

**(2022) 08 JH CK 0062**

**In the Jharkhand High Court**

**Case No :** Letters Patent Appellate No. 229 Of 2022

Jharkhand State Mineral Development Corporation Limited  
And Others

**APPELLANT**

**Vs**

M/s Tirupati Niryat Private Limited And Others

**RESPONDENT**

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**Date of Decision :** 23-08-2022

**Acts Referred:**

Constitution Of India, 1950 — Article 14, 226  
Specific Relief Act, 1963 — Section 16  
Evidence Act, 1872 — Section

**Citation :** (2022) 08 JH CK 0062

**Hon'ble Judges :** Shree Chandrashekhar, J; Ratnaker Bhengra, J

**Bench :** Division Bench

**Advocate :** Sumeet Gadodia, Shilpi Sandil Gadodia, Ritesh Kumar Gupta, Ankit Kumar, Indrajit Sinha, Vipul Poddar

**Final Decision :** Dismissed

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## **Judgement**

Shree Chandrashekhar, J

1. In compliance of the order dated 1st August 2022 passed in Special Leave to Appeal (C) No(s) 13078-13079 of 2022, this Letters Patent Appeal has been heard by us at an early date.

2. The Jharkhand State Mineral Development Corporation (in short, JSMDC) has taken exception to the direction contained in the order dated 7th April 2022 passed in WP(C) No.1024 of 2022, that M/s Tirupati Niryat Private Limited (in short, Company) shall be permitted to lift 75,800 MT coal within 45 days and the JSMDC shall not issue any fresh e-auction notice before releasing such quantity of coal to the Company.

3. Briefly stated, e-auction notice dated 14th December 2020 concluded in favor of the Company which was allotted 1,00,000 (One Lac) MT coal from Sikni Colliery operated by the JSMDC and pursuant thereof a sale intimation letter was

issued by the JSMDC on 24th December 2020. The Company deposited Rs.19,15,60,000/- in advance besides EMD of Rs.2,00,00,000/- for price of One Lac MT coal, whereupon the JSMDC issued DO No.1843 dated 8th February 2021 in favor of the Company. In the next 12 working days, the Company lifted about 12,000 MT coal before an interim order came to be passed on 22nd February 2021 in WP(C) No.271 of 2021 restraining the Company which was arrayed as respondent no.4 to lift coal. The said writ petition was instituted by two local buyers who were registered with M/s MSTC to participate in e-auction of coal. But they were prevented from bidding in the said e-auction on account of large quantity of coal put on sale in e-auction dated 14th December 2020 in which the Company had participated. In the said writ petition, the Company filed IA No.1505 of 2021 for vacating ex-parte order dated 22nd February 2021 and to permit the Company to lift balance quantity of coal. The learned Advocate-General appearing for the JSMDC supported this application and the order was modified by the writ Court on 22nd March 2021 to the extent that the Company/ Intervener was permitted to lift 12,000 MT coal – but, the stay order continued. The JSMDC provided 15 days' time to the Company to lift 12,000 MT coal and subsequently further extensions of 7 days and 15 days (during 2nd wave of COVID-19 pandemic) were provided for lifting coal allocated to the Company by virtue of the writ Court's order – 3rd extension was granted pursuant to direction issued by the writ Court in IA No.5816 of 2021. Finally, WP(C) No.271 of 2021 was dismissed on 14th December 2021 and, consequently, the stay order stood vacated. Thereafter, the Company made representations on 3rd January 2022 and 10th January 2022 to the JSMDC for issuing Delivery Orders (in short, DOs) for remaining 75,800 MT coal. These letters remained unanswered which prompted the Company to approach the writ Court by filing WP(C) No.1024 of 2022 on 5th March 2022.

4. The Company approached the writ Court complaining against arbitrary withholding of DOs for 75,800 MT coal. The JSMDC raised a question of maintainability of the writ petition and, drawing from letters written by the Company, the JSMDC pleaded that the Company admitted its incapacity to lift desired quantity of coal and the fault lies solely with the Company. Subsequently, the JSMDC put forth a plea of financial losses on account of rise in coal price which was the reason for refusing fresh DOs for 75,800 MT coal to the Company.

5. The Company took a plea that inadequate production and supply of fresh coal coupled with space crunch at Sikni Colliery, Chandwa, which did not had infrastructure and facility for loading more than 40-50 trucks, were serious handicaps which prevented the Company to lift coal. In its letters, the Company narrated various acts and omissions of the JSMDC which seriously hampered loading of coal at Sikni Colliery in consequence thereof the Company could not fulfill its commitments to the purchasers and suffered huge losses.

6. In the proceeding of WP(C) No.1024 of 2022, a counter-affidavit was filed by the JSMDC but no reason was disclosed why the JSMDC stopped issuing DOs for

the remaining 75,800 MT coal to the Company. As would appear from the order dated 31st March 2022 passed in WP(C) No.1024 of 2022, that on the request of the learned Advocate-General the hearing of the writ petition was deferred by one week. At this stage, a supplementary counter-affidavit dated 5th April 2022 was filed by the JSMDC raising whole lot of controversies to oppose the writ petition.

7. The writ Court came to a conclusion that; there was no fault on the part of the Company which performed its obligation by depositing Rs.21,15,60,000/- which was full and final consideration for the allotted quantity of coal; the matter lingered because the JSMDC did not perform its obligations and; the act of the JSMDC in issuing three fresh e-auction notices instead of performing its obligation to issue DOs for 75,800 MT coal to the Company was unfair and improper. The writ Court further held that escalation in the coal price was not on account of any negligence on the part of the Company which had already deposited the full amount for purchase of One Lac MT coal and, that, after dismissal of WP(C) No.271 of 2021 it was incumbent upon the JSMDC to issue fresh DOs for 75,800 MT coal in favor of the Company.

8. WP(C) No.1024 of 2022 was allowed by an order dated 7th April 2022 in the following terms:

"Thus, it was duty of Jharkhand State Mineral Development Corporation Ltd. to issue delivery order in favour of the petitioner with regard to balance amount of coal to the tune of 75,800 MT, for which the petitioner has already deposited the amount, but instead of issuing delivery order, the Jharkhand State Mineral Development Corporation Ltd. has issued three auction notice No. 99 / e-Auction of coal / JSMDC / 2022, Ranchi dated 06.01.2022, 101 / e-Auction of coal / JSMDC / 2022, Ranchi dated 03.03.2022 and No. 102 / e-auction of coal / JSMDC / 2022, Ranchi dated 15.03.2022, which shows that respondents – Jharkhand State Mineral Corporation Ltd. has not acted as a model litigant in view of the judgment passed by the Apex Court in the case of ITC Limited Vs. State of Uttar Pradesh and others (Supra), ABL International Ltd. and Another Vs. Export Credit Guarantee Corporation of India Ltd. and Another (Supra) and Popatrao Vyankatrao Patil V. State of Maharastra and Others (Supra).

This Court is of the opinion that it would be proper for the State of Jharkhand to issue delivery order for lifting 75,800 MT of coal in favour of petitioner as coal is limited in Sikni Mines under Jharkhand State Mineral Development Corporation Ltd, as there is no fault on the part of the petitioner, rather petitioner has already performed part of obligation by depositing Rs. 21,15,60,000/- as on 22.12.2020 and 05.01.2021 and thus Jharkhand State Mineral Development Corporation Ltd earned their amount and interest thereon, as such the entire matter lingered on part of Respondent Jharkhand State Mineral Development Corporation Ltd. for performance of their obligation. The Respondent was also not at fault because of pendency of the writ petition i.e. W.P.(C) No. 271/2021. But after dismissal of the writ petition, it was incumbent upon the Respondent Jharkhand State Mineral

Development Corporation to fulfill, the part of their obligation, which they have failed, before issuing three e-acution notices, as there is no fault on part of the petitioner in performing his part of obligation rather petitioner has also suffered, as his money has been blocked for such a long time.

It is incumbent upon the parties to maintain the legal sanctity entered into for the contractual obligation and the parties acting upon the policy of the state government cannot be left in the lurch, in view of the judgement rendered by the Apex Court in the case of Indsil Hydro Power & Manganese Ltd. v. State of Kerala, reported in (2020) 16 SCC 276, relevant Para is profitably quoted herein -

43. The order of the State Government dated 7-2-2001 shows that there was no deliberate act or default on the part of KSEB. Indeed, it has not been seriously disputed that at the material time, there were agitations on the part of the farmers and certain other circumstances which caused delay in the construction of the transmission lines. However as significant as these reasons are, it should not lead to a situation where a private investor who has acted upon the policy of the State Government being left in the lurch as a result of supervening circumstances which have resulted in the power not being evacuated into the grid due to the non-commissioning of the transmission lines at the material time by KSEB. It is imperative that contractual obligations entered into by the State have legal sanctity. A legal regime where the sanctity of contracts is respected and commercial contracts are enforced is essential to the maintenance of the rule of law. Trade and commerce can be freely conducted in a stable legal order which provides remedies for enforcement.

So far contention of the State about the price escalation is not worthwhile for consideration as the price escalation should not be the part of obligation until it reflects from the circumstances, that it has happened due to the negligence of one of the parties. The price allocated in the auction for the coal has already been deposited in full and total by the petitioner, in compliance of the terms and conditions of the auction process and the same has not been disputed by the Respondent, Jharkhand State Mineral Development Corporation Ltd.

It appears that there is no fault on the part of petitioner for the price of the coal, as the same was already paid, as such, it was incumbent upon the Respondent to issue Delivery Order for lifting the coal from the said mines. Rather, pendency of the writ petition i.e., W.P. (C) No. 271/2021, debarred the petitioner to lift the coal. Thus, the contention of the State about the price escalation is hereby negated.

Accordingly, the writ petition is allowed.

The petitioner shall lift 75,800 MT of coal left with the respondent Jharkhand State Mineral Development Corporation Ltd, within stipulated time of 45 days as per the delivery order, failing which consequences shall be taken.

Respondent- Jharkhand State Mineral Development Corporation Ltd is directed to

not issue fresh e-auction notice till the remaining coal of the petitioner is released.

I.A. No. 1882/2022 and I.A. No. 2362/2022 stand closed.”

9. Mr. Sumeet Gadodia, the learned counsel for the JSMD C contended that in a writ petition which was not maintainable on account of the very nature of dispute raised before the Court, by permitting the Company to lift 75,800 MT coal, the writ Court virtually granted specific performance of the contract. With reference to the judgments in “Surjeet Singh Sahani v. State of U.P and others” 2022 SCC OnLine SC 249 and “Municipal Council of Gondia v. Divi Works & Suppliers, HUF and others” 2022 SCC OnLine SC 247, it is contended that such powers cannot be exercised by the writ Court. Per contra, Mr. Indrajit Sinha, the learned counsel for the Company joined the issue by pointing out to the nature of operations conducted by the JSMD C and its arbitrary action in withholding DOs, to contend that the writ petition involved elements of public law.

10. Both sides laid reliance on several judgments regarding parameters to entertain writ petition in contractual matters, which we have recorded in the proceedings dated 17th & 18th August 2022. No doubt the principles laid down by the Hon'ble Supreme Court provide valuable insight for the Courts how to exercise powers and jurisdiction under Article 226 of the Constitution of India but, at the same time, this also is required to be kept in mind that each case may turn on its own facts.

11. There is no absolute rule of law that a petition under Article 226 of the Constitution of India shall not be entertained by the writ Court because one party has raised a dispute on facts or, that, some questions of fact may fall for determination while considering the right to relief of the aggrieved party. In a catena of judgments, the Hon'ble Supreme Court has held that the High Court can examine issues of law and fact in a petition under Article 226 of the Constitution of India and the aggrieved party should not be relegated to somewhat lengthy, dilatory and expensive processes of civil suit or arbitration against the public body. This is also well-settled a proposition in law that the decision of the High Court to entertain or not to entertain a petition under Article 226 of the Constitution of India against a particular State action is fundamentally discretionary and the limitations on exercise of such discretionary jurisdiction are self-imposed.

12. In “A.V. Venkateswaran, Collector of Customs, Bombay v. Ramchand Sobhraj Wadhwani and another” AIR 1961 SC 1506 the Hon'ble Supreme Court has observed that it is not possible or even if were, it would not be desirable to lay down any inflexible rule as to exercise of writ jurisdiction which shall apply with rigidity in every case – it depends on facts of each particular case.

13. Before filing of the writ petition by the Company, there seems to be no dispute between the Company and the JSMD C. Both were sailing together and supporting each other in the proceeding of WP(C) No.271 of 2021. The JSMD C

never questioned capacity of the Company to lift allocated quantity of coal per day, it did not issue any caution to the Company and there is no communication from the JSMDC indicating an intention to terminate the contract. On 22nd February 2021 when the interim order was passed, the Company had clean 33 days' time left to lift the remaining quantity of coal. This period of 33 days was still available to the Company after WP(C) No.271 of 2021 was dismissed on 14th December 2021 – the interim order dated 22nd February 2021 continued till that time. However, the JSMDC stopped issuing DOs for the remaining quantity of coal for which there appears to be no good reason. The actions of the JSMDC do not appear to be in its own interest and its bonafide in withholding and not releasing DOs in favor of the Company is clouded. The contract is still subsisting and at any stage till now the JSMDC did not even indicate to initiate any penal action against the Company. It was filing of the writ petition which triggered war of words between the parties and the JSMDC raised host of objections for not issuing DOs to the Company for the remaining quantity of coal.

14. The JSMDC is an instrumentality of the State and the dispute sought to be raised on facts by it are all elementary questions of fact which can be decided on a mere glance at various correspondences by the Company and the chart of loading and unloading of coal produced by the JSMDC. The Company made several complaints and issued as many as 11 letters to the JSMDC which are not controverted at any stage either before the writ Court or in the present proceeding. However, the JSMDC seeks to rely on statements by the Company in its letters and on that basis built a case that the Company was incapable of lifting the allocated quantity of coal. This is fundamental in law that a document should be read as a whole to infer real intent of the maker of the document. Selective reading of some of the statements in the letters written by the Company, which is nothing but an expression of frustration, may lead to wrong conclusions which must be avoided. It is a matter of record that the Company mobilized more trucks than were loaded on most of the days and there is no dispute that it could have also arranged 175 trucks on each working day. But on none of the days between 10th February 2021 and 23rd February 2021 and between 18th April 2021 to 23rd April 2021 there was any production of coal at Sikni Colliery. In this context, our attention has been drawn to the statement made by the learned Advocate-General in the proceeding of WP(C) No.271 of 2021, that there is limited storage capacity available at Sikni Colliery. It is also admitted at Bar that coal is not a commodity freely available in the market and its production and supply are governed by a regulatory regime under the statutes and rules framed thereunder. In these circumstances, if the JSMDC decides to act illegally and arbitrarily and refuses to issue fresh DOs the aggrieved party can very well avail public law remedy under Article 226 of the Constitution of India. The JSMDC which is a party to the contract is under an obligation to act fairly, justly and reasonably and the writ Court shall have ample powers to issue suitable directions to set right the arbitrary actions of the State and its instrumentalities.

15. Furthermore, the governing principles under section 16 of the Specific Relief

Act, 1963 are not attracted in the present case. The judgments in "Surjeet Singh Sahani" 2022 SCC OnLine SC 249, "Municipal Council of Gondia" 2022 SCC OnLine SC 247 and "U.N. Krishnamurthy (since deceased) Thr. Lrs. v. A.M. Krishnamurthy" 2022 SCC OnLine SC 840 do not provide any legal basis to challenge the writ Court's direction to issue DOs for 75,800 MT coal. The so-called dispute about readiness and willingness of the Company to perform its obligations under the contract cannot be seen in the context of the principles under section 16 of the Specific Relief Act.

16. As held in "Joshi Technologies International Inc. v. Union of India" (2015) 7 SCC 728, the JSMDC is under an obligation to act fairly even in its executive capacity and commercial difficulty, inconvenience or hardship are not the grounds available to it to avoid its obligation under e-auction.

17. In "Joshi Technology International"<sup>5</sup> the Hon'ble Supreme Court has held as under:

"70.9. The distinction between public law and private law element in the contract with the State is getting blurred. However, it has not been totally obliterated and where the matter falls purely in private field of contract, this Court has maintained the position that writ petition is not maintainable. The dichotomy between public law and private law rights and remedies would depend on the factual matrix of each case and the distinction between the public law remedies and private law field, cannot be demarcated with precision. In fact, each case has to be examined, on its facts whether the contractual relations between the parties bear insignia of public element. Once on the facts of a particular case it is found that nature of the activity or controversy involves public law element, then the matter can be examined by the High Court in writ petitions under Article 226 of the Constitution of India to see whether action of the State and/or instrumentality or agency of the State is fair, just and equitable or that relevant factors are taken into consideration and irrelevant factors have not gone into the decision-making process or that the decision is not arbitrary."

18. The main plank of the JSMDC to challenge the writ Court's order on the ground of disputed questions of fact involved in the case is based on the chart appended with the letter dated 10th May 2021. The learned counsel for the JSMDC would submit that on many days the Company did not lift allocated quantity of coal which was available at Sikni Colliery, it did not prepare challans for transportation of Coal and, on top of this all, expressed its inability to lift coal as the Company had no buyers. It is, therefore, contended that the Company was solely responsible for not fulfilling its commitments to lift the entire quantity of coal within the stipulated period of 45 days.

19. Controverting the aforesaid arguments raised by the JSMDC on disputed questions of fact, Mr. Indrajit Sinha, the learned counsel for the Company contended that such plea has been raised by the JSMDC with oblique motive to avoid its obligations under the contract. It is submitted that except the question

of maintainability of the writ petition on the basis of arbitration clause, all controversies regarding disputed questions of fact were sought to be raised by the JSMDCL for the first time at the final hearing of the writ petition, which is very much clear from the statement made by the learned Advocate-General on 31st March 2022.

20. The issue before the writ Court was plain and simple. After WP(C) No. 271 of 2021 was dismissed on 14th December 2021, the Company approached the JSMDCL through letters dated 3rd January 2022 and 10th January 2022 for release of the balance quantity of coal. These correspondences from the Company did not yield any response from the JSMDCL and, constrained, the Company approached the writ Court by filing WP(C) No. 1024 of 2022.

21. In the counter-affidavit, the JSMDCL pleaded bald denials and there was no substantial challenge to the writ petition except to the following extent:

"6. That it is stated that as per the terms & conditions of the Spot e-auction scheme 2015 which guide the e -auction of coal state that all the dispute arising out of these relations that to in any firm whatsoever shall be dealt exclusively by way of arbitration. In the term of arbitration and conciliation Act 1996.

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11. That with regard to para-2 (d) of the writ petition it is stated that the respondent JSMDCL has all the rights to amend the terms and conditions by the clause no. 11.10 of terms and conditions of Spot E-auction Scheme 2015. The balance quantity of coal was not permitted to lift due to stay order of the Hon'ble High Court.

12. That with regard to para-2 (e) of the writ petition it is stated that the same is denied. JSMDCL is public under taking doing all its activities in the interest of public and government as per rules and regulation. The sale of coal was done through open forward e-auction.

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14. That with regard to para-4 of the writ petition it is stated that the corporation being commercial organization and to operate of its activities, regular cash flow is required. After few failed e-auction, the corporation intended for lot wise sale of coal on which the corporation succeed.

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17. That with regard to para-7 of the writ petition it is stated that Respondent have issued Delivery Order (D.O) No. 1843 dated 08.02.2021 for lifting 1,00,000 MT Coal (One Lakh) to the petitioner. The order passed by the Hon'ble High Court in WPC no. 271/21 was served by the respondent JSMDCL to the petitioner by letter no. 299 dated 24.02.2021 and directed to stop lifting of the coal. Upon receipt of the above order dated 22.02.2021 passed by the Hon'ble High Court, the petitioner stop lifting the coal.



18. That with regard to para-8 of the writ petition it is stated that the respondent (JSMDC) issued extension to the D.O. No. 1843 dated 08.02.2021 vide letter 771 dated 07.04.2021 and 872 dated 20.05.2021 as per the order of the order dated 22.03.2021 of Hon'ble High Court of Jharkhand at Ranchi.

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22. That with regard to para-12 of the writ petition it is stated that the petitioner has granted extensions as per the order of Hon'ble High Court of Jharkhand at Ranchi vide letter no. 771 dated 07.04.2021 for a period of 15 days and the petitioner able to lift 1277.98 MT of coal only. Further upon receipt of request from the petitioner the time was extended for a period of 7 days vide letter no. 872 dated 20.05.2021 and the petitioner was able to lift only 572.72 MT of coal.

This shows that the petitioner was not interested to lift the coal. The details of deployment Truck/Vehicle is enclosed as Annexure C.

The respondent JSMDC issued several letter to the petitioner from the very beginning requesting to lift the coal in the specified time mentioned in the letters.

It is further to mention here that the infrastructures like Weigh Bridge, Working Hours is not a constraint to lift the coal from Sikni and the same may be evident from the letter No. 17 dated 09.01.2022 and hence, the same is denied by the answering respondents.

23. That with regard to para-13 of the writ petition it is stated that the corporation has given different letter No. 72 dated 09.02.2021, Letter No. 186 dated 08.04.2021 & Letter No. 247 dated 20.05.2021 for lifting the coal but the petitioner could not lifted the coal during the stipulated time.

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31. That with regard to para-21 of the writ petition it is stated that the Notice no. 99 e-auction of coal JSMDC 2022 Ranchi dated 06.01.2022 calling for bidder to purchase 20,000 MT of coal has been published. The Corporation being commercial organization and operate its business activities which required regular cash flow. The wages & salary payment of all the employees is being met by way of selling of coal from Sikni Coal Mines. This is the only source of earning for JSMDC."

22. As the records reveal, a plea of price rise and most of other disputes were raised by the JSMDC for the first time through supplementary counter-affidavit dated 5th April 2022 at the fag end of hearing. This becomes clear on a glance at the order dated 31st March 2022 wherein the writ Court recorded that no reason has been assigned (by the JSMDC for not issuing DOs in favor of the Company).

23. The relevant portions of order dated 31st March 2022 read as under:

"Learned Advocate General, Mr. Rajiv Ranjan assisted by learned counsel, Mr. P.A.S. Pati, G.A. -II has submitted that counter affidavit has been filed, but reason has not been assigned, as such, one week time may be granted, so as to

assist this Court properly.”

24. Therefore, for the purpose of creating some ground to frustrate the contract, a supplementary counter-affidavit dated 5th April 2022 was filed without permission of the Court and, that too, just two days before the final hearing of the writ petition. It is submitted that in the supplementary counter- affidavit dated 5th April 2022 also the JSMDC took a different stand on price rise what was argued in the writ Court.

25. In paragraph no.7 of the supplementary counter-affidavit dated 5th April 2022, the JSMDC has pleaded thus:

“7. That it is stated that the writ petitioner now has changed its stand only due to the reason that the price of coal has increased manyfold”.

26. The learned counsel for the JSMDC harped on the remarks in the charts for the periods between 10th February 2021 to 24th February 2021 and between 11th April 2021 to 23rd April 2021, to the effect that: (i) challans were not prepared by DO holder, (ii) trucks did not lift coal though fresh coal was available in Depot and (iii) trucks did not lift coal because fresh coal production was not done by Agency/MDO.

27. The aforesaid charts prepared by the JSMDC, however, reveal a different story. Out of a total of 25 working days there was no production of fresh coal on 18 days; number of trucks arranged by the Company was more than the trucks loaded by the JSMDC and; there was complaint about inferior quality of coal available at Sikni Colliery. No record has been produced by the JSMDC as regards total area under mining, daily production of coal or even availability of space for loading 175 trucks per day – either before the writ Court or in the present proceeding. In the present Letters Patent Appeal, several affidavits have been filed on behalf of the JSMDC including an application for bringing additional documents on record but relevant informations which could have fortified its stand taken before the writ Court, if true, are not brought on record. The Company flagged various issues which prevented it from lifting coal and selling the same in open market. In its letters written to the JSMDC, the Company raised a specific ground that there is lack of sufficient infrastructure including availability of only one Weighbridge at Sikni Colliery which seriously hampered lifting of coal by the Company. Besides the other letters, through letter dated 22nd April 2021 the Company once again pointed out its plight to the JSMDC that in spite of arranging large number of trucks those were not loaded for three days and it had to keep the trucks waiting outside the loading area at Sikni Colliery. The JSMDC seems to have accepted the difficulties faced by the Company in lifting of coal and, therefore, never raised any question or issued caution or send any communication in this regard to the Company.

28. The JSMDC has been allotted Sikni Coal Mines which is stretched over an area of 133 Acres for mining of small quantity of coal. The JSMDC has pleaded that it has daily production capacity of 80,000 MT coal. Notwithstanding that,

only 7 e-auction notices were issued by the JSMDC for sale of coals mined from Sikni Colliery. Between 14th December 2020 and 7th April 2022, the JSMDC issued 7 e-auction notices out of which one e-auction notice failed because no buyer turned up and one e-auction notice was withdrawn by the JSMDC. All these e-auction notices have been issued for sale of much smaller quantity of different grades of coal – 5000 MT, 8000 MT, 15000 MT and 25000 MT. Previously, e-auction notices issued on 12th June 2020, 22nd June 2020 and 30th July 2020 had failed as no buyer turned up; in e-auction notice dated 7th July 2020 for sale of 18,000 MT steam coal only 500 MT coal could be auctioned and; 15,000 MT ROM coal was auctioned in e-auction dated 29th September 2020.

29. It was in the aforesaid background that the Company purchased One Lac MT coal and deposited the entire sale consideration in advance. Now if the plea of rise in coal price were to be accepted, some plausible explanation must come forth why the Company would not lift coal for earning more profit. Mr. Sumeet Gadodia, the learned counsel for the JSMDC submitted that other successful e-auctions fetched higher prices than the price for which coal has been sold to the Company. In this regard, however, no record was produced before the writ Court or in the present proceeding. Notwithstanding that, even though we accept the statement made by the learned counsel for the JSMDC there would be few pertinent questions, such as; whether price rise can be a ground to withdraw from a concluded contract and would it be in public interest to permit the State or its instrumentalities to resile from its contractual obligations on the ground of price rise? We are of the definite opinion that price rise cannot be a ground for the JSMDC to arbitrarily withhold issuance of DOs to the Company midway for the remaining quantity of coal which was sold to it and full payment was realized in advance. In "Ashoka Smokeless Coal India (P) Ltd. And others v. Union of India" (2007) 2 SCC 640 the Hon'ble Supreme Court has held that profit earning cannot be the sole motive of the coal Companies.

30. In fact, the plea of price rise works out in favor of the Company. The plea of Corona period is available to both parties and the rise in coal price on the basis of one e-auction which was held on 25th March 2021 must go against the JSMDC, as the rise in coal price would equally benefit the Company. In the normal course, anyone who could be benefited by price rise would not do anything to deprive himself such benefits. The real state of affairs can be discerned from the statement made by the Chief Secretary in the Court who requested the Court not to frame any timeline for supply of the balance quantity of coal. The statement made by the Chief Secretary, that the remaining quantity of coal shall be supplied to the Company before the rainy season which was more than 2 months away provides further indication as regards incapacity of the JSMDC to supply coal.

31. As we have noticed, the JSMDC supported its decision on account of rise in coal price which according to the learned counsel for the JSMDC is a volatile market. If that is so, invoking the remedy under the arbitration clause would

serve no purpose. Either of the parties is not seeking compensation and, in a subsisting concluded contract, the JSMDC which accepted full payment of coal from the Company cannot raise a plea of price rise. The existence of an arbitration clause, with reference to which judgment in "State of U.P. v. Bridge and Roof Co. India Limited" (1996) 6 SCC 22 has been relied upon, is really not a reason to hold the writ petition not maintainable. Every dispute which parties may seek to raise would not fall under clause 11.12 of the terms and conditions of e-auction. Only a dispute arising out of the terms and conditions of the contract would be governed under clause 11.12 and price rise is definitely not an issue which falls under clause 11.12.

32. In "Unitech Ltd. v. Telangana State Industrial Infrastructure Corporation" 2021 SCC OnLine SC 99 the Hon'ble Supreme Court has held that an arbitration clause by itself does not oust the jurisdiction under Article 226 of the Constitution of India and the Courts are required to decide whether recourse to a public law remedy can justifiably be invoked.

33. Clause 11.12 provides that all disputes arising out of e-auction scheme or in relation thereto, in any form whatsoever, shall be dealt exclusively by way of arbitration in terms of the Arbitration and Conciliation Act, 1996.

34. Clause 11.12 of the terms and conditions of e-auction is extracted below:

"11.12 In the event of any dispute, Bidder/Buyer is necessarily required to represent in writing to the Managing Director of the JSMDC Ltd., who would deal with the same in a period of one month from such representation. Thereafter, if required the matter be determined by the Managing Director of the JSMDC Ltd. Any interpretation of any clause of this will be subject to clarification by JSMDC Ltd., which will be deemed as firm and final. All disputes arising out of this scheme or in relation thereto in any form whatsoever shall be dealt exclusively by way of arbitration in terms of the Arbitration and Conciliation Act, 1996. The arbitration shall be conducted at Ranchi at a place to be notified by JSMDC Ltd. The arbitrator shall be appointed by the CMD/Managing Director of JSMDC Ltd. upon written request in this behalf. The award rendered by the Arbitrator shall be final and binding on the parties. (The place of arbitration & nomination of arbitrator be varied appropriately in view of the JSMDC Ltd.)"

35. A contract is concluded upon acceptance by one party of the proposal moved by another party to the contract. In a concluded contract, the parties are stopped from resiling from the contract except under the circumstances recognized in law or which the contract itself admits and both parties can seek enforcement of the terms of the contract through the processes of the Court. After an e-auction is held and successful bidder makes full payment in advance for the allotted quantity of coal there is no scope for any dispute as regards price of coal. In our opinion, the dispute sought to be raised by the JSMDC on a plea of rise in coal price does not fall within the expression "disputes arising out of the scheme of e-auction".

36. The writ Court rightly held that the Company was not responsible if the timeline of 45 days as indicated under clause 7.2 was not adhered to. It was the interim order dated 22nd February 2021 which continued till 14th December 2021 on account of which the Company and JSMD C both were prevented from moving ahead. The further extensions granted to the Company to lift 12,000 MT coal were in pursuance of the order passed in WP(C) No.271 of 2021 and during pendency of the said writ petition no dispute was raised by the JSMD C about lapse of 45 days' period for lifting the entire quantity of coal. The remaining period of 33 days was still available to the Company and, in fact, the JSMD C did not dispute and controvert the same in its pleadings.

37. In "Indsil Hydro Power and Manganese Ltd. v. State of Kerala" (2020) 16 SCC 276 the Hon'ble Supreme Court has observed that legal sanctity of the contractual obligations should be maintained by the State and its instrumentalities. A legal regime where the sanctity of contracts is respected and commercial contracts are enforced is essential to the maintenance of the rule of law.

38. It is not the law that there can be no estoppel, a sort of promissory estoppel, against the government in exercise of its governmental, public or executive powers. The arbitrary actions of the government and its instrumentalities can be looked into and examined by the writ Court even in contractual matters. While dealing with the allegations of arbitrary action by the government and its instrumentalities, it is not really necessary for the Courts to find out what detriment was suffered by the writ petitioner and it would be sufficient material for the Courts to exercise the powers under Article 226 of the Constitution of India where materials are produced to show arbitrary action of the governmental agency. In a concluded contract which is not terminated by the Corporation or either by operation of any law, the consideration of a probable financial loss cannot be raised by the Corporation. Even in cases which do not fall within the terms of section 115 of the Evidence Act, the aggrieved party can insist that the governmental agency is bound to carry out the promise made by it.

39. In "Unitech Ltd." 2021 SCC OnLine SC 99 the Hon'ble Supreme Court has held as under:

"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.”

40. Mr. Sumeet Gadodia, the learned counsel for the JSMDC submits that the JSMDC being an instrumentality of the State was bound to seek direction from the State before taking a final decision in the matter. But we do not find any justification in the statement made on behalf of the JSMDC that the State Government did not agree to the opinion rendered by the learned counsel for the JSMDC who advised it to issue DOs in favor of the Company. In the proceeding of Contempt Case (Civil) No. 252 of 2022, IA No. 4604 of 2022 was filed by the Chief Secretary, Government of Jharkhand seeking four weeks' time for complying with the Court's order. IA No. 4604 of 2022 was supported by an affidavit of the Chief Secretary, Government of Jharkhand and along with this interlocutory application a copy of the order dated 9th May 2022 issued by the Chief Secretary, Government of Jharkhand directing the Managing Director, JSMDC to comply with the Court's order was attached. On 13th May 2022, the Chief Secretary, Government of Jharkhand gave a proposal to the Court while appearing through Virtual Mode that any time-frame may not be fixed by the Court for complying the order passed in WP(C) No.1024 of 2022 and it was submitted before the Court that the writ Court's order shall be complied before the rainy season. The JSMDC which professes the binding nature of direction issued by the State does not provide a bit of information why undertaking given by the Chief Secretary, Government of Jharkhand before the Court pursuant thereof a direction was issued to the Managing Director, JSMDC vide letter dated 9th May 2022 was not adhered to by the JSMDC. In this context, we observe that the JSMDC has made the State of Jharkhand a proforma respondent in the present proceeding.

41. The actions of the Corporation have to be in conformity with Article 14 of the Constitution of India which frowns upon unfairness, unreasonableness and arbitrariness in action by any State agency. There is no concept of unfettered discretion in public law and the same shall be applicable in contractual matters. There is a plethora of judgments by the Hon'ble Supreme Court and the law is now well settled that contractual matters are not prohibited zone for the writ Court. An aggrieved party which has been arbitrarily deprived of some benefit or advantage under the contract can legitimately approach the writ Court. From the pleadings, it is not clear what was the motive behind withholding of DOs in favor of the Company particularly because no bidder was coming forth. Except

castigating the Company with reference to its letters, the JSMDC could not put forth any defence for its refusal to issue DOs for the remaining 75,800 MT coal. The challenge to maintainability of the petition and price rise in the interregnum have been negated by the writ Court and the writ petition was rightly entertained. In the circumstances of the case, the decision of the writ Court to exercise its power under Article 226 of the Constitution of India cannot be said improper or against any law. The writ Court took a decision on examination of the material facts and circumstances in the case, particularly where the JSMDC acted in the matter illegally and did not issue fresh DOs to the Company. Therefore, we would not interfere with the exercise of discretionary powers by the writ Court in the present Letters Patent Appeal.

42. However, there is one aspect of the matter which requires to be dealt with. By the order dated 7th April 2022, the writ Court restrained the JSMDC from issuing fresh e-auction notice till the time the remaining 75,800 MT coal is released in favor of the Company. Mr. Sumeet Gadodia, the learned counsel for the JSMDC informed the Court that Sikni Colliery has been allotted to the JSMDC for mining and sale of coal through e-auction and that is the main area of operation of the JSMDC, besides settlement of Sand Ghats. In our opinion, if the JSMDC fulfills its obligation to release 75,800 MT coal in favor of the Company and is capable of producing more coal for sale, a direction to it not to issue fresh e-auction notice would hamper mining operations and, consequently, would cause losses to the JSMDC. We are, therefore, inclined to interfere with this part of the order dated 7th April 2022 and grant liberty to the JSMDC to carry on fresh e-auctions.

43. The writ Court's order is, therefore, modified to the aforesaid extent.

44. Except to the aforesaid extent, we do not find any ground to interfere in the matter and, accordingly, L.P.A No.229 of 2022 is dismissed in the aforesaid terms.