IN THE HIGH COURT OF TELANGANA AT HYDERABAD

W.P.No.24408 of 2021

Between:

M/s SEW Kranthi JV

Petitioner

And

The State of Telangana and others

... Respondents

JUDGMENT PRONOUNCED ON: 24.03.2023

THE HON'BLE MRS JUSTICE SUREPALLI NANDA

1. Whether Reporters of Local newspapers may be allowed to see the Judgment? : yes

2. Whether the copies of judgment may be marked to Law Reporters/Journals? : yes

3. Whether Their Lordships wish to see the fair copy of the Judgment? : yes

_____

SUREPALLI NANDA, J

THE HON'BLE MRS JUSTICE SUREPALLI NANDA

W.P.No.24408 of 2021

% 24.03.2023

Between:

M/s SEW Kranthi JV

..... Petitioner

And

$ The State of Telangana and others

.....Respondents

< Gist:

> Head Note:

! Counsel for the Petitioners : Mr. A. Venkatesh
^ Counsel for the Respondents: Mr A.Sanjeev Kumar

? Cases Referred:

1. (2014) 5 SCC 1
2. (2022)9 SCC 691
3. (1986) 2 SCC 679
4. 2021 SCC online SC 99
5. 2011(5) SCC 697

THE HON´BLE MRS JUSTICE SUREPALLI NANDA

W.P.No.24408 of 2021

ORDER:

Heard the learned Senior Counsel Sri A. Venkatesh appearing for the petitioner and the Special Government Pleader Sri. A.Snajeev Kumar appearing on behalf of the Respondents.

2. The Main Prayer sought for by the Petitioner:

"to issue a Writ or an Order or a Direction, more particularly one in the nature of Writ of Mandamus, to declare the action of the Respondent No.5 in issuing tender notice No. 06/2021 dt. 17.09.2021 published in newspaper Namaste Telangana dt. 25.09.2021 vide proceedings No. DIPR RO. No. 16305-PP/CL/Advt/1/2021-22 dt. 24.09.2021 for the project JCR-DLS. Phase III, Package No. VI for the balance work: (1) Improvements to Palakurthy Tank near Palakurthy (V&M). Jangaon District for a capacity of 0.25 TMC, Construction of Head Sluice including Surplus arrangements. (2). Improvements to Chennur Tank near Chennur (V). Palakurthy (M), Jangaon District for a capacity of 0.58 TMC, Construction of Head Sluice including Surplus arrangements. (3) Execution of Main Canal from Nashkal Tank to Palakurthy Tank with a carrying capacity for an ayacut of 52.725 Acres at Head Regulator including Earth work Excavation and forming Embankment. Construction of CD & CM works and cement concrete lining up to 1 Cumec discharge for Main

Canal, Distributaries, Minors and Sub- Minors to provide Irrigation potential of 45.210 Acres under Naskhal Tank, 7,515 Acres under Palakurthy Tank and 25,165 Acres under Chennur Tank for an amount of Rs. 378.35.39.120/- contrary to G.O.Ms.No.23 dt.24.06.2021, wherein the ongoing irrigation projects were given extension of time, including the work undertaken by the petitioner in package VI, Phase-lll of JCR-DIS placed at Sl.No.34 of the annexure in the above G.O as illegal. arbitrary and violative of Articles 14. Article 21. Article 19(1) (g) and Article 300A of the Constitution of India and violative of the principles of natural justice and consequently set aside the same, pending the disposal of the above writ petition."

PERUSED THE RECORD

3. Interim Orders of this court in connected W.P. No. 24761 of 2021 dated 04.10.2021 read as under:

"Learned Additional Advocate General takes notice on behalf of the respondents and seeks time to file counter.

List on 21.10.2021 along with W.P.Nos.8906 and 21122 of 2021.

In the impugned order dated 30.08.2021, the 3rd respondent has specifically mentioned that the petitioner is entitled for payment of Rs.15,87,86,155/- and that the petitioner is liable to pay an amount of Rs.28,07,60,001/- to the Department.

Sri B. Chandrasen Reddy, learned senior counsel appearing for the petitioner would submit that the 3 respondent is going to take steps pursuant to the impugned order dated 30.08.2021. He expresses his apprehension that the respondents may withhold an amount of Rs.25 crores which is due to the petitioner by the 3 respondent which is pending bill and EMD of Rs.8 crores.

Learned Addl. Advocate General, on instructions, would submit that since there is an arbitration clause and it is an arbitral dispute, the petitioner has to invoke the same. Instead of doing so, the petitioner has filed the present writ petition which is not maintainable.

In view of the same, matter requires examination.

Therefore, the 3rd respondent is directed not to take further steps pursuant to notice dated 30.08.2021."

4. G.O.Ms.No.6 dated 17.03.2022 issued by the Government of Telangana, Law (E) Department, reads as under:

"The India's First International Arbitration and Mediation Centre at Hyderabad (IAMCH) has been set up by the International Arbitration and Mediation Centre Trust (IAMC Trust), Hyderabad, a public charitable trust declared by the Hon'ble Chief Justice of India under a Trust Deed first read above, executed on 20th August,

2021, to promote various types of alternate dispute resolution (ADR), in particular arbitration, mediation and conciliation, which would provide an effective avenue for access to justice, so as to render speedy and effective justice and also to reduce the caseload on the courts in the State.

2. A Memorandum of Understanding (MoU) second read above has been entered between the Government of Telangana and the International Arbitration and Mediation Centre Trust (IAMC Trust) on 27.10.2021.

3. According to Clause-5 (IACH's Case Management Services) of the Memorandum of Understanding, Government hereby direct all the Ministries, Departments, Public Sector Companies, and other entities controlled or managed by the Government of Telangana:

(i) to designate IAMCH as the arbitral / mediation institution in all their contracts, agreements, purchase orders, etc. (Contracts) having value of more than Rs.3 crores (Rupees three crores only) and containing an arbitration clause;

(ii) In respect of subsisting Contracts of value of more than Rs.10 crores (Rupees ten crores only) to discuss with the counterparty to such Contract a suitable amendment to

designate IAMCH as the arbitral / mediation Institution; and

(iii) in respect of ongoing ad-hoc arbitrations of the value more than Rs.10 crores (to which Government of Telangana, or its instrumentalities are parties) to make a request to the arbitral Tribunal to utilize the services of the IAMCH for conducting their arbitration.

For further details about the International Arbitration and Mediation Centre at Hyderabad (IAMCH), please visit Centre's website."

5. Articles of Contract agreed and entered into, on 20.01.2010 between the petitioner and the then Government of Andhra Pradesh, in particular, para 3 which relates to Adjudication of Disputes, is extracted hereunder:

"3. <u>ADJUDICATION OF DISPUTES</u>:

Except as otherwise provided in the contract, any disputes and differences arising out of or relating to the contract shall be referred to adjudication as follows:

<u>1) (i) Settlement of all claims up to Rs.50,000/- in value and below by way ofArbitration to be referred as follows:</u>

a) Claims up to Rs. 10,000 in value

SCH Circle, Warangal

b) Claims above Rs. 10,000/- and up to Rs. 50,000/- in value	Chief Engineer SRSP Stage-I L.M.DColony, Karimnagar

The arbitration proceedings will be conducted in accordance with provisions of the Arbitration Act, 1940 as amended from time to time. The arbitrator shall invariably give reasons in the award-

ii) Settlement of all claims above Rs. 50,000/- in value:

All claims above Rs 50, 000 in value shall be decided by the civil court of competent jurisdiction by way of regular suit and not by arbitration."

6. CONTENTIONS OF THE PETITIONER :

A. Learned Senior Counsel Sri A.Venkatesh submits that the Petitioner JV is a joint venture between SEW Infrastructure Limited and Kranthi Edifice Private Limited for executing infrastructure projects, more specifically irrigation projects in the State of Telangana and the Petitioner JV entered into agreement No. AB No. SE/CR/DLIS/WGL/EPC/05/2009-10 dated 20.01.2010 [Agreement") with Respondent No. 1 for value of Rs. 325.20 Cr. It was agreed that the

Petitioner JV would complete the work within 48 months i.e., by 19.01.2014, subject to immediate handing over of encumbrance free land by the Respondents. Pursuant to the execution of the Agreement, the Petitioner JV kept deposit of approximately an amount Rs. 15 crores (approx.) in the form of bank guarantees or FSD as security for executing the work. The above amount consists of EMD equivalent to 2.5% of contract value and 7.5% of FSD withheld from the running bills submitted. It is submitted that the above Rs. 15 crores (approx.) continue to remain with the Respondents as security either in form of bank guarantees or in the form of encashed demand drafts or withheld from the running bills and subsequently disputes arose between the petitioner and the respondents as explained in the affidavit filed in support of the present writ petition. The learned senior counsel further does not dispute the fact that the Articles of Contract dt. 20.01.2010 entered into between the Petitioner and the 1st Respondent clearly stipulates that any disputes and differences

arising out of and relating to the contract shall be referred to adjudication in respect of settlement of all claims up to Rs.50,000/- in value and below by way of Arbitration and further for settlement of all claims above Rs.50,000/- in value shall be decided by the Civil Court of competent jurisdiction by way of regular suit.

B. The learned Senior Counsel Sri A.Venkatesh, however puts forth mainly one specific contention :

> **That in view of the clear observations of this Court in its interim orders dt. 04.10.2021 in WP No.24761/2021 (extracted above) that the learned Additional Advocate General, on instructions submitted that since there is an arbitration clause and it is an arbitral dispute the petitioner has to invoke the same and in view of the clear statement made by the Learned Advocate General on instructions, knowing fully well and having knowledge of the fact that the subsisting disputes between the Petitioner and Respondents herein value more than Rs.10 crores, insists that the matter has to be referred to arbitration applying and invoking clause 3 sub-clause (2) of G.O.Ms.No.6, dt. 17.03.2022 issued by the Government of Telangana.**

7. CONTENTIONS OF THE RESPONDENTS

Learned Special Government Pleader Sri A.Sanjeev Kumar, however contends that as per clause 3 of the Articles of Contract agreed and entered into on 20.01.2010 between the petitioner and the Government that the arbitration could be adopted only for settlement of all claims upto Rs.50,000/- in value and below by way of arbitration and all claims above Rs.50,000/- in value shall be decided by the Civil Court of Competent Jurisdiction by way of regular suit and not by arbitration.

8. <u>DISCUSSION AND CONCLUSION</u> :

A) Having heard Learned Senior Counsel Sri A.Venkatesh on behalf of the petitioner and also the Learned Special Govt. Pleader Sri A. Sanjeev Kumar on behalf of the Respondents and having perused the materials on record and duly taking into consideration the averments made by the petitioner in the affidavit filed in support of the present writ petition, this Court is prima facie of the view that there are disputes between the parties which are required to be resolved. This Court is also conscious of the fact that the case on record is a Writ Petition filed under Article 226 of the Constitution of India and not an Arbitration Application filed U/s.11(5) and (6) of the Arbitration and

Conciliation Act, 1996 for appointment of an arbitrator to resolve the disputes between the parties.

B) Learned Counsel for the parties however are in agreement that the dispute between the parties may be referred to arbitration, though Learned Counsel appearing on behalf of the Respondents referring to Clause 3 of Articles of Contract agreed and entered into on 20.01.2010 between the Petitioner and the Government contends that Arbitration could be adopted for settlement of all claims upto Rs.50,000/- in value and below by way of Arbitration.

C. This Court is of the firm opinion that as per Clause 3 Sub-Clause (ii) of G.O.Ms.No.6, dt. 17.03.2022 (extracted above) issued by the Government of Telangana and in view of the fact that in the present case the claim and counter claim value admittedly is more than Rs.10 crores, i.e. more than 15 crores is the claim of the petitioner herein against the respondents and more than 28 crores is the counter claim of the respondents against the petitioner herein. This Court opines that the Respondents should be directed to

initiate appropriate steps and discuss with the Petitioner herein who is the counterpart to Articles of Contract agreed and entered into on 20.01.2010 between the Petitioner and the Respondents i.e., Government and bring about a suitable amendment to designate IAMCH i.e., International Arbitration and Mediation Centre (IAMC) Hyderabad as the arbitral/mediation Institution and further to make a request to the competent authority to utilize the services of the IAMCH for conducting their arbitration in view of the fact as borne on record that Clause 3 Sub-Clause (ii) clearly provides for such a mechanism/process for resolving the arbitral disputes between the petitioner and the Respondents herein.

D. A 3-Judge Bench of the Apex Court in Emercon (India) Ltd., V. Emercon GmbH reported in (2014) 5 SCC 1 dealt with an Arbitration Clause and observed (SCC at para 39, para 88) as under :

> ***"88. In our opinion, the courts have to adopt a pragmatic approach and not a pedantic or technical approach while interpreting or***

construing an arbitration agreement or arbitration clause. Therefore, when faced with a seemingly unworkable arbitration clause, it would be the duty of the court to make the same workable within the permissible limits of the law, without stretching it beyond the boundaries of recognition. In other words, a common sense approach has to be adopted to give effect to the intention of the parties to arbitrate. In such a case, the court ought to adopt the attitude of a reasonable business person, having business common sense as well as being equipped with the knowledge that may be peculiar to the business venture. The arbitration clause cannot be construed with a purely legalistic mindset, as if one is construing a provision in a statute.

E. The Division Bench of Apex Court in its recent judgment dated 07.09.2022 reported in (2022) 9 SCC 691, Babanrao Rajaram Puna vs. Samarth Builders and Developers and Another at para 28 and 29 observed as under :

"28. There is no gainsaying that it is the bounden duty of the parties to abide by the terms of the contract as they are sacrosanct in nature, in addition to, the agreement itself being a statement of commitment made by them at the

time of signing the contract. The parties entered into the contract after knowing the full import of the arbitration clause and they cannot be permitted to deviate therefrom.

29. It is thus imperative upon the courts to give greater emphasis to the substance of the clause, predicated upon the evident intent and objectives of the parties to choose a specific form of dispute resolution to manage conflicts between them. The intention of the parties that flows from the substance of the agreement to resolve their dispute by arbitration are to be given due weightage. e It is crystal clear to us that Clause 18. in this case, contemplates a binding reference to arbitration between the parties and it ought to have been given full effect by the High Court.

9. MAINTAINABILITY OF THE WRIT PETITION UNDER ARTICLE 226 OF THE CONSTITUTION OF INDIA:

a) A Division Bench of the Apex Court in its judgment reported in 2021 SCC Online SC 99 dated 17.02.2021 in Unitech Limited and others v Telangana State Industrial Infrastructure Corporation (TSIIC) and others dealt with the issue of maintainability of the writ petition under Article 226 of the Constitution of

India and observed at Paras 39, 40 and 41 which read as under:

> 39. A two judge Bench of this Court in ABL International Ltd. v. Export Credit Guarantee Corporation of India [ABL International] analyzed a long line of precedent of this Court to **conclude that writs under Article 226 are maintainable for asserting contractual rights against the state, or its instrumentalities, as defined under Article 12 of the Indian Constitution.** Speaking through Justice N Santosh Hegde, the Court held:
>
> "27. …the following legal principles emerge as to the maintainability of a writ petition:
>
> (a) In an appropriate case, a writ petition as against a State or an instrumentality of a State arising out of a contractual obligation is maintainable.
>
> (b) Merely because some disputed questions of fact arise for consideration, same cannot be a ground to refuse to entertain a writ petition in all cases as a matter of rule.
>
> (c) A writ petition involving a consequential relief of monetary claim is also maintainable."
>
> 40. This exposition has been followed by this Court, and has been adopted by three -judge Bench decisions of this Court in State of UP v. Sudhir Kumar and Popatrao Vynkatrao Patil v. State of Maharashtra . The decision in

ABL International, cautions that the plenary power under Article 226 must be used with circumspection when other remedies have been provided by the contract. **But as a statement of principle, the jurisdiction under Article 226 is not excluded in contractual matters.** Article 23.1 of the Development Agreement in the present case mandates the parties to resolve their disputes through an arbitration. However, the presence of an arbitration clause within a contract between a state instrumentality and a private party has not acted as an absolute bar to availing remedies under Article 226. **If the state instrumentality violates its constitutional mandate under Article 14 to act fairly and reasonably, relief under the plenary powers of the Article 226 of the Constitution would lie. This principle was recognized in ABL International:**

"28. However, while entertaining an objection as to the maintainability of a writ petition under Article 226 of the Constitution of India, the court should bear in mind the fact that the power to issue prerogative writs under Article 226 of the Constitution is plenary in nature and is not limited by any other provisions of the Constitution. The High Court having regard to the facts of the case, has a discretion to entertain or not to entertain a writ petition. The Court has imposed upon itself certain restrictions in the exercise of this power. (See Whirlpool Corpn. v. Registrar of Trade Marks

[(1998) 8 SCC 1].) **And this plenary right of the High Court to issue a prerogative writ will not normally be exercised by the Court to the exclusion of other available remedies unless such action of the State or its instrumentality is arbitrary and unreasonable so as to violate the constitutional mandate of Article 14 or for other valid and legitimate reasons, for which the Court thinks it necessary to exercise the said jurisdiction**." (emphasis supplied)

41. Therefore, while exercising its jurisdiction under Article 226, the Court is entitled to enquire into whether the action of the State or its instrumentalities is arbitrary or unfair and in consequence, in violation of Article 14. The jurisdiction under Article 226 is a valuable constitutional safeguard against an arbitrary exercise of state power or a misuse of authority. In determining as to whether the jurisdiction should be exercised in a contractual dispute, the Court must, undoubtedly eschew, disputed questions of fact which would depend upon an evidentiary determination requiring a trial. **But equally, it is well-settled that the jurisdiction under Article 226 cannot be ousted only on the basis that the dispute pertains to the contractual arena. This is for the simple reason that the State and its instrumentalities are not exempt from the duty to act fairly merely because in their business dealings they have**

entered into the realm of contract. Similarly, the presence of an arbitration clause does oust the jurisdiction under Article 226 in all cases though, it still needs to be decided from case to case as to whether recourse to a public law remedy can justifiably be invoked. The jurisdiction under Article 226 was rightly invoked by the Single Judge and the Division Bench of the Andhra Pradesh in this case, when the foundational representation of the contract has failed. TSIIC, a state instrumentality, has not just reneged on its contractual obligation, but hoarded the refund of the principal and interest on the consideration that was paid by Unitech over a decade ago. It does not dispute the entitlement of Unitech to the refund of its principal.

b) A Division Bench of the Supreme Court in its judgment reported in 2011(5) SCC 697, in Union of India and others v Tantia Construction Private Limited, dated 18.04.2011 dealing with an issue of Existence/Availability of arbitration clause in agreement, in particular, paras 20, 21, 22, 33 and 34 read as under:

"20. It was also contended that since the Petitioners had illegally terminated the contract with the

Respondent Company, the Writ Court had stepped in to correct such injustice. In fact, Mr. Chakraborty also submitted that the objection taken on behalf of the Petitioners **that the relief of the Respondent Company lay in arbitration proceedings and not by way of a Writ Petition was devoid of substance on account of the various decisions of this Court holding that an alternate remedy did not place any fetters on the powers of the High Court under Article 226 of the Constitution.**

21. In support of his aforesaid submissions Mr. Chakraborty firstly relied and referred to the decision of this Court in Harbanslal Sahnia vs. Indian Oil Corporation Ltd. [(2003) 2 SCC 107], **wherein this Court observed that the Rule of exclusion of writ jurisdiction by availability of an alternative remedy, was a rule of discretion and not one of compulsion** and there could be contingencies in which the High Court exercised its jurisdiction inspite of availability of an alternative remedy.

22. Mr. Chakraborty also referred to and relied on the decision of this Court in Modern Steel Industries vs. State of U.P. and others [(2001) 10 SCC 491], wherein on the same point **this Court had held that the High Court ought not to have dismissed the writ petition requiring the Appellant therein to take recourse to arbitration proceedings, particularly when the vires of a statutory provision was not in**

issue. Reference was also made to the decision of this Court in Whirlpool Corporation vs. Registrar of Trade Marks [(1998) 8 SCC 1]; National Sample Survey Organisation and Another vs. Champa Properties Limited and Another [(2009) 14 SCC 451] and Hindustan Petroleum Corporation Limited and Others vs. Super Highway Services and Another [(2010)3 SCC 321], where similar views had been expressed.

33. Apart from the above, even on the question of maintainability of the writ petition on account of the Arbitration Clause included in the agreement between the parties, it is now well-established that an alternative remedy is not an absolute bar to the invocation of the writ jurisdiction of the High Court or the Supreme Court and that without exhausting such alternative remedy, a writ petition would not be maintainable. The various decisions cited by Mr. Chakraborty would clearly **indicate that the constitutional powers vested in the High Court or the Supreme Court cannot be fettered by any alternative remedy available to the authorities.** Injustice, whenever and wherever it takes place, has to be struck down as an anathema to the rule of law and the provisions of the Constitution.

34 We endorse the view of the High Court that **notwithstanding the provisions relating to the Arbitration Clause contained in the agreement, the High Court was fully within its competence to**

entertain and dispose of the Writ Petition filed on behalf of the Respondent Company.

c) The Supreme Court in the judgment of Comptroller and Audit General of India, Gian Prakash, New India and Another vs K.S. Jagannathan and Another reported in 1986 2 SCC 679, in particular at para 18, 19 and 20, observed as under:

> "18. The first contention urged by learned counsel for the appellants was that the Division Bench of the High Court could not issue a writ of mandamus to direct a public authority to exercise its discretion in a particular manner. There is a basic fallacy underlying this submission-both with respect to the order of the Division Bench and the purpose and scope of the writ of mandamus. The High Court had not issued a writ of mandamus. A writ of mandamus was the relief prayed for by the respondents in their writ petition. What the Division Bench did was to issue directions to the appellants in the exercise of its jurisdiction under Article 226 of the Constitution. **Under Article 226 of the Constitution, every High Court has the power to issue to any person or authority, including in appropriate cases, any government, throughout the territories in relation to which it exercises jurisdiction, directions, orders, or writs including writs in the nature of habeas corpus, mandamus,**

quo warranto and certiorari or any of them, for the enforcement of the Fundamental Rights conferred by Part III of the Constitution or for any other purpose. In Dwarkanath v. ITO this Court pointed out that Article 226 is designedly couched in a wide language in order not to confine the power conferred by it only to the power to issue prerogative writs as understood in England, such wide language being used to enable the High Courts "to reach injustice wherever it is found" and "to mould the reliefs to meet the peculiar and complicated requirements of this country. In Hochtief Gammon v. State of Orissa' this Court held that the powers of the courts in England as regards the control which the Judiciary has over the Executive indicate the minimum limit to which the courts in this country would be prepared to go in considering the validity of orders passed by the government or its officers.

19. Even had the Division Bench issued a writ of mandamus giving the directions which it did, if circumstances of the case justified such directions, the High Court would have been entitled in law to do so for even the courts in England could have issued a writ of mandamus giving such directions. Almost a hundred and thirty years ago, Martin, B., in Mayor of Rochester v. Regina said:

But, were there no authority upon the subject, we should be prepared upon principle to affirm the judgment of the Court of Queen's Bench. That court has power, by the prerogative writ of mandamus, to amend all errors which tend to the oppression of the subject or other misgovernment, and ought to be used when the law has provided no specific remedy, and justice and good government require that there ought to be one for the execution of the common law or the provisions of a statute: Comyn's Digest, Mandamus (A).... Instead of being astute to discover reasons for not applying this great constitutional remedy for error and misgovernment, we think it our duty to be vigilant to apply it in every case to which, by any reasonable construction, it can be made applicable.

The principle enunciated in the above case was approved and followed in King v. Revising Barrister for the Borough of Hanley. In Hochtief Gammon case this Court pointed out (at p. 675 of Reports: SCC p. 656) that the powers of the courts in relation to the orders of the government or an officer of the government who has been conferred any power under any statute, which apparently confer on them absolute discretionary powers, are not confined to cases where such power is exercised or refused to be exercised on irrelevant

considerations or on erroneous ground or mala fide, and in such a case a party would be entitled to move the High Court for a writ of mandamus. In Padfield v. Minister of Agriculture, Fisheries and Food the House of Lords held that where Parliament had conferred a discretion on the Minister of Agriculture, Fisheries and Food, to appoint a committee of investigation so that it could be used to promote the policy and objects of the Agricultural Marketing Act, 1958, which were to be determined by the construction of the Act which was a matter of law for the court and though there might be reasons which would justify the Minister in refusing to refer a complaint to a committee of investigation, the Minister's discretion was not unlimited and if it appeared that the effect of his refusal to appoint a committee of investigation was to frustrate the policy of the Act, the court was entitled to interfere by an order of mandamus. In Halsbury's Laws of England, 4th edn., vol. I, para 89**, it is stated that the purpose of an order of mandamus**

is to remedy defects of justice; and accordingly it will issue, to the end that justice may be done, in all cases where there is a specific legal right and no specific legal remedy for enforcing that right; and it may issue in cases where, although there is an alternative legal remedy, yet that mode of redress is less convenient, beneficial and effectual.

20. There is thus no doubt that the High Courts in India exercising their jurisdiction under Article 226 have the power to issue a writ of mandamus or a writ in the nature of mandamus or to pass orders and give necessary directions where the government or a public authority has failed to exercise or has wrongly exercised the discretion conferred upon it by a statute or a rule or a policy decision of the government or has exercised such discretion mala fide or on irrelevant considerations or by ignoring the relevant considerations and materials or in such a manner as to frustrate the object of conferring such discretion or the policy for implementing which such discretion has been conferred. In all such cases and in any other fit and proper case a High Court can, in the exercise of its jurisdiction under Article 226, issue a writ of mandamus or a writ in the nature of mandamus or pass orders and give directions to compel the performance in a proper and lawful manner of the discretion conferred upon the government or a public authority, and in a proper case, in order to prevent injustice resulting to the concerned parties, the court may itself pass an order or give directions which the government or the public authority should have

passed or given had it properly and lawfully exercised its discretion."

10. This Court opines that this Court exercising jurisdiction under Article 226 of the Constitution of India is also a Court of Equity. It will have to be mindful of the interests of justice and ensure that in rigidly applying technical rule of procedure, miscarriage of justice does not result.

11. Taking into consideration all the above referred facts and circumstances and the evident intent and objectives of the parties to choose a specific form of dispute resolution to manage conflicts between them and interim orders of this Court dt. 04.10.2021 in W.P.No.24761 of 2021, which observed the fact that the Learned Addl. Advocate General, on instructions submitted to the Court that since there is an Arbitration Clause and it is arbitral dispute the Petitioner has to invoke the same, without going into the merits of the claim and counter claim of the parties on all the issues involved in the present case and without even

expressing any opinion on the same and further taking into consideration Clause 3, Sub-clause (ii) of G.O.Ms.No.6, dt. 17.03.2022 and duly considering the observations of the Apex Court in judgement reported in (2014) 5 SCC 1 in Emercon (India) Ltd., V. Emercon GmbH and also the judgment of the Apex Court reported in (2022) 9 SCC 691 in Puna vs. Samarth Builders and Developers and Another and also the judgement of the Apex Court reported in (1986) 2 SCC 679 in Comptroller and Auditor General of India, Gian Prakash, New Delhi and Another v. K.S. Jangannathan and Another, Unitech Limited and others v Telangana State Industrial Infrastructure Corporation (TSIIC) and others reported in 2021 SCC online SC 99 dated 17.02.2021 and Union of India and others v Tantia Construction Private Limited, dated 18.04.2011 reported in 2011(5) SCC 697 (extracted above) the writ petition is disposed of directing the respondents to discuss with the Petitioner who is the counterparty to the agreement dt. 20.01.2010 entered into by and between the petitioner and Respondents duly applying

Clause 3 Sub-Clause 2 of G.O.Ms.No.6, dt. 17.03.2022 and bring about a suitable amendment to designate International Arbitration and Mediation Centre (IAMC) Hyderabad as the Arbitral Mediation Institution to utilize the services of the IAMCH for conducting their arbitration relating to all the disputes between the petitioner and the respondents herein arising out of Contract vide agreement No. AB No. SE/JCR/DLIS/ WGL/EPC/05/2009-10 dated 20.01.2010, within a period of 3 weeks from the date of receipt of the copy of the order. However, there shall be no order as to costs.

Miscellaneous petitions, pending, if any, shall be disposed off.

_____

MRS JUSTICE SUREPALLI NANDA

Dated: 24.03.2023
Note: L.R.Copy to be marked
b/o kvrm