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

+ W.P.(C) 6901/2025, CM APPL. 31255/2025, CM APPL. 31256/2025
& CM APPL. 31257/2025

M/S GUPTA ENGINEERS AND CONTRACTORS.....Petitioner

Through: Mr. Kunwar Chandresh, Ms. Poonam Prasad, Mr. Divyansh Singh and Mr. Munis Nasir, Advocates.

versus

M/S NBCC INDIA LIMITED

.....Respondent

Through: None.

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Date of Decision: 21st May, 2025

CORAM:

HON'BLE THE CHIEF JUSTICE

HON'BLE MR. JUSTICE TUSHAR RAO GEDELA

J U D G E M E N T

TUSHAR RAO GEDELA, J: (ORAL)

1. The present writ petition is filed under Article 226 of the Constitution of India, 1950, seeking a direction to withdraw the impugned tender or issue a corrigendum to Clause 9 of the Additional Special Conditions of Contract (SCC) of the said tender, which declares the materials, tools, and plants belonging to the petitioner as the property of the respondent/NBCC. Alternatively, the petition further seeks return of the aforesaid materials since the same do not belong to M/s YFC Projects Private Limited (hereinafter referred to as "YFC") and have been illegally confiscated by the respondent/NBCC.

2. The petitioner is a Micro, Small and Medium Enterprise (MSME)



contractor, having its registered office at 19, Patel Nagar, Hapur, Uttar Pradesh, and is represented through its partner, Mr. Rakesh Aggarwal.

3. The petitioner states that NBCC issued a Notice Inviting Tender (NIT) on 13.04.2020. Pursuant to the NIT, a contract was awarded to YFC by way of a Letter of Award dated 19.08.2020 for the works pertaining to the “*Construction/Rectification of Balance Works/Left Out Works of Leisure Valley – Adarsh Awas Yojna on an ‘As Is Where Is’ Basis at Plot No. GH-02, Sector - Tech Zone-IV, Noida (UP),*” related to the Amrapali Group of Companies, on an Engineering, Procurement, and Construction (EPC) basis, at a tender value of ₹517,36,45,572/-. As per the work order, the stipulated date of commencement was ten days from the date of issuance, and the contractual period was 36 months.

4. The petitioner candidly submits that it is not a party to the contract executed between NBCC and YFC. However, the petitioner entered into a subcontracting agreement with M/s YFC Projects Private Limited for execution of works relating to Towers B1, C1, D1, and E1 of the aforementioned project. The subcontract agreement was executed on 28.11.2022, which was also the stipulated date of commencement, with a scheduled completion period of 24 months.

5. It is the case of the petitioner that, on 04.09.2024, YFC unilaterally withdrew a portion of the subcontracted works, specifically, Towers B and C on account of slow progress. Thereafter, on 25.02.2025, without issuing any prior notice, YFC terminated the subcontract in its entirety. The termination notice stated that the remaining unexecuted portion of the subcontract would be carried out at the risk and cost of the petitioner. The notice further



mentioned that the petitioner shall not remove any machinery, materials, shuttering, or scaffolding from the site.

6. Subsequently, on 22.04.2025, the agreement between the YFC and NBCC was terminated. Following this, the NBCC issued a fresh NIT on 01.05.2025 to execute the balance works at the risk and cost of the YFC. Clause 9 of this fresh NIT provides for the confiscation of property belonging to the YFC. The petitioner asserts that, despite having addressed communications to the NBCC requesting exclusion of the petitioner's materials and equipment from the purview of the fresh NIT, no response was received.

7. In view of the above, and considering that the last date for submission of bids under the said tender is 22.05.2025, the petitioner apprehends imminent risk of unlawful confiscation of its materials and machinery valued at approximately ₹10 crores by NBCC. Hence, the petitioner has filed the present petition.

8. Mr. Kunwar Chandresh, learned counsel for the petitioner lays challenge to Clause 9 of the fresh NIT notified by the NBCC for completion and execution of the balance works at the risk and cost of the contractor/YFC under which the petitioner was a sub-contractor. Learned counsel states that in accordance with Clause 9, the NBCC is unilaterally attempting to seize and utilize the materials, tools and plants of the petitioner which is at site, while executing the works as a sub-contractor of YFC. According to him the NBCC cannot undertake any such coercive measure unilaterally causing a huge loss of almost ₹10 Crores to the petitioner,



without even as much as a notice.

9. Learned counsel also emphasises that he is only a sub-contractor to YFC and there is no contract executed between him and the NBCC and therefore, it is not permissible in law for the NBCC to takeover or seize his raw materials, tools and plant which are available at site. He states that despite submitting number of representations, the NBCC has not responded any of them and is now unilaterally by way of Clause 9, of the fresh NIT to which the petitioner is not a party, usurping the property belonging to the petitioner.

10. Learned counsel fairly admitted he has filed a suit against YFC in respect of the goods referred to in the present writ petition and has also filed an application under section 9 of the Arbitration and Conciliation Act, 1996 before the Court of competent jurisdiction. Notwithstanding the same, learned counsel asserts that this Court may interfere in the fresh NIT notified by the NBCC and direct NBCC to either withdraw the fresh NIT or issue a corrigendum withdrawing Clause 9 whereby the materials, tools and plants of the petitioner are declared as asset of NBCC. Alternatively, the petitioner seeks return of the aforesaid materials since the same do not belong to YFC and have been illegally confiscated by NBCC.

11. In the present case, we are unable to appreciate how the present writ petition is maintainable. It is the admitted case of the petitioner that it was a sub-contractor to the contractor namely, YFC Projects who was awarded a contract by NBCC by way of a letter of award dated 19.08.2020 regarding certain infrastructural projects. It is not disputed that the petitioner was a sub-contractor of YFC and had no privity of contract with NBCC. Infact a



sub-contract agreement dated 28.11.2022 was executed between the petitioner and YFC. From the record, it is clear that YFC *vide* letter dated 04.09.2024 withdrew a portion of the sub-contracted works on the alleged ground of slow progress. Furthermore, YFC by letter dated 05.02.2025 had terminated the sub-contract in its entirety with a caveat that the remaining unexecuted portion of the sub-contracted work would be carried out at the risk and cost of the petitioner. Thereafter, on 22.04.2025 the NBCC terminated the agreement/contract executed with YFC. It appears that in accordance with the Clauses of the contract, a fresh NIT was issued by NBCC for executing the balance works at the risk and cost of YFC. It appears that in pursuance to the said agreement executed between NBCC and YFC, property at site belonging to YFC is proposed to be confiscated. It is these properties that the petitioner claims ownership of and seeks protection/pre-emption. The grievance of the petitioner arises from the said impending/apprehended action of the NBCC.

12. It is crystal clear from the aforesaid narration of facts that there is no privity of contract between the petitioner and NBCC as admitted. It is also manifest that the petitioner as a sub-contractor of YFC, has disputes with YFC. In such circumstances, considering the fact that YFC is a private party coupled with the admitted fact that there is no privity of contract or any relation, contractual or otherwise, with NBCC, it is apparent, no petition under Article 226 of the Constitution of India, 1950 can be maintained against a private party, i.e., YFC Projects Pvt. Ltd. Moreover, the petitioner has not been able to demonstrate any violation of its rights, muchless any fundamental right which has been infringed by the State or its



instrumentality, in the present case, the NBCC. Ergo, the present writ petition is clearly not maintainable in its present form.

13. That apart, the statement of facts and submissions clearly indicate and demonstrate that the disputes *inter se* petitioner and YFC are in the realm of private disputes which cannot be agitated in a writ under Article 226 of the Constitution of India.

14. Additionally, the petitioner for unknown reasons has not impleaded the Contractor/YFC as one of the respondents, though the pleadings are replete with references to the facts commencing from the execution of the sub-contract agreement; the partial withdrawal of the works by YFC; the termination of the sub-contract again by YFC; and finally, the notice that the balance remaining sub-contracted works would be completed at the risk and cost of the petitioner, unequivocally point towards the fact that the disputes, if any, are entirely between two private parties for which no petition under Article 226 can be maintained. It is also pertinent to note that non-joinder of YFC, in the present case, would be fatal to the maintainability of the petition itself, inasmuch as, given the facts and circumstances, YFC would be a necessary and proper party in whose absence the core issues and disputes cannot be adjudicated. In that view of the matter too, the petition is liable to be dismissed (See: ***Kanakarathanammal v. V.S. Loganatha Mudaliar, 1963 SCC OnLine SC 154***)

15. Merely because the petitioner has addressed certain correspondences or representations to the NBCC, would not *ipso facto*, give rise to a cause of action to institute a writ under Article 226 of the Constitution of India. It is apparent from the facts crystallized above that the grievances, if any, of the



petitioner can be traced only to YFC and not NBCC. In that view of the matter too, we are unable to appreciate as to how a writ could be maintainable.

16. It is also significant to note that the petitioner itself is located in Hapur, Uttar Pradesh, the contractor/YFC is located in Gurgaon and the work which was to be executed under the contract is situated in Noida in the State of Uttar Pradesh. Merely because NBCC is Head Quartered at Delhi, would not automatically give rise to a cause of action for the petitioner to file the present writ petition before this Court. This conclusion is reiterated by the additional fact that, as observed above, there is no privity of contract between NBCC and the petitioner. Thus, this Court would not have any territorial jurisdiction to adjudicate the present writ petition. For the reasons stated above, we do not find any reason, muchless cogent reasons to exercise the powers of judicial review under Article 226 of the Constitution of India.

17. It is pertinent to note that the petitioner has already availed of its appropriate remedies by filing a civil suit as also an application under section 9 of the Arbitration and Conciliation Act, 1996 before the court of competent jurisdiction. In that eventuality too, the alternate remedy of writ under Article 226 of the Constitution, would not be maintainable.

18. Resultantly, the writ petition is dismissed alongwith pending applications, if any.

TUSHAR RAO GEDELA, J

DEVENDRA KUMAR UPADHYAYA, CJ

MAY 21, 2025/aj/rl