(2022) 12 PAT CK 0083

In the Patna High Court

Case No : Civil Writ Jurisdiction Case No. 1525 Of 2021

M/S Patliputra Entertainment Private Limited — APPELLANT

Vs

Bihar State Tourism Development Corporation Ltd — RESPONDENT

Date of Decision : 22-12-2022

Acts Referred:

Constitution Of India, 1950 — Article 14, 19(1)(g), 21, 226, 298

Citation : (2022) 12 PAT CK 0083

Hon'ble Judges : Sanjay Karol, CJ;Partha Sarthy, J

Bench : Division Bench

Advocate : Y.V. Giri, Kaushal Kumar, Shrishti Singh, Anukriti Jaipuriyar, P.K. Shahi, Vikash Kumar

Final Decision : Dismissed

Judgement

1. Primarily, the following questions arise for considera-tion of this Court.

(i) Whether the present writ petition is maintainable in light of the arbitration clause 54 of the agreement entered into on 27.08.2019 between the petitioner and the respon-dent-Corporation?

(ii) Contingent upon the above, whether the conduct of the petitioner, post filing of the present writ petition entitles him to have the possession of the Hotel in question re-stored to itself?

(iii) As a result of the second NIT, what right, if any, towards the Hotel in question vests with respondent no.6?

(iv) Whether the claim of the petitioner that the agreement entered into with the Corporation would begin from the date of signing of the agreement, is sustainable in law?

SEQUENCE OF EVENTS

2. Petitioner M/s. Patliputra Entertainment Private Limited and its Director seeks

setting aside of orders dated 01.04.2022 (Annexure-11, Page- 93) and 23.05.2022 (Annexure-10, Page-73) rejecting his request for reconsideration of cancellation of agreement dated 01.04.2022; grant of stay upon proceedings arising out of cancellation and consequential order of blacklisting by respondent no.1 namely the Bihar State Tourism Development Corporation Limited (hereinafter referred to as the "Corporation"); continuation of the agreement dated 27.08.2019 (Annexure-5, Page-37) for the agreed period of ten years; calculation of rental of the leased property in question, i.e. Hotel Vishnu Vihar, Gaya ("Hotel") from the date of agreement, in terms of Clause 37 thereof and Clause 6 of the Notice Inviting Tender dated 09.03.2018 (Annexure-1, Page-24) and not from 15.06.2018, i.e. the date of issue of LOI or 20.06.2018 the date of taking over possession of the "Hotel"; condonation of the rent to be paid in respect of the Hotel for the period of lockdown (Pandemic Covid-19) in the years 2020, 2021 and 2022; directing the respondents to address all disputes before a learned Arbitrator as according to clause 54 of the agreement (Page 44).

3. Petitioner No.1, namely M/s. Patliputra Entertainment Private Lim-ited is a Company and petitioner no.2 namely Sri Niranjan Kumar is its Di-rector.

4. Respondent-Corporation issued an advertisement inviting tenders on 09.03.2018 for running a Hotel (Annexure-1, Page-24).

5. Having undergone the tender process, a letter of award dated 04.04.20218 (Annexure- R/1, Page-156) was issued in favour of Hotel Patliputra Exotica a unit of the above stated Company, being the successful bidder, wherein it was asked to deposit (i) bid amount for the 1st year, i.e. Rs.81,25,000.00 plus G.S.T amounting to Rs.14,62,500.00; (ii) security de-posit equivalent to the amount of the licence fee, i.e. Rs.81,25,000.00; and

(iii) submission of non-judicial Stamp of Rs.1,000/- for the purposes of ex-ecuting an agreement, post which, an order of allotment was to be issued followed by signing of an agreement.

6. Even though on 04.05.2018 petitioner deposited only part of the li-cence fee plus GST totalling to Rs.95,87,500.00 as acknowledged by letter dated 12.05.2018 of the Corporation (Annexure R/4, Page-159), yet the Hotel was allotted for a period of ten years vide allotment letter dated 15.06.2018 (Annexure-2, Page-31) with the condition for the petitioner to deposit licence fee and security amount. On the assurance of furnishing a bank guarantee lest, post dated cheques issued by the petitioner to be en-cashed are not honoured, possession of the Hotel was handed over on 20.06.2018 (Annexure-R/6, Page-161).

7. However, failure to furnish Bank Guarantee led to deposit of the post dated cheque, which was returned uncashed on 31.07.2018, which fact petitioner was informed of vide letter dated 09.08.2018 (Annexure-R/7, Page-162), affording three days' time to deposit the required bank guaran-tee.

8. The petitioner partly deposited the security fee on 12.09.2018 (Rs.40,00,000/-) (Annexure-3, Page-32). Vide letter dated 21.01.2019 (Annexure-R/8, Page-163), the Corporation followed upon the remaining amount reiterating the earlier demand dated 18.09.2018 for paying the bal-ance amount of Rs.41,25,000/-, also noting that despite passing of three months, the same had yet not been paid. Again vide letter dated 01.04.2019 (Annexure- R/8 series, Page-164) a reminder was sent to pay the remaining amount granting thirty days time, which was then deposited on 03.05.2019 (Annexure-3, Page-34). A reminder with respect to signing of the agree-ment was sent by the Corporation on 03.06.2019 (Annexure- R/8 series, Page-165). Further, reminders dated 08.07.2019 and 25.07.2019 regarding the licence fee for the second year payable on 25.06.2019 and yet pending signing of the agreement (Annexure-R/8 series, Page-166-167) were sent.

9. Resultantly, only with the persistent follow up by the Corporation, eventually the agreement was signed on 27.08.2019 (Annexure-5, Page-37).

10. On 22.10.2019, another reminder with respect to the licence fee for the second year totalling to Rs.1,00,66,875/- was sent by the Corpora-tion (Annexure-R-10 series, Page-169) followed by letter dated 18.11.2019 which further gave thirty days' time to pay the due amount and detailed the consequences upon failure to do so (Page-170).

11. In response, petitioner stated vide a letter dated 18.12.2019 that Rs.21,00,000/- stood deposited towards the dues for the second year lease rental fee and the remaining amount would be deposited by 15.01.2020 (Annexure-R/11, Page-171). A letter dated 01.06.2020 issued by the Additional Managing Director of the Corporation (Annexure-12 series, Page-172) suggests that as on that date, Rs. 41,00,000/- towards the lease amount had been deposited by the petitioner and the said letter served as "last warning" for the remainder amount. Since petitioner did not respond to the above, which gave them 15 days time from the issuance of the letter to meet the dues, a cancellation order dated 11.11.2020 (Annexure R/12 se-ries, Page-173) was issued, revoking the contract as also black listing from participation in the works of the Corporation for a period of five years.

12. On 23.11.2020 (Annexure-8 series, Page-59), petitioner wrote to the Managing Director of the Corporation requesting accommodation (waiver) in payment of rental dues for the period of March, 2020 to August, 2020 in the light of the then ensuing global pandemic and the resultant lock down imposed, with an assurance of payment of rent "once situation comes back to normal". Again, on 09.01.2021 (Annexure-8 series, Page-60), peti-tioner wrote, highlighting the impact of global pandemic, putting forth three fold request: (i) three months exemption, September to November 2018 as the Hotel started operation in December, 2018; (ii) waiver of rent from March to August, 2020 on account of COVID Lockdown; and (iii) significant reduction in rent as a consequence of the lasting impacts of COVID-19.

13. It is contended by the petitioner that the order dated 11.11.2020 (Annexure-R/12 series, Page-173) was never given effect to, i.e. he was allowed to continue as an allottee of the Hotel in question. It is submitted that the same is evident from letter dated 16.01.2021 (Annexure-15, Page-99) by which the Corporation asked for the remainder amount as it stood then to be paid, which in effect, due to the above order not being made opera-tional, was 'recall of the said order'.

14. Vide letter dated 05.03.2021 (Annexure-16, Page-100), petitioner's request made vide letter dated 02.02.2021 (Annexure-8 series, Page-62), were considered and rejected stating that (i) no particular reason stood as-signed for availing the gestation period; (ii) the interest arising out of delay in payment of principal amount was waived by the State Government vide office order dated 31.12.2020 (Annexure-16A, Page-101) with the princi-pal amount remaining to be paid; and (iii) that in light of the provisions of the agreement, request for reduction in rent could not be acceded to. None-theless, vide another representation dated 05.10.2021 (Annexure-8 series Page-64), petitioner reiterated its three fold request.

15. On 23.11.2021 (Annexure-9 series, Page-66), the petitioner sent legal notice to the Corporation invoking the arbitration clause 54 of the agreement, further stating that under clause 8 of the tender notice, a gesta-tion period of three months "was also to be allowed" and that the petitioner "honestly believed" that the date of allotment would be reckoned from the date of agreement and not handing over possession and as such the lease period be determined accordingly. Further, that COVID-19 lockdown and the prevalent situation adversely affected the businesses resulting to the non-payment of the amount for the subsequent period. Further Corpora-tion's claim of payment to Rs. 3,04,99,928/- was exorbitant, accounting for the clauses in the agreement. Despite adversities petitioner is interested in running the Hotel and as such had paid a token amount Rs.25,00,000/-.

16. The Corporation responded vide communication dated 05.01.2022 (Annexure 18, Page 104) wherein petitioner's claim regarding the agree-ment commencing from 27.08.2019 was refuted, referring to the date and time mentioned in the agreement. Also reminding the petitioner about the dishonouring of its cheque and the eventual deposit of the security amount only after repeated reminders and a delay of one year. Also, Corporation does not partake in profits and therefore, it cannot be asked to incur losses, be it for whatever reason. Clause 52 of the agreement presents a way out for those unwilling to continue by giving six months' notice or paying six months' allotment fee in advance. In respect of the "confusion" about the commencement of the agreement, it clarified that clause 53 of the agree-ment provides for a method for clarification before the Managing Director of the Corporation and the same does not constitute an arbitral issue to be referred to jurisdiction of the learned Arbitration under Clause 54 of the agreement.

17. Clause 53 and 54 of the agreement dated 27.08.2019 read as under:-

Translated as

“54. Any dispute arisen between both the parties shall be disposed of by the arbitrator appointed with the consent of both the parties. The procedure of the arbitration shall be followed under the provisions enshrined in Arbitration and Reconciliation Act, 1996, which shall be acceptable to both the parties. The procedure of this arbitration shall be concluded in Patna itself.”

18. On 25.01.2022 (Annexure-19, Page-114), the Corporation once again reminded the petitioner of the dues payable granting fifteen days time to pay the amount totalling Rs.2,64,99,928.00 constituted by the fees for the third and fourth year which became due respectively on 25.06.2020 and 25.06.2021 and the sums arising therefrom. The petitioner did not respond thereto and consequently, vide order dated 01.04.2022 [Annexure-11, Page-94], the agreement was cancelled and the petitioner blacklisted for a period of five years.

19. In rejecting the petitioner’s another representation dated 26.04.2022 (Annexure-12, Page-95), the Corporation vide order dated 23.05.2022 (Annexure-10, Page-73) observed that not only deposit of Rs.25,00,000/- was insufficient but post such amount more than Rs.2.5 Crores was outstanding. It is imperative for a commercial entity to receive the amounts due to it in time, and so, such a request is denied. On the issue of waiver of interest, order dated 31.12.2020 (Annexure-16A, Page-101) is referred to by which though interest arising out of the delay in payment of licence fee was waived, but the principal amount remained payable. It clari-fied that in a meeting on 15.09.2021, the commercial nature of the Corpora-tion was highlighted and the waiver of rent was, therefore, not acceded to. Regarding the gestation period, previously petitioner never made a request for grant of gestation period and in any case Hotel was functional much prior thereto. With respect to the commencement of the lease period from the date of signing of agreement as requested, it is stated that the allotment order as well as the agreement were clear on the aspect that the lease period would commence from the date of issuance of allotment letter. Most impor-tantly, petitioner’s past conduct weighed in the rejection of request for re-call of the order dated 01.04.2022. And while not conceding to any of the request made vide letter dated 26.04.2022 (Annexure-12, Page-95), peti-tioner was once again reminded to pay the outstanding dues of the Corpora-tion, in the absence of which, process for attachment of property as accord-ing to clause 11 (ga), would be taken.

PROCEEDINGS OF THE COURT

20. The present writ petition was filed on 25.06.2022. The reliefs claimed therein have been referred to in the earlier part of the judgment.

21. An interlocutory application bearing no. I.A. No. 01 of 2022 was filed on 14.07.2022 to further lay challenge on the order of cancellation dated 01.04.2022 (Annexure-11, Page-93) and to quash subsequent notice inviting tender dated 15.06.2022 (Annexure-13, Page-97) pertaining to the Hotel in

question. The same was allowed vide order dated 02.11.2022. Sig-nificantly, no interim order staying the process was passed.

22. Subsequently, taking note of the developments in the intervening period, another interlocutory application bearing I.A. No.02 of 2022 was filed on 02.08.2022 by M/s MKS Enterprises, who, as a result of the tender notice dated 15.06.2022 and its processes, stood allotted the Hotel in ques-tion, on 27.07.2022, post cancellation of the agreement of the Corporation with the petitioner. The said I.A. was allowed vide order dated 12.09.2022 wherein the Court noted that the applicant is a proper party to the present proceedings and declared as a successful bidder, had also deposited the bid amount which is north of Rs.1,00,00,000/- (Rupees One Crore), as such was added as a party-respondent no.6 to the present petition.

23. Vide order dated 02.08.2022, this Court taking note of the dispute regarding the exact amount to be paid, and payable by the petitioner as on date of determination of the agreement, i.e. 27.08.2019, noted that-

"We are of the view that interest of justice only demands that the petitioner sits with the Managing Director of the respondent Corporation for working out the amount due and payable not only in terms of the agreement but also in terms of the policy uniformly adopted by the respondents in granting benefit of waiver, be it in whatever form, with respect to the hotels situate in the State of Bihar.

Shri Y.V. Giri, learned Senior Counsel states that as on date, petitioner is liable to pay a sum of Rs. 2,73,25,418.70/- which he is ready and willing to deposit in two equal instalments spread over a period of one month.

On the other hand, Ms. Jaipuriyar, learned counsel for the respondents, states that the total amount due and payable is Rs.4,02,33,346.00/-.

We notice that this amount also includes the licence fee for the entire period 2022-23, which may not have been payable as on the date of the determination of the agreement but nonetheless would be payable, should the parties arrive at a settlement in terms of the agreement.

At this stage, Shri Y.V. Giri, learned senior counsel, states that the amount so determined for the period 2022-23 would be deposited within six months from the date of handing over of possession of the property to the petitioner.

Petitioner shall make himself available in the office of the Managing Director of the Respondent Corporation on 04.08.2022 at 10:30 A.M.

We are hopeful that the parties shall endeavour to arrive at an amicable settlement.

However, we clarified that such an exercise shall be without prejudice to the respectable rights and contentions of all the parties."

(Emphasis supplied)

24. Pursuant to the above order, a meeting of the parties which in-cluded representatives of the petitioner, the respondent-Corporation and M/s MKS Enterprises was held on 06.08.2022 in the chambers of Managing Director of the Corporation. The minutes of the meeting are filed as (Annexure-20, Page-180) along with supplementary affidavit dated 02.09.2022. The following issues reflect as having been considered but without any conclusion of settlement. 1). Issue of calculating lease amount from the date of agreement; 2). COVID related waiver; 3). Calculation of interest in general (apart from COVID period); 4). Request regarding gesta-tion period; 5). Payment of all dues of the Corporation in two equal install-ments over a period of one month; 6). Request regarding the lease amount of year 2022-23; 7). Re-allotment of the Hotel in question to the petitioner, payment of licence fee for 2022-23 within six months of handing over of possession.

25. Without prejudice, the dues worked out, pursuant to the order dated 02.08.2022, by the respondent-corporation were communicated to the petitioner vide letter dated 10.08.2022 (Annexure-21, Page-185) to the amount of Rs.2,62,92,261/- which even though the petitioner submits is, on the higher side, but acceptable in the spirit of amicable settlement.

26. Vide order dated 08.09.2022, learned counsel appearing for the pe-titioner was directed to ascertain the willingness of the petitioner to deposit the amount as arrived at in the proceedings dated 06.08.2022 and meeting the difference in the amount of annual lease as per the bid submitted by the successful bidder. The petitioner's willingness was conveyed to the Court as recorded in order dated 12.09.2022 as under:-

"Today, Shri Y.V.Giri, learned senior counsel for the petitioners, states that the petitioners are ready and willing to abide with the conditions contained in the aforesaid order.

As such, petitioners are directed to deposit a sum of Rs.2,62,92,261/- on or before 19.09.2022. Also, prior thereto, petitioners shall furnish an undertaking to this Court of making good the difference of the amount of annual lease equivalent to the amount submitted by the successful bidder.

Needless to add, such deposit of amount and furnishing of an undertaking is only without prejudice to the respective rights and contentions of the parties."

(Emphasis supplied)

27. On 19.09.2022, petitioner filed supplementary affidavit by which it is stated that an Online transfer of Rs.2,30,92,261/- and Rs.32,00,000/-vide cheque dated 19.09.2022 was made. In support of the same, petitioner annexed RTGS Slip (Page 223-225).

28. In response, vide supplementary counter affidavit dated 27.09.2022, respondent-corporation submitted that the cheque for Rs.32,00,000/- was dishonoured due to insufficiency of fund, hence, pay-ment to be made falls short

of said amount (Annexure-R/13, Page-242).

29. In the 4th supplementary affidavit dated 28.09.2022, petitioner has tried to explain the reason for the dishonour of the cheque, being inadver-tence and the said amount deposited via NEFT on 27.09.2022 (page-233) in favour of the Corporation which stands accepted. Further, bona fides of the company cannot be questioned as entire amount stands deposited and the respondent-Corporation's raising frivolous issues appears to be at the behest of third party. The petitioner is ready and willing to make good the difference between the lease amount upon which the Hotel is allotted to him and subsequently vide NIT dated 15.06.2022 to respondent no.6, namely M/s MKS Enterprises, with the lease period extended for twenty years as opposed to ten years under the original agreement entered into with the Corporation.

30. The respondent-Corporation has, in turn, explained its unwilling-ness for petitioner's tainted image and poor financial capability and lack of good faith. There can be no guarantee that similar defaults not to be re-peated in future. Further, respondent no.6 has not only paid the amounts due in full, but allotment letter stands issued with the agreement yet to be executed and, therefore, no claim can be made by the petitioner.

31. Reproduction of the operative part of the minutes dated 06.08.2022 would be beneficial, appreciating that despite endeavours, par-ties were not ad idem on continuance of the contract, hence adjudication on merits.

"The BSTDC had gone ahead with the due process of leasing out the said property and after following the due process, the prop-erty has been allotted to the successful bidder MKS Enterprises. The new bidder has already deposited the required Licence fees for the year 2022-23 and has shown his bonafide intent as against the repeated default exhibited by the petitioner. The new allottee has quoted an annual licence fee of Rs. 1.15 Cr. (One Crore Fifteen Lac) + GST for the next 20 years with an yearly increment of 5% which is far more than the annual licence fee committed and de-faulted by the petitioner, which was mere 81.25 lac + GST at the time of allotment. Hence, if the contention of the petitioner regard-ing re-allotment of the property is accepted, it would not only tanta-mount to jeopardizing the rights of the new lessee but also lead to a major loss of public money that would otherwise accrue to the BSTDC in the next two decades. Moreover, any such decision or consent about re-allotment to the petitioner is not possible at the level of the BSTDC as the matter is sub judice.

The meeting with the petitioner thus concluded. After this, the representative and Ld. Advocate of MKS Enterprises submitted a written representation and briefly put forth their request of not ter-minating their allotment order as they had already complied with the due process and had deposited the requisite amount in advance showing their bonafide intent, and that their right has been created which may not thus be abrogated. They tried to convince that there is no compelling reason to be biased against them in favour of the petitioner who has been in habitual default, even at the cost of gov-ernment revenue and their rights. It was clarified to them that it is beyond the administrative power of BSTDC to re-allot the property to ex-lessee. However, BSTDC is mindful of the fact that the matter is pending before the Hon'ble High Court and any decision which will be passed by the Hon'ble Court will be binding upon the par-ties. The meeting was then concluded."

(Emphasis supplied)

Submissions on behalf of the petitioners

32. Shri Y.V. Giri, learned Senior Advocate appearing for the petition-ers has submitted that 1). the prevailing conditions of the COVID Pandemic-19 were not considered by the Corporation prior to termination of the agreement and issuance of order of blacklisting, so, the impugned or-ders are arbitrary and unreasonable; 2). During the period of the Pandemic, various relaxations and exemptions were granted to different sectors and in-dustries. Considering the fact that the sole business of the petitioner was running the Hotel, the non-grant of exemption from payment of rent is in violation of Article 14 and 19(1) (g) of the Constitution of India; 3). Im-pugned action is in violation of the principles of natural justice, as not only no opportunity was afforded but the orders passed are non-reasoned; 4). The Corporation is silent on methods of calculation of dues which has de-prived the petitioner of the opportunity to respond to the issues raised by the respondent-corporation; 5). An order of blacklisting is equal to a civil death as it activates prejudice at present but also taints the future of the or-ganization. Considering the ongoing restrictions, such a harsh penalty was not warranted apart from being disproportionate to the alleged infraction; 6). The subsequent allotment would result into irreparable loss to the peti-tioner; 7.) Pursuant to the orders of this Court, a meeting was held and the amount due to the respondent-corporation calculated. Despite, the peti-tioner's belief that the amount so calculated is higher than what it ought to be, it stands deposited; 8). The petitioner is also ready to undertake the higher amount of lease payment as undertaken by respondent no.6 in terms of NIT dated 15.06.2022 under which, then, the term of the agreement should be extended to twenty years.

33. Sri Y.V. Giri, learned Senior Advocate, refers to and relies upon the following judgments:-

(i) Bihar Offset Printers Association v. Union of India (2022) 2 BLJ 595 CWJC No.762 of 2022 decided on 25.03.2022, para 54(i); (ii) M/s Magadh Sugar & Energy Ltd. V. State of Bi-har 2021 SCC OnLine SC 801, para 19, 23, & 24; (iii) Uttar Pradesh Power Transmis-sion Corporation Limited v. CG Power and Industrial Solu-tions Limited & Anr. (2021) 6 SCC 15, Para 65, 67, 68 & 69; (iv) Maharash-tra Chess Assn. v. Union of India (2020) 13 SCC 285; (v) State of Jharkhand v. CWE-SOMA Consortium (2016) 14 SCC 172, para 13; (vi) Poonam v. State of U.P. (2016) 2 SCC 779, para 48, 49, 50, 53; (vii) State of Kerala v. M.K. Jose (2015) 9 SCC 433, para 17; (viii) Gorkha Security Services v. Govt.

(NCT of Delhi) (2014) 9 SCC 105, Para 21, 22; (ix) Uttar Pradesh Avas Evam Vikas Parishad v. Om Prakash Sharma (2013) 5 SCC 182, para 28 & 29; (x) Union of India v. Tantia Construction Pvt. Ltd. (2011) 5 SCC 697, (xi) ORXY Fisheries (P) Ltd. V. Union of India (2010) 13 SCC 427, para 25, 26,27, 41, 42; paras 20, 21, 22, 33 and 34; (xii) Food Corporation of India v. SEIL Ltd. (2008) 3 SCC 440; (xiii) Popcorn Entertainment v. City Indus-trial Development Corpn. (2007) 9 SCC 593, para 21, 22, 23 & 47; (xiv) Ra-jasthan Housing Board & Anr. V. G.S. Investments & Anr. (2007) 1 SCC 477, para 8 & 9; (xv) ABL International Limited v. Export Credit Guarantee Corpn. of India Ltd. (2004) 3 SCC 553; (xvi) Harbanslal Sahnia v. Indian Oil Corpn. Ltd. (2003) 2 SCC 107, para 4 & 7; (xvii) Whirlpool Corpn. Registrar of Trade Marks v. Registrar of Trade Marks (1998) 8 SCC 1.

Submissions on behalf of the Corporation

34. Ms. Anukriti Jaipuriyar, learned counsel appearing for respondent-Corporation, made the following submissions:-

1). The Corporation, upon the petitioner not depositing the licence fee, security deposit or non-judicial stamp paper of Rs.1,000/-, took a sympa-thetic view and did not withdraw letter of award as per clause 3.1 and 3.2 of NIT and gave time to deposit the required amount. Even after reminder, only the licence fee was submitted. The post dated cheque submitted on 30.07.2018 even after seeking further time, stood dishonoured for non-fur-nishing of guarantee. On assurance of the petitioner's letter dated 14.06.2018 (Annexure-4, Page-36), allotment letter was issued on 15.06.2018 (Annexure-2, Page-31) stipulating a condition that the period of allotment would begin from the date of its issuance which was never ob-jected to by the petitioner. The said condition was also included in the agreement dated 27.08.2019, duly signed by both the parties.

35. After the cheque was dishonoured followed by a false assurance of payment, the security amount was finally deposited after lapse of more than one year from letter of award dated 04.04.2018; 2). A general principle of equity is that no one should take benefit of own wrong. The petitioner be not permitted to count the period of licence from date of signing of agreement; 3). The Corporation issued several reminders, taking a lenient view on payment of second year licence fee of which only part payment of Rs.21,00,000/- was made on 16.12.2019; 4). The gestation period as per clause 4.1 of the NIT was never demanded; 5). A show cause was issued dated 01.06.2020 and even a termination letter issued on 11.11.2020 (An-nexure R/12 series, Page-173) was not acted upon as petitioner sought re-vocation of the cancellation order in light of COVID-19; 6). The relaxation sought by the petitioner for the period COVID-19 lockdown was for the first time on 09.01.2021 (Annexure-8 series, Page-60) and subsequently on 02.02.2021 which was rejected vide letter dated 05.03.2021; 7). After the default to pay amount Rs.2,64,99,928/- within fifteen days as according to letter dated 25.01.2022 (Annexure-19, Page-114), the petitioner was black-listed for a period of five years vide order dated 01.04.2022 (Page- 94) and subsequent

representation dated 26.04.2022 rejected vide a reasoned order dated 23.05.2022 (page-73); 8). The beautification of the property is a cost to be borne by the petitioner as per clause 13 of the agreement (Also clause 11 of the NIT) and the respondent-corporation cannot be held liable for the same; 9). No differential treatment can be given to the present petitioner as opposed to other licencees of the respondent-corporation as a general deci-sion to waive the interest already stands taken vide letter dated 31.12.2020 (Annexure-16A, Page-101); 10). Any dispute with respect to the terms of the agreement are subject to clarifications as requested under clause 53 of the agreement and not arbitrable under clause 54.

36. She refers to and relies upon a decision of the Hon'ble Supreme Court in Silppi Constructions Contractors v. Union of India & anr (2020) 16 SCC 489.

Submissions on behalf of respondent no.6 namely MKS Enterprises

37. Mr. P.K. Shahi, learned Senior Advocate made the following sub-missions:- (i) The present writ petition is not maintainable as the agreement contains clause 54 which is an arbitration clause. In the availability of ef-fective remedy, the exercise of extraordinary writ jurisdiction would not be appropriate; (ii). Four exceptions have been carved out by the Hon'ble Apex Court where in the presence of alternate remedy, a writ petition is maintainable. (a) for enforcement of fundamental rights; (b) violation of principles of natural justice; (c) orders/ proceedings are entirely without ju-risdiction; and (d) that the vires of the legislation is challenged, which in the present case are not available; (iii) With respect to the investment to Rs.5,00,00,000/-, petitioner has not annexed any document to reflect the same; (iv). Petitioner is a defaulter in making payment and COVID has no relation to such default as it occurred right from the time of security de-posit. Petitioner is also defrauder of the Indian Bank who has taken re-course of law against them; (v) Petitioner is a habitual defaulter, not only to the present corporation but also to other Government Institutions. An investigation has been launched by the Enforcement Directorate under the Pre-vention of Money Laundering Act, 2002 and two properties have also been attached; (vi). The continuance of the licensing agreement would be against the public interest.

38. He refers to and relies upon the following judgments:-

(i) South Eastern Coalfields Ltd. v. S. Kumar's Associates AKM (JV) (2021) 9 SCC 166; and (ii) Radha Krishan Industries v. State of Himachal Pradesh (2021) 6 SCC 771.

Relevant Provisions of the NIT/Agreement

39. It is apt, for proper adjudication of the lis, to reproduce certain clauses of the NIT dated 09.03.2018 (Annexure-1, Page-23-30).

"3.12 The successful bidder shall be required to sign the Managment Agreement within 15 days of acceptance of Letter of Award. The successful bidder shall be liable to fulfil the following obligations as a precondition of signing of Management Agreement:

(i) Payment of Management Fee shall have to be paid in ad-vance.

(ii) Submission of requisite unconditional Bank Guarantee /FD/TDR equivalent to 1 year Management Fee and shall be renewed every year.

Failing to fulfil the aforementioned obligations, the Letter of award shall stand withdrawn without any liability on BSTDCL and the EMD of such bidder shall stand forfeited."

"3.13 Bidders should note that:

(i) If they withdraw their Bid after their technical bid has been accepted, or

(ii) In case successful bidders fail to execute the Management Agreement within 15 days from the date of receipt of the Letter of Award, or within the extended period if any or.

(iii) If they conceal any material information or make incorrect and misleading statements or misrepresent facts in their Bid, or

(iv) Try to influence BSTDCL or any of its officials in relation to the evaluation of bids; BSTDCL shall have the right to forfeit their EMD and blacklist them from participating in any future tenders issued by BSTDCL"

"4. Terms & conditions

General

...

3. The operator will have to remit the management fee (hereinafter referred as the "Management Fee") in full within 15 calendar days from the date of receipt of acceptance of Letter of Allotment. Further relaxation of due date will not be entertained at any cost. …

5. The Management Fee is to be paid annually in advance and shall be as per the financial quote committed. The fee shall be Increased by 5% every year for the duration of operation. If the operator failed to pay the management fee within 30 days from the date of start of F.Y., The authority will have right to cancel the agreement and forfeit the bank guarantee. The management operator shall be liable to vacate the premise with immediate effect. Failing which the BSTDC/ authority will have right to evict the operator

6. The Management Agreement is for a period of ten (10) years from date of signing of the Agreement.

7. For category i.e. lease of property for 10 years, security Deposit will be in form of cash/fixed Deposit pledge in favour of BSTDC. Amount of Security Deposit will be 1 (one) year Management fee/ lease amount.

8. Gestation period of maximum three months be given to Lessee in case of Long period lease agreement or License i.e. 10 years for furnishing etc of Hotel or date of start of Hotel, whichever is earlier. …

11. Beautification & temporary structure of Hotel done by lessee on his own cost and will be the asset of Corporation. On completion of lease period or prior termination no cost or compensation shall be payable. …

25. In case of any dispute, the Parties will refer the dispute to a sole Arbitrator with mutual consent in accordance with the provisions of the Arbitration and Conciliation Act 1996 and the parties agreed to abide by the decision of the Arbitrator. All the arbitration shall be subject to the courts of Patna Jurisdiction. …

45. In case of any difficulty in carrying out the term of the agreement or in case of any difficulty in interpretation of any provision of this agreement the decision of the Managing Director BSTDCL shall be final & binding."

40. Relevant terms and conditions of the Agreement dated 27.08.2019 (Annexure-5, Page-37):-

Translated as

10. The operational fee shall be increased by 5 percent every year during the lease period. For example, the lease fee shall be increased by 5 percent in the initial year to second year, 10 percent in the third year, 15 percent in the fourth year, 20 percent in the fifth year, 25 percent in the sixth year, 30 percent in the seventh year, 35 percent in the eighth year, 40 percent in the ninth year and 45 percent in the tenth year.

Translated as

11. If the alloottee does not make payment of the amount of allottement to the Bihar State Tourism Development Corporation in the prescribed period, then in that situation the Bihar State Tourism Development Corporation would have the right to take actions as follows :-

A In case of not paying the amount of licence within time by the licencee, a warning letter shall be issued by BSTDC for depositing the licence fee. After cancellation of the allotttment, the Bihar State Tourism Development Corporation will take the restaurant/property under its possession.

B The Bihar State Tourism Development Corporation Limited shall seize the deposited gaurantee money.

C All the articles and equipments kept in the said property by the second party i.e. the allottment holder would be seized by the first party i.e. Bihar State Tourism Development Corporation Limited.

D The second party i.e. the allottment holder shall be blacklisted for five years by the first party i.e. Bihar State Tourism Development Corporation.

Translated as

"37. The date of allottment shall be calculated from the date as mentioned in the agreement and after receipt of all the desirable amount, the charge of the said property shall be handed over for its use."

Opinion of the Court

41. Before proceeding to merits of the case, it is appropriate to appre-ciate various principles of law laid down and judgments rendered by Hon'ble the Supreme Court.

42. The scope of judicial review depends on the facts and circum-stances of each case. In other words, the dimensions of judicial review must remain flexible. [B. Shreeram Durga Prasad v. Settlement Com-mission (IT & WT) (1989) 1 SCC 628; Tata Cellular v. Union of India (1994) 6 SCC 651]

43. Exercising the power of judicial review, it is open for the Court to review the decision maker's evaluation of the facts. The Court will inter-vene where the facts as a whole could not have warranted the decision taken. If the facts point overwhelmingly in one direction, a decision going the opposite way cannot be upheld. [Tata Cellular22]

44. On limitations to judicial review, it has been held that the duty of the court is to confine itself to the question of legality. It has to consider whether a decision-making authority exceeded its powers, committed an er-ror of law, violated rules of natural justice, reached a decision which no reasonable man would have reached or otherwise abused powers. [S.R. Bommai v. Union of India(1994) 3 SCC 1] Though the Court is not expected to act as a court of appeal, nevertheless it can examine whether such a decision or ac-tion was reasonable, rational, not arbitrary or not violative of Article 14 of the Constitution. The parameters of judicial review must be clearly defined and never exceeded. If the authority has faltered in its wisdom, the court cannot act as super auditor. [V. Sudhish Pai, V.G. Ramachandran's Law of Writs, Vol. I (Seventh Edition, 2022) EBC Publishing House]

45. Unless the order passed by an administrative authority is unlawful or unconstitutional, power of judicial review cannot be exercised. An order of administration may be right or wrong. It is the administrator's right to trial and error and so long as it is bona fide and within the limits of the au-thority, no interference is called for. In short, the power of judicial review is supervisory in nature. Unless this restriction is observed, the court, under the guise of preventing abuse of power by the administrative authority, will itself be guilty of usurping power. [Sterling Computers Ltd. v. M & N Publications Ltd. (1993) 1 SCC 445]

46. Hon'ble Krishna Iyer J. observed that the Court is handcuffed in its jurisdiction and cannot raise its hand against what it considers to be a foolish choice…. Judicial circumspection keeps the court lock-jawed save where power

has been polluted by oblique ends or is otherwise void on well established grounds. [State of Punjab v. Gurudial Singh (1980) 2 SCC 471,]

47. In Shri Sitaram Sugar Co. Ltd. v. Union of India (1990) 3 SCC 223, it has been held:-

“51. A repository of power acts ultra vires either when he acts in excess of his power in the narrow sense or when he abuses his power by acting in bad faith or for an inadmissible purpose or on irrelevant grounds or without regard to relevant considerations or with gross unreasonableness. See Associated Provincial Picture Houses Ltd. v. Wednesbury Corporation [(1948) 1 KB 223 : (1947) 1 All ER 498] . In the words of Lord Macnaghten in Mayor & C. Westminster Corporation v. London and North Western Railway [1905 AC 426, 430 : 93 LT 143] .

“....It is well settled that a public body invested with statutory powers such as those conferred upon the corporation must take care not to exceed or abuse its powers. It must keep within the limits of the authority committed to it. It must act in good faith. And it must act reasonably. The last proposition is involved in the second, if not in the first.”

In Barium Chemicals Ltd. v. Company Law Board [1966 Supp SCR 311 : AIR 1967 SC 295 : (1966) 36 Comp Cas 639] , this Court states: (SCR pp. 359-60, per Shelat, J.)

“.... Even if (the statutory order) is passed in good faith and with the best of intention to further the purpose of the legislation which confers the power, since the authority has to act in accordance with and within the limits of that legislation, its order can also be challenged if it is beyond those limits or is passed on grounds extraneous to the legislation or if there are no grounds at all for passing it or if the grounds are such that no one can reasonably arrive at the opinion or satisfaction requisite under the legislation. In any one of these situations it can well be said that the authority did not honestly form its opinion or that in forming it, it did not apply its mind to the relevant facts.”

In Renusagar [(1908) 1 KB 441 : 77 LJ KB 236] , Mukharji, J., as he then was, states: (SCC p. 104, para 86)

“The exercise of power whether legislative or administrative will be set aide if there is manifest error in the exercise of such power or the exercise of the power is manifestly arbitrary. Similarly, if the power has been exercised on a non-consideration or non-application of mind to relevant factors the exercise of power will be regarded as manifestly erroneous. If a power (whether legislative or administrative) is exercised on the basis of facts which do not exist and which are patently erroneous, such exercise of power will stand vitiated”.

52. The true position, therefore, is that any act of the repository of power, whether legislative or administrative or quasi-judicial, is open to challenge if it is in conflict with the Constitution or the governing Act or the general principles of

the law of the land or it is so arbitrary or unreasonable that no fair minded authority could ever have made it [See the observation of Lord Russel in Kruse v. Johnson, (1898) 2 QB 91 and that of Lord Greene, M.R. in Associated Provincial Picture Houses Ltd. v. Wednesbury Corporation, (1948) 1 KB 223. See also Chertsey UDC v. Mixnam Properties Ltd., (1965) AC 735; Commissioners of Customs and Excise v. Cure and Deeley Ltd., (1962) 1 QB 340; McEldowney v. Forde, (1971) AC 632 (HL); Carltona Ltd. v. Commissioners of Works, (1943) 2 All ER 560, 564; Point of Ayr. Collieries Ltd. v. Lloyd George, (1943) 2 All ER 546; Scott v. Glasgow Corporation, (1899) AC 470, 492; Robert Baird Ltd. v. Corporation of City of Glasgow, (1936) AC 32, 42; Manhattan General Equipment Co. v. Commissioner of Internal Revenue, (1935) 297 US 129, 134; Yates (Arthur) & Co. Pty. Ltd. v. Vegetable Seeds Committee, (1945-46) 72 CLR 37; Bailey v. Conole, (1931) 34 WALR 18; Boyd Builders Ltd. v. City of Ottawa, (1964) 45 DLR (2d) 211; Re Burns and Township of Haldimand, (1966) 52 DLR (2d) 1014 and Lynch v. Tilden Produce Co., 265 US 315, 320-22] .

48. On establishing mala fides, Bhagwati J. observed in E.P. Royappa v. State of T.N. (1974) 4 SCC 3,

"92. Secondly, we must not also overlook that the burden of establishing mala fides is very heavy on the person who alleges it. The allegations of mala fides are often more easily made than proved, and the very seriousness of such allegations demands proof of a high order of credibility. …The Court would, therefore, be slow to draw dubious inferences from incomplete facts placed before it by a party, particularly when the imputations are grave and they are made against the holder of an office which has a high responsibility in the administration. Such is the judicial perspective in evaluating charge of unworthy conduct against ministers and other high authorities, not because of any special status which they are supposed to enjoy, nor because they are highly placed in social life or administrative set up— these considerations are wholly irrelevant in judicial approach—but because otherwise, functioning effectively would become difficult in a democracy. …"

(Emphasis supplied)

49. One method of exercising power against an action by an authority which is improper, against law, unreasonable or irrational is the doctrine of proportionality. Applying this doctrine the Court looks to answer two questions (a) whether such measure in its circumstances is excessively restrictive or (b) whether it imposed an unnecessary bur-den and instead, the same result could have achieved by a less restric-tive alternative.

50. In Om Kumar v. Union of India (2001) 2 SCC 386, the departmental pro-ceedings were initiated against officers of Delhi Development Authority which defrauded thousands of investors and misappropriate huge amounts. It was held that the question of quantum of punishment in dis-ciplinary matters was primarily for the authority and judicial review would be confined to Wednesbury

reasonableness.

51. The burden of proof that the decision of the authority is unreasonable is on the person bringing such challenge. A Court may en-quire as to whether a reasonable man could arrive on the conclusion in question without misreading the law or facts. If the answer is no, then interference is made out. [Sheo Nath Singh v. CIT (1972) 3 SCC 234,; S.R. Bommai (1994) 3 SCC 1; Tata Cellular (1994) 6 SCC 651]

52. If the contract entered into provides for an alternate fo-rum for resolution of dispute arising from the contract, then the party should approach the forum agreed upon and the High Court in writ ju-risdiction should not permit them to bypass the agreed forum of dispute resolution. [LIC of India v. Asha Goel (2001) 2 SCC 160,, para 10]

53. While examining complaints of violation of statutory rules/conditions, it has been observed that violation of each and every provision does not furnish a ground for the Court to interfere. [Rajen-dra Singh v. State of M.P. (1996) 5 SCC 460, para 6]

54. Every person before an authority, exercising adjudicatory power has a right to know the evidence used against him. [Dhakeswari Cotton Mills Ltd. v. CIT AIR 1955 SC 65,]

55. The law is fairly well settled if prejudicial allegations are to be made against a person, he must be given particulars of that before hearing so that he can prepare his defence. [Natwar Singh v. Director of Enforcement (2010) 13 SCC 255,]

56. Minor deviation from explicit terms of the NIT would not be sufficient in itself in the absence of mala fide for the Court to set aside the tender at the behest of an unsuccessful bidder. [Bharat Cok-ing Coal Ltd. v. AMR Dev Prabha (2020) 16 SCC 759,, para 47]

57. Mere disagreement with the decision making process of the decision of the administrative authority is no reason for a constitu-tional court to interfere. [Afcons Infrasture Ltd. v. Nagpur Metro Rail Corpn. Ltd., (2016) 16 SCC 818]

58. A writ petition under Article 226 of the Constitution of In-dia is an extra ordinary and discretionary remedy. It is well established that the power of a High Court under this Article is mostly unfettered save by judicial restraint, i.e. self-imposed limitation upon the exercise of such power. In ordinary course, in the presence of an equally effica-cious alternate remedy, such petition is not entertained. The same is however, not an absolute bar. The scope of judicial review is deter-mined by the facts and circumstances of each case, seeking such re-view. [B. Shreeram Durga Prasad (1989) 1 SCC 628].

59. Per usual, a writ petition is not maintainable in contrac-tual matters, as is well known. However, it is not altogether excluded. [Harbanslal Sahnia16 and

Tantia Construction Pvt. Ltd10]

60. In Silppi Constructions Contractors v. Union of India (2020) 16 SCC 489, Hon'ble the Supreme Court has observed that-

"19. This Court being the guardian of fundamental rights is duty-bound to interfere when there is arbitrariness, irrationality, mala fides and bias. However, this Court in all the aforesaid decisions has cautioned time and again that courts should exercise a lot of restraint while exercising their powers of judicial review in contractual or commercial matters. This Court is normally loathe to interfere in contractual matters unless a clear-cut case of arbitrariness or mala fides or bias or irrationality is made out. One must remember that today many public sector undertakings compete with the private industry. … Courts must also not interfere where such interference will cause unnecessary loss to the public exchequer."

61. Hon'ble the Apex Court in UNITECH Limited & Ors. v. Telangana State Industrial Infrastructure Corporation (TSIIC) & Ors 2021 SCC Online SC 99. speaking via Dr. Justice Chandrachud (as His Lordship then was) noted:-

"39 …. Speaking through Justice N Santosh Hegde, the Court held:

"27. …the following legal principles emerge as to the maintain-ability 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 obli-gation 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 Kumar9 and Popatrao Vynkatrao Patil v. State of Maha-rashtra10. The decision in ABL International, cautions that the ple-nary 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 ex-cluded 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 arbitra-tion clause within a contract between a state instrumentality and a private party has not acted as an absolute bar to availing remedies under Article 226.11 If the state instrumentality violates its constitu - tional 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 main-tainability of a writ petition under Article 226 of the Consti-tution 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 is-sue a prerogative writ will not normally be exercised by the Court to the exclusion of other available remedies un-less such action of the State or its instrumentality is arbi-trary 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 exer-cise 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 viola-tion 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, un-doubtedly 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. Simi-larly, 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 justi-fiably be invoked. …"

62. The principles with respect to maintainability of the writ petition have been summarized by Hon'ble the Apex Court in Radha Krishan In-dustries20 in para 27 as under:-

"27. The principles of law which emerge are that:

27.1. The power under Article 226 of the Constitution to issue writs can be exercised not only for the enforcement of fundamental rights, but for any other purpose as well.

27.2. The High Court has the discretion not to entertain a writ petition. One of the restrictions placed on the power of the High Court is where an effective alternate remedy is available to the aggrieved person.

27.3. Exceptions to the rule of alternate remedy arise where : (a) the writ petition has been filed for the enforcement of a fundamental right protected by Part III of the Constitution; (b) there has been a violation of the principles of natural justice; (c) the order or proceedings are wholly without jurisdiction; or (d) the vires of a legislation is challenged.

27.4. An alternate remedy by itself does not divest the High Court of its powers under Article 226 of the Constitution in an appropriate case though ordinarily, a writ petition should not be entertained when an efficacious alternate remedy is provided by law.

27.5. When a right is created by a statute, which itself prescribes the remedy or procedure for enforcing the right or liability, resort must be had to that particular statutory remedy before invoking the discretionary remedy under Article 226 of the Constitution. This rule of exhaustion of statutory remedies is a rule of policy, convenience and discretion.

27.6. In cases where there are disputed questions of fact, the High Court may decide to decline jurisdiction in a writ petition. However, if the High Court is objectively of the view that the nature of the controversy requires the exercise of its writ jurisdiction, such a view would not readily be interfered with.”

63. Hon’ble the Supreme Court in Maharashtra Chess Assn. (2020) 13 SCC 285 has held that-

“23…In exercising its discretion to entertain a particular case under Arti-cle 226, a High Court may take into consideration various factors includ-ing the nature of the injustice that is alleged by the petitioner, whether or not an alternate remedy exists, or whether the facts raise a question of con-stitutional interpretation. These factors are not exhaustive and we do not propose to enumerate what factors should or should not be taken into con-sideration. It is sufficient for the present purposes to say that the High Court must take a holistic view of the facts as submitted in the writ peti-tion and make a determination on the facts and circumstances of each unique case.”

64. The respondent-Corporation, although a commercial entity, is an instrumentality of the State and as per ABL International Limited (2004) 3 SCC 553 and

Food Corporation of India v. SEIL Ltd. (2008) 3 SCC 440 is under an obligation to act fairly, justly and reasonably.

65. The petitioner has alleged violation of principles of natural jus-tice and has also challenged the impugned orders of 01.04.2022 (Annex-ure-11, Page-93) and 23.05.2022 (Annexure-10, Page-73) as unreasonable and arbitrary, hitting at Article 14 of the Constitution of India which would constitute a violation of the fundamental rights.

66. Hence, in the opinion of this Court, keeping in view, the holding of UNITECH Limited 2021 SCC Online SC 99; Silppi Constructions Contractors (2020) 16 SCC 489; Maharashtra Chess Assn. (2004) 3 SCC 553, we proceed to examine as to whether there is in-fraction of the principles of natural justice or that the action

of the respon-dent-Corporation violates the spirit of Article 14 of the Constitution of India as enunciated in the decisions referred to supra.

67. The issue as to whether the petitioner should be non-suited purely on the ground of alternative remedy is something which we will examine later.

68. In presence of an alternate remedy as also the reference of the learned counsel for the respondent-Corporation to the Bihar Litigation Policy, 2011, this Court in usual course would have relegated the peti-tioner to the alternate dispute resolution mechanism. However, on account of the arguments advanced by the petitioner and its insistence, despite the Court's oral observations to the contrary, the discussion following, evalu-ates the merits thereof.

69. The petitioner has approached this Court against the order of can-cellation issued on 01.04.2022 (Annexure-11, Page-93) and his subse-quent representation against this order disposed of vide order dated 23.05.2022 (Annexure-10, Page-73). The reason assigned in the order of cancellation was that the last opportunity granted vide a letter dated 25.01.2022 (Annexure-19, Page-114) to pay the licence fee for third and fourth years was not availed, neither the said letter was responded to.

70. Sri Y. V. Giri, learned Senior Advocate, contends that the orders passed are arbitrary and unreasonable. The test of manifest arbitrariness is that, given a set of facts and circumstances, no reasonable person could arrive at the conclusion that has been arrived at in the impugned order. That is to say, passing the order of cancellation without considering the period of COVID Lockdown as also the request for grant of gestation pe-riod are manifestly arbitrary. Many industries have been granted exemp-tions and not granting such exemption to a Hotel industry is violative of Article 14 of the Constitution of India.

71. Simply put, this argument of the petitioners lacks merit.

72. The respondent-Corporation, although an instrumentality of the State, is a commercial body. The management has taken a decision vide a letter dated 31.12.2020 (Annexure-16A, Page-101) in respect of the COVID situation which in fact is, only to the petitioner's advantage, of waiving of the interest arising out of delayed payment of licence fees. The same is squarely within the bounds of a policy decision. A policy decision goes through multiple stages and factors in diverse indicators including socio-economic and political justice, before its final culmination. [Rajeev Suri v. Delhi Development Authority 2021 SCC OnLine SC 7,]

73. It is well established that the Court does not sit to substitute the judgment of the parliament or the executive and should not impose its will over theirs, holding what the Court believes to be the stand of the law.

[Gurudial Singh (1980) 2 SCC 471]. Hon'ble Apex Court in U.P. Financial Corpn. v. Naini Oxygen & Acetylene Gas Ltd (1995) 2 SCC 754, para-21 observed in respect of Corporations that the views it forms and the decision it takes would be on the basis of information in its possession, the advice it receives and according to its own perspective and calculation. In such a situation, more so in commercial matters, the Court should not risk their judgments for the judgments of the bodies to which the task is assigned. These observa-tions were followed in Maharashtra State Financial Corpn. v. Sanjay Shankarsa Mamarde, (2010) 7 SCC 489.

74. In Rajeev Suri 2021 SCC OnLine SC 7, the Court noted in some detail, the conduct to be undertaken when faced with scrutinizing a policy decision.

"191. As noted earlier, the Courts do not sit in appeal over the decisions of the Government to do merit review of the subjective decision as such. In Natural Resources Allocation268, this Court noted that Government deci-sions concerning public resources have an "intricate economic value" at-tached with them and to elevate the standard of review on the basis of a subjective understanding of the subject matter being extraordinary would be dehors the review jurisdiction…"

75. Hence, the point of challenge is misplaced. The non-considera-tion of COVID-19 as a ground is clearly as above, misconceived. Should the petitioner have had grievances as to the decision taken, a challenge should have been brought to the policy decision dated 31.12.2020 (Annexure-16A, Page-101) which would then have been considered on its own merit, but that is not the case here.

76. So far as the request of gestation period is concerned, it has been submitted on behalf of the Corporation that "no communication in regards to such a demand was ever made (impugned order dated 23.05.2022 An-nexure-10, page-73) and therefore, cannot be granted. Further, in the eyes of the Corporation, as is apparent from the record of proceedings dated 06.08.2022 (Annexure-20, Page- 180), the delay between the date of letter of award and the time of allotment of the property, i.e. 04.04.2018 and 15.06.2018 has been considered somewhat as a gestation period as during that time also the Corporation did not receive any revenue of this property (Minutes of the meeting dated 06.08.2022).

77. Despite both an ambivalent and vacillating stand taken by the Corporation, nonetheless it is apparent from record that a request for ges-tation period was for the first time made by the petitioner only on 09.01.2021 (Annexure-8 series, Page-60), which is almost two and half years after the allotment.

78. A gestation period is an initial span of time when things take hold or fall into line to enable the smooth functioning of an entity. The Cam-bridge Dictionary defines 'gestation' as the period of "development of ideas, thoughts or plans." [https://dictionary.cambridge.org/dictionary/english/gestation] The meaning of the word itself makes clear that this time period is associated to the beginning, so a claim for such pe-riod after considerable period of time cannot be sustained.

79. The petitioner's claim for being granted a gestation period has to be refused

also for the reason that clause 4.8 of the NIT dated 09.03.2018 (Annexure-1, Page-28) which as reproduced supra reads as:-

"8. Gestation period of maximum three months be given to Lessee in case of Long period lease agreement or License i.e. 10 years for furnishing etc of Hotel or date of start of Hotel, whichever is earlier."

80. The clause itself makes clear the conditions in which such a pe-riod of relaxation can be granted. (i) for furnishing of the Hotel and (ii) for the start of the Hotel. Undisputedly as is also recorded in the im-pugned order dated 23.05.2022 (Annexure-10, Page-74), the Hotel was al-ready functional at the time when petitioner took over possession.

81. The object behind granting relaxation for payment of lease money for the period termed as "gestation period" is only to make the Ho-tel functional and operational, be it for furnishing or otherwise, which in the instant case is a case not set up by the petitioner and as such the dis-cretion exercised by the Corporation for a period limited to three months rightly could not have been exercised, more so, as lack of timely demand made by the petitioner. For a valid claim to avail this period of relaxation, it ought to have been claimed between the taking over the possession and the commencement of operation in December, 2018 at the relevant time as claimed belatedly in letter dated 09.01.2021 (Annexure 8 series, Page-60).

82. The plea of silence on method of calculation of dues has never been raised hitherto before. Nowhere in the numerous communications between the two parties annexed as part of record has the method of cal-culation being challenged or questioned. Mere statement that the amount arrived at is high or unreasonable is not sufficient for such challenge to stand. The petitioner has not placed any calculation independently made by it to challenge the numbers presented by the Corporation and so such a ground cannot be allowed.

83. The petitioner has claimed a violation of the principles of natural justice as "the respondent did not consider and take appropriate obligation at their discharge of their duty on the request letter of the official of the petitioners and have forcibly issued cancellation order on 23.05.2022 without considering on the request letter of the petitioner."

84. Natural justice is constituted by an absence of bias, the right to be heard and the passing of a reasoned order. There is no material put for-ward on the first prong, nor is it argued, and so, the Court now considers the next two.

85. Two cancellation orders were issued, i.e. on 11.11.2020 (Annex-ure R/12 series, Page-173) and on 01.04.2022 (Annexure-11, Page-93). Compliance of natural justice would entail that before passing such order(s), petitioner ought to have been noticed. The text of the cancella-tion order dated 11.11.2020 (Annexure R/12 series, Page-173) in the sec-ond para states that letter dated 01.06.2020 (Annexure R/12 series, Page-172) was sent giving fifteen days time

to deposit the remaining amount, failing which action would be taken as per the agreement. It is noticed that despite the passage of more than five months from the date, i.e. 01.06.2020 no reply or objection to the last warning was raised. The petitioner has referred to ORXY Fisheries (P) Ltd.11 and in particular to paras 25, 26, & 27 which pertain to reasonable opportunity being granted for defence. The passage of five months as noted and no reply to the letter dated 01.06.2020 right up until 11.11.2020 undoubtedly, satisfies the re-quirement of reasonable opportunity. It is a separate matter that the can-cellation order was not acted upon and vide letter dated 16.01.2021, the Corporation again reminded the petitioner to pay the remaining dues.

86. The second order of cancellation was issued on 01.04.2022. The first para thereof itself states that on 25.01.2022 (Annexure-19, Page-114), a last warning was issued to the petitioner to pay the amount due for the third and fourth year within fifteen days which was again not responded to and the cancellation order was issued more than two months after the said notice. An essential aspect of the notice is to clearly state the charges against such person as also the consequences arising out of a failure.

[Gorkha Security Services v. Govt. (NCT of Delhi) (2014) 9 SCC 105]

87. The object and purpose of noticing a party for taking detrimental action is only to make aware the grounds and the factum of initiation of such purpose.

88. In both these notices, the clauses of the agreement were listed down as per which action would be taken against the petitioner and the charge of course is the failure to pay the amount due to the petitioner. Therefore, it cannot be said that the petitioner was not noticed prior to the cancellation orders being issued. Any doubt, if it existed, could have been clarified from the language of the letter itself clearly states the grant of “last opportunity”.

89. In the instant case, from the beginning itself, the petitioner has been a persistent defaulter. Petitioner, a legal entity, with open eyes, hav-ing read and agreed to the terms of the agreement, signed the same. The terms resulting into action prejudicial or otherwise, on defaults, were well known. Commencing from the issuance of letter of award, the petitioner has been a persistent defaulter-despite the indulgence or laxity on the part of the respondent-corporation. In any event, mere laxity on the part of the Corporation would not account lack of knowledge of the consequences of breach of the conditions stipulated in the contract. Nor would it amount to revisiting the contract, estoppel by conduct or according benefit of any le-gitimate expectation.

90. The last and final requirement of natural justice is that of a rea-soned order. The petitioner has claimed that the orders passed by the au-thority are anything but so. The order dated 01.04.2022 (Annexure-11, Page-93) states that the petitioner has not responded to notice dated 25.01.2022 and has failed to pay the outstanding dues. Therefore, accord-ing to clause 11 of the agreement (which was duly noted in letter dated 25.01.2022), this allotment is cancelled

and the petitioner is blacklisted.

91. Clause 11 of the agreement dated 27.08.2019 reads as under:

Translated as

“11.In the alloottee does not make payment of the amount of allotment to the Bihar State Tourism Development Corporation in the prescribed period, then in that situation the Bihar State Tourism Development Corporation would have right to take actions as follows :-

A In case of not paying the amount of licence within time by the licencee, a warning letter will be issued by BSTDC for depositing the licence fee. After cancellation of the allotment, the Bihar State Tourism Development Corporation will take the restaurant/property under its possession.

B The Bihar State Tourism Development Corporation Limited will seize the deposited guarantee money.

C All the articles and equipments kept in the said property by the second party i.e. the allotment holder would be seized by the first party i.e. Bihar State Tourism Development Corporation Limited.

D The second party i.e. the allotment holder will be blacklisted for five years by the first party i.e. Bihar State Tourism Development Corporation.”

92. The next order dated 23.05.2022 (Annexure-10, Page-73) which has been labelled as non-reasoned by the petitioner is that of disposal of the representation dated 26.04.2022. This Court lists the five grounds taken by the petitioner in its representation and then proceeds to consider and take final call on each one.

Sl. No.

Grounds averred

Consideration by the Authority

That within twenty days from 26.04.2022, Rs.25,00,000/- would be deposited by the petitioner towards the dues outstanding.

That even after the deposit of the said amount outstanding dues total to Rs.2.5 crores (approx.) and given that the Corporation is a commercial body for it to be run smoothly, timely payment of lease amount is necessary and so the request is denied.

That the lease amount due for the period of COVID-19 Lockdown be waived.

That vide order dated 31.12.2020, the interest arising out of delay in lease payments have been waived off, but the principal amount cannot be waived. Also that in a meeting dated 15.09.2021 with all lease holders, this position was categorically stated and clarified. Hence, request is denied.

3

That a three month Gestation Period be granted.

That the request for Gestation Period was never communicated, and, the hotel was in a working condition even prior to the petitioner’s taking over of its operations.

4

That the time period of the lease agreement be computed from the date of signing of the agreement, i.e. 27.08.2019.

That, in this regard, both the allotment letter as also the agreement between the parties were clear that the petitioner would without delay take possession of the Hotel in question and the time period of lease would commence from the date of issuance of letter of allotment and so, this request cannot be agreed to.

5

That the cancellation order dated 01.04.2022 be recalled.

That even after payment of Rs.25,00,000/- the outstanding amount of Rs.2.5 crores (approx.). Also that the licensee has never paid the licence fee on time and in view of such past conduct, extending the term of agreement would not be agreeable as per law.

93. From the above, it is clear that each averment of the petitioner has been considered. Therefore, the order dated 23.05.2022 by no means can be termed as non-reasoned.

94. It is clear, that non consideration of the request letters, as averred, is in actuality, a disagreement with the decision arrived at. In that respect the Hon’ble Supreme Court has held, that disagreement cannot be a ground of interference [Afcons Infrastructure Ltd. (2016) 16 SCC 818].

95. Citing a judgment of Hon’ble the Apex Court in Popcorn Entertainment (2007) 9 SCC 593, the petitioner contends that the three circumstances as laid down therein, i.e. the order impugned is without jurisdiction; principles of natural justice have been violated; and, Article 14 of the Constitution of India have been offended. The contention as to Article 14 and natural jus-tice already stand answered in our opinion. So far as the impugned orders, being without jurisdiction and with intent to resile from a concluded con-tract, contrary to the express terms therein, this Court fails to appreciate how is it so. It is clear from the conduct of the Corporation that despite the indolent approach of the petitioner, numerous opportunities were granted over the years to pay the dues and one cancellation order, despite being issued was not acted upon, thereby, yet again granting the petitioner fur-ther opportunity to mend his ways and after no positive result could be seen from such stand of the Corporation towards the petitioner, the agree-ment was cancelled according to the terms and conditions

agreed to by both the parties.

96. The petitioner in the present case has been termed by the respon-dent-corporation as also respondent no.6, a chronic defaulter. It is so. Hence, petitioner deserves no favourable equity. No proof of any invest-ments made on the property is on record. Indulgence to such a chronic de-faulter, would amount to ‘flogging a dead horse without any conceivable result being expected’. [Haryana Financial Corporation v. Jagdamba Oil Mills (2002) 3 SCC 496, , Para 15].

97. Continuing with the discussion, henceforth we conjointly deal with the issue of blacklisting. Undisputedly, vide notice dated 25.01.2022 (Annexure-19, Page-114), petitioner was informed of such possible conse-quences. As such and rightly so, such plea is not raised. However, what is urged is the order of blacklisting being disproportionate and unwarranted.

98. The principles with respect to blacklisting have been noted by this Court in CWJC No.2625 of 2021 titled as M/s. Satyendra Kumar and Co. Const. Pvt. Ltd. v. The State of Bihar & Ors. decided on 21.04.2022. Para 12, summarizing principles is reproduced as under:-

“ 12. The principles enunciated in the said decisions can be summarized as under:-

(a) The effect of blacklisting is to exclude a person from entering into a lawful relationship with the government for a gainful purpose.

(b) The power of the State and the Union under Article 298 of the Constitution extends to carrying on any form of trade, the acquisition, holding or disposal of property and entering into any related contracts. Such exercise of power may be with or without a law, on the books, subjected of course to Part III of the Constitution, including Article 14 and 21.

(c) Public contracts are subject to equality of opportunity. The State's right to trade must be executed with due observance of equality.

(d) An individual may choose to or not to deal with a particular person but the government does not have such Liberty. It cannot discriminate similarly situated person.

(e) Blacklisting deprives a person of equality of opportunity in a public contract, disabling them from participating, in spite of eligibility. A person transacting business with the State possesses a legitimate expectation that any act done by the State will be backed by legality.

(f) The ground of prejudice being caused to the petitioner on non issuance of Show cause, is as a 6/10 matter of practice, generally, not available to the State.

(g) The issuance of show Cause Notice, unless otherwise warranted, must precede blacklisting.

(h) Blacklisting is not a simple event. It is followed by many civil consequences, or those of another nature. It is also termed "civil death."

(i) Given the stigmatic nature of an order of blacklisting it must be issued with great caution as it entirely precludes a person who has been blacklisted from the award of government contracts.

(j) An order of blacklisting is open to be weighed on the scales of natural justice and the doctrine of proportionality.

(k) An essential precondition for a duly issued order of blacklisting is a fair hearing on the Show Cause Notice issued."

99. Since inception i.e. the grant of letter of award, petitioner's de-faults have been a constant occurrence. There was a delay in payment of the licence fee of the first year which came to be paid two months after the award, the security deposit was made after lapse of more than one year and also after numerous reminders. For the payment of licence fees con-cerning subsequent years also repeated reminders were sent as is apparent from record and the various letters referred earlier and piecemeal pay-ments for dues outstanding for months altogether as also two dishonoured cheques have led to such a stand being taken by the Corporation.

100. It is only on the initiative of this Court that the payment of dues outstanding of the Corporation have been made and even therein, part payment after a cheque being dishonoured after the time period granted by the Court and without seeking leave.

101. In the light of the chronic default of the petitioner in payment of its dues, repeated reminders and even one cancellation order not being acted upon as also taking of the delayed pleas, the order of blacklisting, although of considerable negative consequent cannot be said to unwar-ranted. The payment of dues after the institution of this writ petition upon the urging of the Court, which in any event were undisputedly payable, does not sweep under the rug, the past conduct of the petitioner. Annex-ure-21, Page 185 of the record speaks loud and clear that for each of the preceding four years were pending right up until the last of the payments having been made on 27.09.2022.

102. Hon'ble Apex Court in Haryana Financial Corporation v. Jagdamba Oil Mills (2002) 3 SCC 496, Para 8, observed that "while not insisting upon the borrower to honour the commitment undertaken by him, the Corporation

alone cannot be shackled, hand and foot in the name of fairness." In the present case, the petitioner has not, in any way, stood true to the commit-ments undertaken by him, having been declared the successful bidder for the Hotel Vishnu Vihar, Gaya. Simply because upon the urging of the Court, the petitioner has paid the amounts calculated, the Corporation can-not be expected to engage and deal with a Company which has repeatedly caused delays and issues in the name of fairness.

103. From the above, it is clear that the punishment of five years blacklisting the petitioner is not disproportionate.

104. In the legal notice dated 23.11.2021 (Annexure-9 series, Page-66) given by the petitioner to the respondent-Corporation, under point 9, it is stated that in view of clause 37 of the agreement, the petitioner "hon-estly believed" that the allotment would be calculated from the date of signing of the agreement.

105. It is submitted that not calculating the same from the date of signing of the agreement is in violation of the terms of the NIT.

106. Clause 4.6 of the NIT (Page-28) reads "The management Agree-ment is for a period of ten (10) years from the date of signing of the Agreement."

107. Clause 3 of the allotment order dated 15.06.2018 (Annexure-2, Page-31) reads as under:-

Translated as

"37. The date of allottment shall be calculated from the date as mentioned in the agreement and after receipt of all the desirable amount, the charge of the said property shall be handed over for its use."

109. It is true that the NIT states that the management of the Hotel is handed over from the date of signing of the agreement. It is equally true that the allotment order states that the period of lease would begin from the date of issuance of the letter. Also, clause 1 of the agreement which has been signed by both the parties clearly mentions the time period for which the management of the Hotel stands handed over to the petitioner. Clause 37 which the petitioner relies on, in his legal notice dated 23.11.2021 (Annexure-9 Series, Page 66) itself says that the period of allotment will commence from the date mentioned in the agreement. In our considered view, the terms of the NIT stood modified vide subsequent agreement. Even otherwise as is held by Hon'ble the Supreme Court in

Bharat Coking Coal Ltd.35 that minor deviations from the NIT cannot be a cause of interference of the Court and also keeping in view that it is after more than two years that the objection with respect to the date of signing of the agreement is taken, ignoring the fact that both parties signed the agreement which clearly stated the period, in view of this Court, petitioner has no right to have date of the agreement be construed not from the date of signing. If this plea is allowed, the respondent corporation would be harmed severely and undeservedly, resulting into wrongful gain to the petitioner, against whom, unrefutedly, proceedings under the provisions of the Prevention of Money Laundering Act, 2002 stands initiated. Equity being dead against the petitioner, on all counts, basis of challenge to the impugned action stands repelled.

110. With the disposal of the representation vide order dated 23.05.2022, the saga of the present petitioner, save and except, as on date outstanding dues,

was closed and a fresh NIT with respect to Hotel in question was issued on 15.06.2022. Respondent No.6 was the successful bidder and as has been submitted by the respondent- Corporation, has paid the amounts in full, with the allotment having been made.

111. It is contended by the petitioner that no right vests in respondent no.6 just because he was the highest bidder. Petitioner has referred to Rajasthan Housing Board14 wherein it is stated that the highest bidder in auction did not have any right to have the auction concluded in his favour till the time the Chairman of the Housing Board passed an order to that ef-fect. Further, reliance is placed on Uttar Pradesh Avas Evam Vikas Parishad9, wherein participation in a tender process accrues no other right except fair treatment and equality; and on CWE-SOMA Consortium5 wherein it is stated that the person issuing the tender has no obligation to accept any tender.

112. The contention of the petitioner that no right whatsoever has ac-crued in favour of respondent no.6 is in error. In contractual matters, a right accrues once a contract is concluded. A contract has been described by Hon'ble the Apex Court as a bilateral transaction between two or more than two parties. Every contract has to pass through several stages begin-ning with the stage of negotiation during which the parties discuss and ne-gotiate proposals and counter-proposals as also the consideration resulting finally in the acceptance of the proposal. The proposal when accepted gives rise to an agreement. [Tarsem Singh v. Sukhminder Singh (1998) 3 SCC 471,]

113. Here, there can be no doubt that an NIT was issued, the bidding process has been completed, the highest bidder declared, award letter is-sued and deposits made. Additionally, both Rajasthan Housing Board (2007) 1 SCC 477 and CWE-SOMA Consortium (2016) 14 SCC 172 cited by the petitioner themselves belie their contention. They both state "it is well settled that so long as the bid has not been accepted the highest bidder acquires no vested right to have the auction concluded in his favour." In the present case, a letter of award has been issued by the respondent-corporation on 27.07.2022 and dues of the first year and also the security deposit have been duly made.

114. Sri P.K. Shahi, learned Senior Advocate, appearing for respon-dent no.6 has placed reliance on South Eastern Coalfields Ltd. (2021) 9 SCC 166, wherein it is stated that whether a concluded contract has been arrived at inter se the parties is dependent on the terms and conditions of the parties and the conduct of the parties.

115. The conduct of the parties in the present case, i.e. issuing a fresh tender, entertaining and processing bids, short-listing respondent no.6, ac-cepting payment of licence fee as well as security deposit as also issuing a letter of award make it crystal clear that the said respondent was a proper and necessary party to the instant lis. Accounting for the principle of lis pendens, we stop short of holding any concluded contract entered into be-tween the parties.

CONCLUSION

116. Enforcing remedies under an arbitration clause and entertaining a writ are not always mutually exclusive. The petitioner has contended violation of principles of natural justice and has also challenged the validity of two orders passed by the respondent-Corporation, resulting in blacklisting of the petitioner-company. This Court has examined the grounds, generally upon which the existence of alternate remedy does not restrict the entertainment of a writ petition. Perusal of the record and a thoughtful consideration to the submissions made across the Bar, the following conclusions can be drawn.

117. That the orders passed by the respondent-corporation do not meet the threshold of arbitrariness and, therefore, are not violative of Article 14 of the Constitution of India. The decision taken by the Corporation to only waive the interest arising out of delayed payment, is not one for the Court to substitute with its own judgment and keeping in view the various factors, including the letter dated 31.12.2020 (Annexure-16A, Page-101), it cannot be said that no reasonable man could have arrived at the conclusion challenged herein.

118. It is borne from record that delay in payments has existed right from the inception of this contract. Repeated reminders were ignored and no course correction was made even after first order of cancellation was issued against the petitioner. Be it for whatever reason, the respondent-Corporation repeatedly excused the delays of the petitioner and granted time for payment. As noted earlier, dues from the past four years, in varying amounts were outstanding when upon the persuasion of the Court a final amount was calculated and paid. Conduct post institution of this writ petition cannot wash away the repeated defaults on part of the petitioner and neither is it that after such institution the conduct was flawless. Even here, a cheque for Rs.32,00,000/- was dishonoured and a delayed payment was made later. From an equity standpoint, allowing for the Corporation to be once again saddled with such a lessee would be against the demands of justice as the same would run squarely counter to the interest of the Corporation as a commercial entity.

119. Respondent no.6, namely MKS Enterprises, has acted as according to the NIT dated 15.06.2022 and was declared the successful bidder on 27.07.2022. Considering that no stay was granted, this action of the respondent-corporation cannot be questioned. In view of this Court, putting an imprimatur on the petitioner’s contentions would be incorrect as the concerned respondent has been issued Letter of Award on 27.07.2022 pursuant to which he has complied with all conditions and as has been submitted by it the formal inking of the contract and handing over the possession has been put on hold only because of the present petition. We cannot, by agreeing to this contention, validate the questionable conduct of the petitioner, to the detriment of an interested party who has provided no reason under which doing so could be justified.

120. The questions raised in this lis are thus answered.

121. It shall be open for either party to agitate the arbitration clause to vent any grievances, if the need to do so is felt.

122. No other points urged.

123. Costs easy.

124. Petition is dismissed in the above terms.

125. Interlocutory application(s), if any shall stand disposed of.

I agree.

