



IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 14<sup>TH</sup> DAY OF JUNE, 2024

PRESENT

THE HON'BLE MR. N.V. ANJARIA, CHIEF JUSTICE

AND

THE HON'BLE MR. JUSTICE KRISHNA S DIXIT

C.C.C NO.495 OF 2023 (CIVIL) C/W

WRIT APPEAL NO.1095 OF 2023 (GM-RES) AND

WRIT APPEAL NO.1266 OF 2023 (GM-RES)

IN C.C.C NO.495 OF 2023 (CIVIL)

BETWEEN:

M/S. BBP STUDIO VIRTUAL BHARAT PVT. LTD.  
A COMPANY REGISTERED UNDER  
COMPANIES ACT, 1956  
STUDIO VIRTUAL BHARAT,  
101/102 POOJA, 7<sup>TH</sup> ROAD, GOLIBAR,  
SANTA CRUZ EAST  
MUMBAI – 400 055.  
REPRESENTED BY ITS  
AUTHORIZED REPRESENTATIVE  
LYNETTE DMELLO  
D/O ANTHONY JEROME DSOUZA  
AGED ABOUT 49 YEARS.

... COMPLAINANT

(BY SRI JAYAKUMAR S. PATIL, SENIOR ADVOCATE A/W  
SRI S. SWAROOP, ADVOCATE)

AND:

1 . DR. SELVAKUMAR. S  
PRINCIPAL SECRETARY  
FOR STATE OF KARNATAKA  
MINISTRY OF COMMERCE  
AND INDUSTRY  
VIDHANA SOUDHA

AMBEDKHAR ROAD,  
BENGALURU – 560 001  
KARNATAKA.

- 2 . MS. GUNJAN KRISHNA  
CHIEF EXECUTIVE OFFICER  
INVEST KARNATAKA FORUM  
No.49, SOUTH BLOCK  
KHANIJA BHAVAN,  
RACE COURSE ROAD,  
BENGALURU – 560 001.

**(V/O DATED 11.08.2023 CONTEMPT PETITION  
DROPPED AGAINST ACCUSED NO.2)**

- 3 . SRI VIKASH KUMAR  
MANAGING DIRECTOR  
MARKETING COMMUNICATIONS AND  
ADVERTISING LTD.,  
MC&A HOUSE, No.42,  
MILLERS ROAD,  
BENGALURU – 560 052 .

**(V/O DATED 11.08.2023 CONTEMPT PETITION  
DROPPED AGAINST ACCUSED NO.3)**

... ACCUSED

- 4 . STATE OF KARNATAKA  
REPRESENTED BY ADDITIONAL  
CHIEF SECRETARY  
MINISTRY OF COMMERCE AND INDUSTRY  
VIDHANA SOUDHA  
AMBEDKAR ROAD  
BENGALURU  
KARNATAKA – 560 001.

...PRO FORMA RESPONDENT

(BY SRI RUBEN JACOB, ADDITIONAL ADVOCATE GENERAL A/W  
SMT. NILOUFER AKBAR, AGA FOR ACCUSED Nos. 1 & 4)

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THIS CCC IS FILED UNDER SECTION 11 AND 12 OF THE OF  
THE CONTEMPT OF COURTS ACT 1971, PRAYING TO HOLD THE  
ACCUSED GUILTY OF CONTEMPT OF COURT FOR WILLFUL  
DISOBEDIENCE OF THE JUDGMENT OF THIS HON'BLE COURT

DATED 25.01.2023 MADE IN WRIT PETITION NO.21308/2022 AND FURTHER BE PLEASED TO PUNISH THE ACCUSED HEREIN WITH IMPRISONMENT OF SIX MONTHS IN ACCORDANCE WITH LAW.

**IN WRIT APPEAL NO. 1095 OF 2023**

**BETWEEN:**

- 1 . INVEST KARNATAKA FORUM  
REPRESENTED BY  
THE CHIEF EXECUTIVE OFFICER  
KHADIJA BHAVANA,  
RACE COURSE ROAD,  
BENGALURU – 560 001.
  
- 2 . KARNATAKA STATE MARKETING  
COMMUNICATION AND ADVERTISING LTD.  
REPRESENTED BY  
THE CHIEF EXECUTIVE OFFICER,  
KHANJIA BHAVANA,  
RACE COURSE ROAD,  
BENGALURU – 560 052.

... APPELLANTS

(BY SRI H. MOHAN KUMAR, ADVOCATE)

**AND:**

- 1 . M/S. BBP STUDIO VIRTUAL BHARATH PVT. LTD.  
A COMPANY REGISTERED UNDER  
COMPANIES ACT, 1956  
STUDIO VIRTUAL BHARAT  
101/102 POOJA,  
7<sup>TH</sup> ROAD, GOLIBAR  
SANTA CRUZ EAST  
MUMBAI - 400 055.
  
- 2 . STATE OF KARNATAKA  
REPRESENTED BY  
ADDITIONAL CHIEF SECRETARY  
MINISTRY OF COMMERCE  
AND INDUSTRY  
VIDHANA SOUDHA

AMBEDKAR ROAD  
BENGALURU – 560 001  
KARNATAKA.

... RESPONDENTS

(BY SRI JAYAKUMAR S. PATIL, SENIOR ADVOCATE A/W  
SRI S. SWAROOP, ADVOCATE FOR R1 &  
SRI RUBEN JACOB, ADDITIONAL ADVOCATE GENERAL A/W  
SMT. NILOUFER AKBAR, AGA FOR R2)

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THIS WRIT APPEAL IS FILED UNDER SECTION 4 OF THE  
KARNATAKA HIGH COURT ACT, 1961, PRAYING TO SET ASIDE  
THE ORDER DATED 25.01.2023 IN W.P. No. 21308/2022  
(GM-RES) PASSED BY THE HON'BLE SINGLE JUDGE OF THIS  
HON'BLE COURT BY ALLOWING THE APPEAL AND ETC.

**IN WRIT APPEAL NO. 1266 OF 2023**

**BETWEEN:**

STATE OF KARNATAKA  
REPRESENTED BY  
ADDITONAL CHIEF SECREARY  
MINISTRY OF COMMERCE  
AND INDUSTRIES  
VIDHANA SOUDHA  
AMBEDKAR ROAD  
BENGALURU – 560 001  
KARNATAKA.

... APPELLANT

(BY SRI RUBEN JACOB, ADDITIONAL ADVOCATE GENERAL A/W  
MS. NILOUFER AKBAR, AGA)

**AND:**

1. M/S. BBP STUDIO VIRTUAL BHARAT PVT. LTD.  
A COMPANY REGISTERED UNDER  
COMPANIES ACT, 1956  
STUDIO VIRTUAL BHARAT 101/102  
POOJA, 7<sup>TH</sup> ROAD, GOLIBAR  
SANTA CRUZ EAST

MUMBAI – 400 055  
REPRESENTED BY ITS  
AUTHORIZED REPRESENTATIVE  
LYNETTE DMELLO  
D/O ANOTHONY JEROME D SOUZA  
AGED ABOUT 50 YEARS

- 2 . INVEST KARNATAKA FORUM  
REPRESENTED BY  
THE CHIEF EXECUTIVE OFFICER  
No. 49, SOUTH BLOCK  
KHANIJA BHAVAN  
RACE COURSE ROAD  
BENGALURU – 560 001.
- 3 . MARKETING COMMUNICATION AND  
ADVERTISING LTD.,  
A COMPANY REGISTERED UNDER  
COMPANIES ACT, 1956  
REPRESENTED BY ITS  
MANAGING DIRECTOR  
MCA HOUSE, No. 42, MILLERS ROAD  
BENGALURU – 560 052.

... RESPONDENTS

(BY SRI JAYAKUMAR S. PATIL, SENIOR ADVOCATE A/W  
SRI S. SWAROOP, ADVOCATE FOR R1 &  
SRI H. MOHAN KUMAR, ADVOCATE FOR R2 & 3)

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THIS WRIT APPEAL IS FILED UNDER SECTION 4 OF THE  
KARNATAKA HIGH COURT ACT, 1961, PRAYING TO SET ASIDE  
THE ORDER DATED 25.01.2022 IN W.P. No. 21308/2022  
(GM-RES) PASSED BY THE LEARNED SINGLE JUDGE AND  
CONSEQUENTLY DISMISS THE WRIT PETITION IN W.P. No.  
21308/2022 (GM-RES) AND ETC.

CCC AND WRIT APPEALS HAVING BEEN HEARD AND  
RESERVED FOR JUDGMENT, COMING ON FOR PRONOUNCEMENT  
OF JUDGMENT, THIS DAY, **CHIEF JUSTICE** DELIVERED THE  
FOLLOWING:

**JUDGMENT**

Preferred under Section 4 of the Karnataka High Court Act, 1961, the two appeals arise from the judgment and order dated 25.01.2023 passed by learned Single Judge in Writ Petition No.21308 of 2022. Writ Appeal No.1095 of 2023 is filed by the Invest Karnataka Forum who was original respondent No.2, whereas in the other writ appeal, original respondent No.1-State of Karnataka is the appellant.

2. Both the appellants are aggrieved by the judgment and order which contained the following operative directions,

- “(i) The Writ Petition is allowed in part.
- (ii) The impugned communication dated 25-10-2022 issued by the 3<sup>rd</sup> respondent stands quashed.
- (iii) A *mandamus* issues to the 1<sup>st</sup> respondent/ State to release balance payments due to the petitioner in terms of its invoice dated 27.10.2022.
- (iv) The petitioner is at liberty to seek arbitration of any other dispute that remains unresolved, apart from what is considered in the case at hand.”

2.1 In the writ petition, following prayers are made,

- “(i) to set aside the email communication dated 25.10.2022 issued by respondent No.3 whereby work order dated 11.08.2022 issued by the Respondent No.3 to the petitioner for creating 3D film showcasing Karnataka for the upcoming “Invest Karnataka 2022: Global Investors Meet”, which is scheduled to be held on 2<sup>nd</sup> November 2022, was withdrawn.
- (ii) to declare that the action of the respondents of withdrawing the work order dated 11.08.2022 by email communication dated 25.10.2022 to be arbitrary and illegal.
- (iii) to consider the email dated 27.10.2022 issued by the petitioner requesting them to take hand over of the 3D film created by the petitioner in terms with the work order dated 11.08.2022.
- (iv) to take hand over the 3D film created by the petitioner and sent to them by email communication dated 28.10.2022 in terms with work order dated 11.08.2022.
- (v) to direct the respondent to show the final version of the 3D film created by the petitioner and sent to the respondent by email dated 28.10.2022, in the upcoming Global Investors meet 2022 organised by the respondent.
- (vi) to direct the respondents to release the balance payments due to the petitioner as per invoice dated 28.10.2022 in terms with the work order dated 11.08.2022.”

2.2 After the aforesaid judgment and order of learned Single Judge, the respondents filed Review Petition No.104 of 2023 which was rejected by the learned Single Judge as per his order dated 7<sup>th</sup> August 2023. Thereafter, the challenge in the present writ appeal was lodged.

3. Noticing the facts, M/s.BBP Studio Virtual Bharat Private Limited-the petitioner stated that it was a renowned film production house engaged in the business of producing feature films, documentaries, commercials and music videos, and that it produced acclaimed albums such as Vande Mataram and Jana Gana Mana. It was stated that it directed music video of official song in 2010 Commonwealth Games and also for the opening ceremony. It was stated that respondent No.2-Invest Karnataka Forum was a non-profit company established under the Companies Act, 2013 to promote investments and to attract the investments globally by the Government of Karnataka. The Chairman of the forum happens to be the Minister for Large and Medium Industries and the Directors of the company comprise of government and industry leaders.

3.1 It was the case of the petitioner that the Government of Karnataka held Global Investors Meet titled "Invest Karnataka



2022” at Bengaluru during November 2-4, 2022 which aimed at attracting investments from around the world. On 16.06.2022, it was averred, respondent No.3-Marketing Communication and Advertising Limited issued an invitation for Expression of Interest for appointment of business associates for the said event of Global Investors Meet and other media services by issuing tender. The empanelment of business associates was called in four categories based on valuation of the work ranging from Rs.25 lakhs to over Rs.1 crore.

3.1.1 The petitioner stated that on 14.07.2022, respondent No.3 addressed a letter to the petitioner notifying its prequalification and successful acceptance of the application and the petitioner was called upon to furnish the security deposit amount as required. On 18.07.2022, respondent No.2 issued a letter to respondent No.3 with an intention to showcase the uniqueness of Karnataka through a three dimensional (3D) film titled “Invest Karnataka 2022: Global Investors Meet”.

3.1.2 It was further stated that respondent No.3 on 02.08.2022 issued a proposal to respondent No.2 quoting the sum of Rs.4,08,87,000/- for creation of 3D film. On 11.08.2022, the proposal was communicated and on 02.08.2022, it stood accepted

by its competent authority and respondent No.3 was required to execute work. In pursuance to the above development and letter dated 11.08.2022, respondent No.3-Marketing Communication and Advertisement Limited issued to the petitioner work order to execute the work in view of the orders issued by respondent No.2-Invest Karnataka Forum. The work order was issued with a stipulation to complete the work within a budget of Rs.3,98,40,000/- including taxes.

3.1.3 The petitioner stated that upon receipt of the said letter/work order, it started the work of creation of 3D film. It is stated that as per the terms of the work order and as could be gathered from other communications, time was the essence of the contract and the price fixed was owing to an emergent need to create the film that was to be featured on 02.11.2022 in the Global Investors Meet.

3.1.4 It is the further case of the petitioner that respondent No.3 addressing a letter dated 16.09.2022, got released from respondent No.2 advance amount of Rs.1,50,00,000/- towards creation of the 3D film. On 30.09.2022, it was stated, the petitioner issued a letter to respondent No.3 for documenting the submission

of stamp paper and cheques towards guarantee for return of advance amount in the event of failure to execute the work order.

3.1.5 Finally on 01.10.2022, respondent No.3 executed an agreement with the petitioner containing terms for execution of the work order dated 11.08.2022. The petitioner thereafter stated that upon receipt of work order dated 11.08.2022 and execution of the agreement dated 01.10.2022, the petitioner mobilized its resources and produced a feature film which was ready for exhibition for respondent No.2 in the Global Investors Meet. It is the case of the petitioner that in compliance of the work order, it had spent huge amount of money in addition to the advance payment made as above. According to the petitioner, it completed the work expeditiously as time was the essence.

3.2 The petitioner stated that when the petitioner was ready to deliver its work on 25.10.2022 to respondent No.3, it was surprised to receive an email from respondent No.3, whereby the work order was cancelled and withdrawn without assigning any reason. In response to the said email, the petitioner sent a response dated 27.01.2022 mentioning about the efforts, time, energy and money expended and it stated that the project was ready. The petitioner called upon respondent No.3 to withdraw its email and accept the

project of 3D film as per the work given on 11.08.2022. The respondents failed to respond. It appears that the petitioner in its subsequent email dated 28.10.2022 enclosed the final version of the 3D film it had produced.

3.3 The petitioner stated that no response has been forthcoming even though it sent the bill for the balance dues under the work order and the tax invoice. It was stated that 3D film was not presented by respondent Nos.2 and 3 in the Global Investors Meet and the entire efforts and the hardwork as well as resources engaged by the petitioner in creating the 3D film were wasted. It is stated that the film produced by the petitioner was a high resolution 3D animation film. It is in the background and premise of the aforesaid facts that the petitioner invoked the jurisdiction of this Court by filing writ petition advancing the prayers as above.

3.4 In the writ petition, contentions are raised *inter alia* that the work order was given to exhibit the film and that the Petitioner performed its part of contract by preparing the documentary film. It was submitted that, huge expenses and high level technology was employed and produced in the film and that manpower was involved from different parts of the Country. It was sought to be highlighted that non-acceptance and non-exhibition of the film at

the Global Investors Summit was an act of evident breach of contract on part of respondents.

4. Heard learned Senior Advocate Mr. Jayakumar S Patil assisted by learned counsel Mr. Swaroop S and learned Additional Advocate General Mr. Ruben Jacob for the respective parties at length.

4.1 The appellants in the respective writ appeal raised contentions to assail the judgment and order of learned Single Judge, stated in nutshell, that the learned Single Judge could not have entered into the arena of dispute which was a contractual matter between the parties.

4.2 On the other hand, learned advocates for the respondent-petitioners supported the impugned judgment to vehemently contend that the facts clearly showed that there was a breach on the part of the respondents who were 'State' authorities or agencies of the 'State', of the established contractual obligations in not accepting for exhibiting the film produced by the petitioner.

4.3 Proceeding to examine the judgment and order of learned Single Judge, it was noticed by the learned Single Judge that the petitioner was communicated by the respondent Nos.2 and 3 for

producing the film to be exhibited at the Global Meet Summit “Invest Karnataka 2022” and that pursuant to the exchange of the communications, the work order was issued in terms of letter dated 18.07.2022. Learned Single Judge highlighted the aspect that the petitioner conducted itself to execute the work order dated 11.08.2022 and produce the film. It was reasoned by learned Single Judge that when expression of interest was shown and was accepted by the petitioner and the film was produced as per the work order, the authorities could not have declined the exhibition of the film.

4.3.1 The cost of production of 3D film was shown to be Rs.4,08,87,000/- which remained unpaid, barring the part payment, it was noted in the judgment. It was further stated that, the petitioner had made advance payment of Rs.1,50,00,000/- and cheque for further amount of Rs.1,42,85,714/- was given by the petitioner towards guarantee, in the event if the work was not completed.

4.3.2 Learned Single Judge, thereafter, proceeded to highlight from the correspondence between the petitioner and the respondents. As regards the Committee, which was constituted by respondents to examine the film, learned Single Judge took the

view that it was by interested persons and it's view would not inspire confidence. It was concluded by learned Single Judge that, it was the communication of the Minister which led to the refusal to exhibit the film and resultant litigation.

4.3.3 Learned Single Judge, thereafter, discussed various judgments on the aspect of scope of interference by the High Court exercising writ jurisdiction, in contractual matters. It was the view held by the learned Single Judge that, if the action is arbitrary and one of the contracting party was State or its instrumentality who had failed to discharge its obligation, the writ jurisdiction would be exercisable and the relief could be granted.

5. Having closely considered the controversy, the pleadings raised as well as the attended facts on aspect, it is difficult to agree with the view of the learned Single Judge. There is no gainsaying that, the dispute between the parties wherein the petitioner produced the film pursuant to work order and later the same was not accepted by exhibition, was a pure contractual dispute. The work of producing 3D film proposed to be exhibited in the Global Summit was negotiated in which process, both the appellants were involved. After settling the terms, work order dated 11.08.2022 was issued to the petitioner. According to the case of the

petitioner, the film was produced after consuming energy, money and manpower, but at the eleventh hour, it was refused to be accepted on the ground it was of sub-standard quality.

5.1 The internal Committee which was constituted, examined the worthiness as also the quality content of 3D film created by the petitioner intended to be exhibited at the Invest Karnataka – 2022 and the Committee found that the film was raw, generic, incomplete and sub-standard which did not meet the scope of work, and therefore, the version of the film submitted by the petitioner was not accepted by the Committee. According to the stand of the respondents, the petitioner failed to comply with the covenants in the agreement dated 18.07.2022. The dispute was, therefore, a pure dispute of breach of contract.

5.2 As could be seen from the judgment and order of learned Single Judge, he set aside the communication dated 25.10.2022 issued by respondent No.3–Marketing Communication and Advertising Ltd., which was a communication, whereby the contract dated 11.08.2022 was cancelled and the petitioner was accordingly communicated.



5.3 It transpired from the record that the petitioner issued notice dated 30.01.2023 demanding payment as per the invoice for breach of the contract. The petitioner further got issued legal notice dated 10.04.2023 and 20.04.2023 through its Advocate asking to pay an amount of Rs.4,08,87,000/- which included the commission and GST as payable to the petitioner, which was the cost of production incurred by, minus sum of Rs.1,37,28,813/-, which was received by the petitioner. The tax invoice raised by the petitioner, the payable amount was Rs.2,46,54,286/- including GST.

5.4 It is to be recorded that during the pendency of the writ petition, it appears that the communication cancelling the work order/contract dated 25.10.2022 was stayed. An internal Committee was constituted to view the final version of the film to be displayed in the Investors Meet. The Committee scrutinised the film and rejected the film for display at the Meet. The Committee was of the opinion that the film was not upto the mark to be exhibited at the Global Meet. However, the learned Single Judge took the view the Committee constitution did not inspire credibility for their rejection of the film.

5.5 It is to be emphasised that there is no quantification of the amount claimed by the petitioner at any stage. The petitioner claimed that particular amount was extended and the invoice was raised on the ground of breach of contract. On the other hand, the stand of the respondents was that the product produced was not upto the quality. This is the dispute in its nutshell. It is a civil dispute in the realm of the contract.

5.6 The entire challenge by learned Single Judge, in other words, was about alleged illegal termination of the contract and that the respondents did not perform their part of obligations under the contract, as per the case of the petitioner. The issues raised and the relief sought for pertained to contractual rights and obligation arising from the work order given by the respondents and its performance by the petitioner. The petitioner as well as the appellant-State and appellant-Invest Karnataka Forum were the participants which led to formation of the contract.

5.7 Furthermore, the agreement between the respondent No.2 and the petitioner contained Clause-57 which was an arbitration clause, that any dispute or difference or claim arising out of, or in connection with, or relating to the contract in question or the breach or termination thereof, shall be referred and settled under

the Arbitration Centre - Karnataka (Domestic & International) Rules 2012. It is well settled that in such circumstances the proper course for the learned Single Judge to relegate the parties to arbitral proceedings instead of entertaining the writ petition.

6. The dispute between the parties arising out of the alleged breach of the contract, is required to be adjudicated. Whether the respondents were justified in declining the acceptance of the 3D film of the petitioner, whether the non-screening thereof in the Global Investors Meet was justified on the ground of poor quality of the film, whether time was the essence, whether it was a breach of contractual obligation on part of the parties, and whether the petitioner had duly performed its part of the contract, are all the issues required to be established by leading evidence. The ready conclusion cannot be drawn in respect of such questions, unless evidence is led by both the parties.

7. In **Uttar Pradesh Power Transmission Corporation Limited and another vs. CG Power and Industrial Solutions Limited and another, (AIR 2021 SC 2411)**, the Supreme Court observed that though in case arising out of contract, the relief in the petition under Article 226 of the Constitution is not alien, “however, the writ jurisdiction under Article 226, being

discretionary, the High Courts usually refrain from entertaining a writ petition which involves adjudication of disputed questions of fact which may require analysis of evidence of witnesses”.

7.1 The scope of judicial review in contractual matters is extremely limited and it is in rare category of cases that the writ of mandamus could be issued. The facts of the present case is not a case where learned Single Judge would have issued writ of mandamus directing the respondents to release the payment straightaway without the trial of the issues. The High Court in exercise of writ jurisdiction would not enter into the arena of interpretation of contractual term, its enforcement and the questions regarding breach or otherwise thereof since they are questions to be subjected to evidence.

7.2 In **Binny Limited and another vs. V.Sadasivan and others, [(2005) 6 SCC 657]**, it was a question of termination of services of the employees and the Court said that in absence of any element of public policy therein, the Court could not have interfered with.

7.2.1 It was observed,

“... Their cases were purely governed by the contract of employment entered into between the

employees and the employer. It is not appropriate to construe those contracts as opposed to the principles of public policy and thus void and illegal under Section 23 of the Contract Act. In contractual matters even in respect of public bodies, the principles of judicial review have got limited application. ..." (para 31)

7.2.2 It was further observed,

"... This was expressly stated by this Court in *State of U.P. v. Bridge & Roof Co. (India) Ltd.*, (1996) 6 SCC 22 and also in *Kerala SEB vs. Kurien E. Kalathil*, (2000) 6 SCC 293. In the latter case, this Court reiterated that the interpretation and implementation of a clause in a contract cannot be the subject-matter of a writ petition. Whether the contract envisages actual payment or not is a question of construction of contract. If a term of a contract is violated, ordinarily, the remedy is not a writ petition under Article 226." (para 31)

7.3 The very principles were re-emphasized by the Supreme Court in **State of Kerala v. M.K. Jose [(2015) 9 SCC 433]** by referring to its own decision in **State of Bihar v. Jain Plastics and Chemicals Ltd. [(2002) 1 SCC 216]**. Quoting from the said decision in **Jain Plastics and Chemicals Ltd. (supra)**,

"3.... It is to be reiterated that writ petition under Article 226 is not the proper proceedings for adjudicating such disputes. Under the law, it was open to the respondent to approach the court of competent jurisdiction for appropriate relief for breach of contract. It is settled law that when an alternative and equally efficacious remedy is open to the litigant, he should be required to pursue that remedy and not invoke

the writ jurisdiction of the High Court. Equally, the existence of alternative remedy does not affect the jurisdiction of the court to issue writ, but ordinarily that would be a good ground in refusing to exercise the discretion under Article 226.” (para 14)

7.3.1 It was further extracted from the decision in **Jain Plastics and Chemicals Ltd. (supra)**,

“7. ...It is true that many matters could be decided after referring to the contentions raised in the affidavits and counter-affidavits, but that would hardly be a ground for exercise of extraordinary jurisdiction under Article 226 of the Constitution in case of alleged breach of contract. Whether the alleged non-supply of road permits by the appellants would justify breach of contract by the respondent would depend upon facts and evidence and is not required to be decided or dealt with in a writ petition. Such seriously disputed questions or rival claims of the parties with regard to breach of contract are to be investigated and determined on the basis of evidence which may be led by the parties in a properly instituted civil suit rather than by a court exercising prerogative of issuing writs.” (para 14)

7.3.2 In **M.K. Jose (supra)**, Supreme Court further quoted from **Jain Plastics and Chemicals Ltd. (supra)** to observe that even if in some cases the lis could be seemingly decided on the basis of the affidavit, when it comes to contractual matters, the High Court should not delve in such exercise. It was further

observed that in many cases, the dispute can be decided on the basis of the affidavit.

7.4 The present controversy is not one which could be decided on the basis of documents and affidavits. There are rival factual disputes and the factual stance taken by the parties which necessarily require the leading of evidence.

7.5 In **Bharat Coking Coal Ltd., and others v. AMR Dev Prabha and others [(2020) 16 SCC 759]**, it was unequivocally ruled by the Supreme Court that the writs are impermissible when the allegation is solely with regard to violation of a contractual right or duty. It was observed thus,

“30. But merely because the accusations made are against the State or its instrumentalities does not mean that an aggrieved person can bypass established civil adjudicatory processes and directly seek writ relief. In determining whether to exercise their discretion, the writ courts ought not only confine themselves to the identity of the opposite party but also to the nature of the dispute and of the relief prayed for. Thus, although every wrong has a remedy, depending upon the nature of the wrong there would be different forums for redress.” (para 30)

7.6. Given the above well settled principles relating to the permissibility of intervention in the contractual matters by the writ court and the scope of judicial review in such disputes, the order

passed by learned Single Judge could hardly be treated good in law. Learned Single Judge manifestly erred in setting aside communication dated 25.10.2022, whereby the work order was cancelled by the respondents. The second direction which learned Single Judge proceeded to issue a mandamus was to direct the respondent–State to release the balance amount due to the petitioner. This part of the direction was evidently erroneous inasmuch as with any quantification and adjudication release of the payment was not warranted. A writ of mandamus could not have been issued. The petitioner was required to establish its case on evidence.

8. In the third direction, learned Single Judge placed the petitioner at liberty to seek arbitration for any other dispute. When the agreement contained arbitration clause, it is trite that the Court would not entertain the writ petition and would require the parties to avail the arbitral remedy.

9. Such recourse is kept open for the parties while dismissing this petition.

10. In view of the above discussion and reasons, the judgment and order of learned Single Judge dated 25.01.2023 as well as the



order dated 07.08.2023 passed in Review Petition No.104 of 2023 rejecting the review are hereby set aside.

11. Both the appeals stand allowed. The contempt application will not survive which was filed against the impugned judgment now set aside by this judgment allowing the appeals and the same is dismissed.

In view of disposal of the appeals, the interlocutory applications would not survive and they stand accordingly disposed of.

**Sd/-  
CHIEF JUSTICE**

**Sd/-  
JUDGE**

AHB