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> ***.....***
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> ***.....***
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> ***18. WHEREAS, the Authority's Engineer has failed to perform the deliver its duties and responsibilities as Authority's Engineer in absence of Key Personnel in the project site.***
>
> ***19. WHEREAS, the authority under Cl.. 2.9.1 (f) of GCC "If the client in its sole discretion and for any reason whatsoever, decides to terminate this contract" in reference of occurrence of any of the events specified under (1.. 2.9.1 (a) to (h).***
>
> ***20. In light of the above, the authority has issued this Show Cause Notice without prejudice to rights of NIIIDCL available under the relevant provisions of the Consultancy Agreement as well as under applicable laws on failure of the firm to remedy the failures. The Authority's Engineer to submit its reply and action taken within 60 days under CL.***

2.9.1 (a) to (h) failure to which the Contract shall be terminated."

7. The petitioner, however, did not submit any reply to the show-cause notice dated 19.10.2023. Subsequently, the impugned termination order dated 24.04.2024 was issued, whereby the contract between the petitioner and the respondent NHIDCL was terminated, as can be seen from Para 14 to 19 of the impugned termination order, which are as follows: -

"14. However, till date, no response from the Consultant has been received regarding the Show Cause Notice dated 19.10.2023 and neither the Consultant has improved its performance, which clearly depicts the lackadaisical attitude of the Consultant towards the execution of the project

15. Whereas, even after the lapse of 60 days' time period for replying to the Show Cause Notice, the Authority provided time to the Consultant to improve its performance, but the Consultant has terribly failed to show any improvement.

16. In light of the aforesaid, non-exhaustive fundamental breach and in view of the Consultant's persistent & sustained gross default in fulfilling contractual obligation, the Authority is left with no other option but to Terminate this contract in accordance with the provisions under C1. 2.9.1 of GCC of the Contract Agreement on account of consultant default with immediate effect.

17. Upon termination of the Contract on account of Consultant's Default, the relevant provisions of the Contract Agreement would henceforth apply.

18. In pursuance of this Termination order, your firm shall perform no further services other than those reasonably necessary to close this Contract Agreement.

19. This Termination Order is being issued without prejudice to Authority's right to claim damages and/or to realize any dues, losses and damages and/or to exercise any other right or remedy on account of Consultant's failure to comply with its obligations under this Contract Agreement, which may be available now or in future under the Contract Agreement or under the applicable laws or otherwise, as the case may be."

8. In view of clause 8.4 of the contract agreement providing for arbitration for resolution of disputes between the parties, this Court is of the view that the petitioner would have to avail the arbitration clause for making a challenge to the impugned termination order. Clauses 8.4, 8.4.1 and 8.4.2 of the contract agreement are reproduced herein below as follows: -

"8.4 Arbitration

8.4.1 Any Dispute which is not resolved amicably by conciliation, as provided in Clause 8.3. shall be finally decided by reference to arbitration by an Arbitral Tribunal appointed in accordance with Clause 8.4.2. Such arbitration shall be

held in accordance with the Rules of Arbitration of the International Centre for Alternative Dispute Resolution, New Delhi (the "Rules"), or such other rules as may be mutually agreed by the Parties, and shall be subject to the provisions of the Arbitration and Conciliation Act, 1996 as amended. The venue of such arbitration shall be ** and the language of arbitration proceedings shall be English.***

8.4.2 Fach dispute submitted by a Party to arbitration shall be heard by a sole arbitrator to be appointed as per the procedure below: -

(a) Parties may agree to appoint a sole arbitrator or, failing agreement on the identity of such sole arbitrator within thirty(30) days after receipt by the other Party of the proposal of a name for such an appointment by the Party who Initiated the proceedings, either Party may apply to the President, Indian Roads Congress, New Delhi for a list of not fewer than five nominees and, on receipt of such list, the Parties shall alternately strike names there from, and the last remaining nominee on the list shall be sole arbitrator for the matter in dispute. If the last remaining nominee has not been determined in this manner within sixty (60) days of the date of the list, the president, Indian Roads Congress, New Delhi, shall appoint, upon the request of either Party and from such list or otherwise, a sole arbitrator for the matter in dispute."

9. The petitioner's counsel has also taken a stand that the impugned termination order is a blacklisting/debarment order, which does not allow him to participate in other tenders. A perusal of the impugned termination order, however, does not indicate that the same is a blacklisting/debarment order. Though the petitioner has annexed two tenders, which prohibits the petitioner from participating in the bidding process due to the petitioner's termination from a contract work, in terms of the impugned order dated 24.04.2024, this Court finds that the petitioner has not put to challenge the said clauses in the tenders, where the petitioner has been barred from participating in the bid process. In any event, the impugned termination order, is not an order blacklisting the petitioner from participating in any future bidding process.

10. In the case of Gorkha Security Services (supra) and UMC Technologies Private Limited (supra), the Supreme Court has held that a show-cause-notice prior to blacklisting has to be issued, giving the precise case set up against the person against whom the penalty of blacklisting is to be imposed. However, the present case is not related to blacklisting the petitioner from participating in any future tender. The problem lies in the fact that in the two tenders that have been annexed to the writ petition, there is a clause barring person whose contracts have been terminated, from participating in the bidding process. This clause barring the petitioner from participating in the bidding process, does not ipso facto mean that the impugned termination order issued to the petitioner is a blacklisting order. The petitioner had all the time to make a challenge to the clause in the tender notice denying him participation from the bidding process. However, the petitioner has however not done the same. Further, the petitioner has only annexed two tender notices. There is

nothing to show that all the tender notices issued by different authorities have a clause barring a person whose contract was terminated from participating in the bidding process. The petitioner has also not made any reply to the show-cause-notice issued by the respondents. In that view of the matter, this Court is of the view that the two Supreme Court cases cited above are not applicable to the facts of this case.

11. In the case of M/s Kulja Industries Limited (supra), the Supreme Court has held that because blacklisting is in the nature of penalty, the quantum whereof is a matter that rests primarily with the authority competent to impose the same. As stated earlier, the petitioner had not may any reply to the show-cause-notice dated 19.10.2023, though the show-cause-notice had clearly stated that failure to submit any reply within 60 (sixty) days could result in the contract being terminated. As such, this Court is of the view that the judgments relied upon by the petitioner does not support the petitioner's case that the termination of the contract was disproportionate. In any event, this issue is to be decided by the competent authority.

12. In the case of Union of India & Others vs. Tantia Construction Private Limited, the Supreme Court has held that an alternative remedy, including an Arbitration Clause in a contract agreement, is not an absolute bar to the invocation of the writ jurisdiction of a High Court. It has held that even without exhausting such alternative remedy, a writ petition would be maintainable. However, it is clear that the writ jurisdiction of a High Court is a discretionary power and only because there is no bar for this Court to invoke its writ jurisdiction, it does not mean that it has to invoke the said jurisdiction.

13. In the case of Whirlpool Corporation vs. Registrar of Trade Marks, Mumbai & Others', the Supreme Court has held that the High Court under Article 226 has the discretion to entertain or not to entertain a writ petition in at least 3 contingencies, namely where the writ petition has been filed for (i) the enforcement of any of the fundamental rights or (ii) where there has been a violation of principles of natural justice or (iii) where the order or proceedings are wholly without jurisdiction or the vires of an Act is challenged. In the present case, none of the three contingencies stated above are present. Further, as the petitioner had not submitted any reply to the show-cause-notice dated 19.10.2023 and as there is an Arbitration Clause for resolving the disputes between the parties, this Court is not inclined to exercise it's discretion in the present case.

14. In view of the reasons stated above, the writ petition stands dismissed, with liberty being given to the petitioner to invoke the arbitration clause for redressal of its grievance."

9. Mr. K. N. Choudhury, learned Senior Counsel, assailing the decision of the learned Single Judge has submitted that the National Company Law Tribunal, on proceedings

being instituted before it by the Corporate Creditors, had vide order dated 11.01.2024; imposed a moratorium as provided under Section 14 of the Insolvency and Bankruptcy Code, 2016 (herein after referred to as the IBC), upon the appellant company i.e., the Corporate Debtor and had appointed a Resolution provider for managing the affairs of the appellant/Corporate Debtor. Mr. Choudhury, learned Senior Counsel has submitted that the order of termination dated 24.04.2024 has the effect of the appellant being now prevented from participating in other bidding processes, inasmuch as, the RFP and/or NITs issued by various organizations have a Clause therein, to the effect that intending bidders who had suffered a termination of their contract in pursuance to earlier process of RFP and/or NIT, would not be eligible to participate in the RFPs/NITs so issued. Mr. Choudhury has further submitted that the intention behind the appointment of the Resolution provider is to keep the Corporate Debtor, which in the present case is the appellant, as a going concern, the Termination Order as issued by the respondent no. 2 has the effect of debarring the appellant from participating in other bidding processes, which would result in its corporate death. Mr. Choudhury has further submitted that the same would also be in clear violation of the intention behind the enactment of the IBC.

10. In support of his such contention, Mr. Choudhury, learned Senior Counsel has referred to the various provisions of the IBC and has contended that a declaration is called upon to be so issued by this Court, to the effect that notwithstanding the termination of the contract entered into with the appellant as well as its Joint Venture partner by the respondent no. 2, the same should not be held against the appellant and it should not be barred from participating in future bidding processes, issued by various organizations.

11. Mr. Choudhury has fairly submitted that with regard to the termination so effected vide the communication dated 24.04.2024, the appellant would take recourse to the provisions of the Arbitration Act in terms of the provisions of Clause 8.4 of the Contract Agreement, however, with view to keep the appellant company as a going

concern, a declaration by this Court to the effect that the termination of the contract entered into by it with the respondent no. 2, would not debar the appellant from participating in further bidding processes that would be so issued from time to time by various organizations, is called upon to be issued.

12. Mr. Choudhury, learned Senior Counsel has by drawing our attention to the Termination Order dated 24.04.2024, by which the contract in question was terminated by the respondent no. 2, contended that the grounds assigned therein, are vague and basing thereon, the said Termination Order was not mandated to be so issued. Mr. Choudhury has submitted that the respondents have projected that the appellant had not submitted its reply to the show-cause notice dated 19.10.2023, however, while projecting the said contention, the respondent no. 2 has ignored the fact that the appellant herein was prevented from submitting its due replies in the matter only on account of the fact that the appellant was experiencing working capital issues and also commencement of Corporate Insolvency Resolution Plan (CIPR) proceedings by its Corporate Creditors. Further, it was highlighted by Mr. Choudhury, that on account of the said eventuality happening, the employees of the appellant had also left their services, for which, the appellant was handicapped from appropriately responding to the show-cause notice dated 19.10.2023.

13. In the above premises, Mr. Choudhury has submitted that the learned Single Judge while drawing conclusions in the matter, failed to appreciate that there was a necessity under the provisions of the IBC for taking measures towards keeping the Corporate debtor as a going concern. Accordingly, Mr. Choudhury submits that the order of the learned Single Judge would mandate an interference to the extent that it did not clarify that the Termination Order notwithstanding, the appellant herein, would be eligible to participate in future bidding processes in pursuance to RFPs/NITs, that would be issued by the various organizations.

14. Per contra, Mr. P. J. Saikia, learned Senior Counsel appearing for the respondent

nos. 2 & 3 has at the outset, submitted that the termination of the Contract entered into with the appellant and its Joint Venture partner was not on account of initiation of CIRP proceedings under the IBC against the appellant herein. Mr. Saikia has submitted that the deficiency of service on the part of the appellant and its Joint Venture partner, having come to the forefront, the contract in question came to be terminated vide the order dated 24.04.2024, by strictly following the provisions of the Contract Agreement involved and after a notice in this connection, was issued to the appellant on 19.10.2023. Mr. Saikia, learned counsel has submitted that the contract entered into with the appellant and its Joint Venture partner, was a determinable contract and in the event, this Court is pleased to interfere with the said termination, on the ground that the petitioner is presently facing proceedings under the IBC, it would have the effect of such determinable contract being treated as a non-determinable contract.

15. Mr. Saikia has further submitted that the respondent nos. 2 & 3, in terminating the contract agreement entered into with the appellant and its Joint Venture partner, had not violated any of the provisions of the IBC. It was further submitted that material breaches of the contract agreement having occasioned and multiple opportunities having been granted to the appellant to cure the defect, the same having not being so done, the termination of the contract effected vide the communication 24.04.2024 would not mandate any interference.

16. Mr. Saikia has submitted that on termination of the contract occasioning, the provisions of the Contract Agreement, more particularly, provisions of Clause 2.9.7 mandates that as a natural consequence of the termination, due to the Consultant's failure, the Consultant shall be deemed to have been debarred for a period of 2(two) years and shall not be eligible to bid for any contract of the authority either singularly or jointly, or its related parties. However, Mr. Saikia has fairly submitted that the interference with the debarment order made vide order dated 05.06.2024; passed by the learned Single Judge in WP(C) No. 2934/2024 has not been assailed by the respondent nos. 2 & 3. He further submits that the termination having so occasioned,

the appellant firm would be eligible in terms of the provisions of the Contract Agreement, more particularly, the provisions of Clause 8.4 to take recourse to Arbitration and the learned Single Judge, having also provided for the said eventuality, no error can be attributed to the conclusions reached by the learned Single Judge in the impugned order dated 23.07.2024.

17. We have heard the learned counsels appearing on the parties and also perused the materials available on record.

18. At the outset, it is to be noted that the learned Senior Counsel for the appellant had submitted that the appellant would take recourse to Arbitration, in accordance with the provisions of Clause 8.4 of the Contract Agreement for redressal of its grievance, pertaining to the termination of the Contract Agreement entered into with it and its Joint Venture partner, by the respondent no. 2. However, Mr. Choudhury has submitted that in view of the fact that the appellant is presently brought under the CIPR proceedings, and there being a necessity of keeping the appellant company, being a Corporate Debtor, as a going concern, the termination of the Contract Agreement notwithstanding, the appellant is to be permitted to participate in future bidding processes, in its line of work, in pursuance to RFPs/NITs issued by other organizations. The learned counsel for the appellant has accordingly, limited his challenge to the order of the learned Single Judge to the above extent only.

19. The said aspect of the matter was considered by the learned Single Judge and the learned Single Judge had concluded that the termination of the contract occasioning, cannot be construed to be a debarment of the appellant from participating in future bidding processes. The learned Single Judge, further proceeded to conclude that although the appellant had annexed two tenders, wherein, clauses existed restraining the appellant from participating in the bidding process involved, on account of the termination of the Contract Agreement entered into by it with the respondent no. 2, the provisions so existing in the tenders referred to by the appellant

in the Writ Petition, were not put to challenge, although he had all the time to do so.

20. Having noticed the above position, the learned Single Judge while not interfering with the termination of contract so effected vide the communication dated 24.04.2024, had granted liberty to the appellant to invoke the Arbitration clause existing in the Contract Agreement for redressal of his grievance.

21. We further find from the materials available on record that the Contract Agreement entered into by the appellant along with its Joint Venture partner with the respondent no. 2, was not so terminated, on account of the fact that the appellant was subjected to CIPR proceedings, but, was so terminated on account of the deficiency in service on the part of the appellant and its Joint Venture partner. Further, such termination was so done, after a show-cause notice in this connection, was issued to the appellant and its Joint Venture partner by the respondent no. 2 on 19.10.2023, against which the appellant had not submitted any response. Accordingly, we are of the considered view that no provision of the IBC came to be violated on account of the termination of the contract entered by the respondent no. 2 with the appellant and its Joint Venture partner.

22. The contention of the appellant with regard to the termination of its contract and that the same to so based on non-existent ground and/or on vague grounds, would not mandate a consideration in the present proceedings, inasmuch as, the appellant has already undertaken to take recourse to Arbitration for redressal of its grievance in this connection.

23. In the event the declaration as sought for by the appellant, to the effect that notwithstanding the termination of its contract so effected vide the communication dated 24.04.2024, the appellant would be still entitled to participate in future bidding processes, in pursuance to RFPs/NITs so issued by various organizations by ignoring the clause existing therein that the firms/individuals, whose contracts have been so terminated are barred from participating in the bidding process involved, is so granted,

the same would have the effect of pre-determining such clauses that would be incorporated in the future RFPs/NITs causing prejudice to the interest of such employers and that too without providing for an opportunity of hearing to such employers issuing the RFPs/NITs.

24. As held by the learned Single Judge, it was open to the appellant to assail the Clauses, debarring it from participating in the bidding process in the RFPs/NITs referred to by the appellant, by presenting a challenge to the Clauses therein; restraining the appellant from submitting its bids.

25. In the event the appellant had made a challenge to the provisions so existing in the referred NITs, the Writ Court would have had an opportunity to examine such contention of the appellant and thereafter, arrive at a conclusion thereon. The appellant, not having challenged such provisions and having undertaken to take recourse to Arbitration proceedings for its grievance qua the termination of its contract, it would not be permissible for this Court to issue a blanket order to the effect that notwithstanding the termination so effected, the appellant would continue to be eligible to participate in similar contracts in future, in pursuance to fresh RFPs/NITs issued by various organizations.

26. At this stage, a recent decision of the Hon'ble Supreme Court in the case of **Airport Authority of India Vs Pradip Kumar Banerjee**, reported in **(2025) SSC Online SC 232** is being noticed. The Hon'ble Supreme Court in the said decision had drawn the following conclusions with regard to the manner, in which an intra-court appeal has to be so considered: -

> "***36. The law relating to the exercise of intra-Court jurisdiction is crystallized by this Court in the case of Management of Narendra & Company Private Limited v. Workmen of Narendra & Company, wherein it was held as under: -***
>
> ***5. Once the learned Single Judge having seen the records had come to the conclusion that the industry was not functioning after January 1995, there is no justification in***

entering a different finding without any further material before the Division Bench. The Appellate Bench ought to have noticed that the statement of MW 3 is itself part of the evidence before the Labour Court. Be that as it may, in an intra-court appeal, on a finding of fact, unless the Appellate Bench reaches a conclusion that the finding of the Single Bench is perverse, it shall not disturb the same. Merely because another view or a better view is possible there should be no interference with or disturbance of the order passed by the Single Judge, unless both sides agree for a fairer approach on relief."

(emphasis supplied)

37. ***The position is, thus, settled that in an intra-court writ appeal, the Appellate Court must restrain itself and the interference into the judgment passed by the learned Single Judge is permissible only if the judgment of the learned Single Judge is perverse or suffers from an error apparent in law. However, the Division Bench, in the present case, failed to record any such finding and rather, proceeded to delve into extensive re-appreciation of evidence to overturn the judgment of the learned Single Judge."***

27. Applying the ratio of the said decision to the facts of the present case, we are of the considered view that the conclusions reached by the learned Single Judge in the impugned Judgment and Order dated 23.07.2024, does not suffer from any perversity. We are also of the considered view that the view taken by the learned Single Judge being a plausible view, in an intra-court appeal, the same would not be called to be disturbed. Accordingly, the conclusions drawn by the learned Single Judge in the impugned Judgment and Order dated 23.07.2024, being not erroneous, the same would not mandate an interference at the instance of the appellant herein.

28. In view of the above discussions, we are of the view that the appellant had miserably failed to persuade us to take a different view in the matter than that taken by the learned Single Judge and accordingly, the Judgment and Order dated 23.07.2024, passed by the learned Single Judge in WP(C) No. 3368/2024 would not mandate any interference. Accordingly, the present writ appeal is held to be devoid of any merit and consequently, the same stands dismissed. However, there would be no order as to costs.

JUDGE CHIEF JUSTICE

Comparing Assistant