

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 25TH DAY OF JANUARY, 2023

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BEFORE

THE HON'BLE MR.JUSTICE M.NAGAPRASANNA

WRIT PETITION NO.21308 OF 2022 (GM-RES)

BETWEEN:

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

...PETITIONER

(BY SRI ADITYA SONDHI, SENIOR ADVOCATE A/W
SRI SWAROOP S., ADVOCATE)

AND:

1. STATE OF KARNATAKA
REPRESENTED BY ADDITIONAL
CHIEF SECRETARY,
MINISTRY OF COMMERCE AND INDUSTRY,
VIDHANA SOUDHA, AMBEDKAR ROAD,
BENGALURU – 560 001,
KARNATAKA.
2. INVEST KARNATAKA FORUM
REPRESENTED BY

THE CHIEF EXECUTIVE OFFICER,
NO. 49, SOUTH BLOCK,
KHANIJA BHAVAN,
RACE COURSE ROAD,
BENGALURU – 560 001.

3. MARKETING COMMUNICATION AND
ADVERTISING LTD.,
A COMPANY REGISTERED UNDER
COMPANIES ACT, 1956,
REPRESENTED BY ITS
MANAGING DIRECTOR,
MCA HOUSE, NO. 42, MILLER ROAD,
BENGALURU – 560 052.

...RESPONDENTS

(BY SRI B.V.KRISHNA, AGA FOR R-1 AND R-2;
SRI H.MOHAN KUMAR, ADVOCATE FOR R-3)

THIS WRIT PETITION FILED UNDER ARTICLE 226 OF THE
CONSTITUTION OF INDIA, PRAYING TO SET ASIDE THE EMAIL
COMMUNICATION DATED 25.10.2022 ISSUED BY THE R3
WHEREBY WORK ORDER DATED 11.08.2022 ISSUED BY THE R3
IN BEARING NO.MCA/IKF/3D-FILM/BBPDVBPL/2022-23 TO THE
PETITIONER FOR CREATING 3D FILM SHOWCASING KARNATAKA
FOR THE UPCOMING "INVEST KARNATAKA 2022 - GLOBAL
INVESTORS MEET" WHICH IS SCHEDULED TO BE HELD ON 2ND
NOVEMBER 2022 WAS WITHDRAWN ANNEXURE-B AND A AND
ETC.

THIS WRIT PETITION HAVING BEEN HEARD AND
RESERVED FOR ORDERS ON 12.01.2023, COMING ON FOR
PRONOUNCEMENT THIS DAY, THE COURT MADE THE
FOLLOWING:-

ORDER

The petitioner-M/s BBP Studio Virtual Bharat Private Limited is before this Court seeking quashment of communication dated 25-10-2022 and for other incidental reliefs.

2. Heard Sri Aditya Sondhi, learned senior counsel appearing for the petitioner, Sri B.V.Krishna, learned Additional Government Advocate appearing for respondents 1 and 2 and Sri H.Mohan Kumar, learned counsel appearing for respondent No.3.

3. *Sans* unnecessary details, the facts in brief which are germane for consideration of the *lis* are as follows:-

The petitioner claims to be a renowned film production house engaged in the business of producing feature films, documentaries, commercials and music videos. The petitioner further claims to have made more than 500 television commercials for both Indian and International brands and has also produced albums like Vande Mataram and Jana Gana Mana videos. Respondent No.2 is the Invest Karnataka Forum (hereinafter referred to as 'the Forum' for short) created by Government to promote investments and to market Karnataka within India and globally in order to attract such investments.

The Forum was established under Section 8 of the Companies Act as amended in the year 2013. The Chair person of the Forum is the Minister for Large and Medium Scale Industries and is co-chaired by the leader in the industry in the State of Karnataka. The Forum consists of 8 Directors and all the Directors are of the Government and the industry. This is the broad composition of the Forum.

4. The Government of Karnataka holds Global Investors Meet annually. Likewise a global investors meet titled "Invest Karnataka 2022" was slated to be held between 2nd and 4th November, 2022, with the object of projecting the State and reflecting the role of the State for a play in the global supply chain, the petitioner was sought to be hired for production of a film. On 16-06-2022 the 3rd respondent/Marketing Communication and Advertising Limited which is a subsidiary unit of Mysore Sales International Limited issued an invitation for expression of interest for appointment of business associates for the event i.e., Invest Karnataka 2022 and other media services by way of tender process. In terms of the said invitation empanelment of business associates was called for in four categories based on valuation of work ranging from

₹ 25,00,000/- to ₹ 1,00,00,000. On 14-07-2022 the 3rd respondent issued a communication to the petitioner notifying its pre-qualification and successful acceptance of the application of the petitioner. The petitioner was called upon to furnish a security deposit applicable to the category in which he had applied for along with certain other post qualification formalities. The petitioner on 18-07-2022 communicates to the 3rd respondent with an intention to showcase the uniqueness of the State of Karnataka through a 3D film during the Global Investors Meet which was scheduled to be held between 2nd and 4th November, 2022 at Bangalore Palace.

5. The Forum communicated to the 3rd respondent to provide the costing for creation of the 3D film as was communicated in the communication of the petitioner. The 3rd respondent communicates a proposal to the Forum quoting a sum of ₹ 4,08,87,000/- for creation of 3D film showcasing the State of Karnataka. After these correspondences on 11-08-2022 the Forum communicates to the 3rd respondent acceptance of proposal by its Competent Authority and directed the 3rd respondent to execute work order as was mentioned in the

communication dated 18-07-2022. In terms of the said communication, the 3rd respondent issues a work order to the petitioner to execute the work which did bear the approval of the Forum. The work order was issued with a stipulation that the petitioner should complete the work within the budget of ₹ 3,89,40,000/- including taxes. Once the work order was issued, the petitioner began to work for creation of the 3D film.

6. On 16-09-2022, the 3rd respondent again communicates to the Forum requesting release of advance amount of ₹ 1,50,00,000/- towards creation of the film, which was also released. A cheque for an amount of ₹ 1,42,85,714/- was submitted by the petitioner as a guarantee for return of advance amount in case of failure to execute the work. After all these communications and conditions being fulfilled, on 01-10-2022 the 3rd respondent executed an agreement with the petitioner for execution of the work order in terms of the work order dated 11-08-2022. The petitioner claims to have begun the work and invested huge amounts for creation of 3D film. On 25-10-2022 the petitioner claims to have been ready to deliver its work to the 3rd respondent in completion of the work order dated 11-08-2022. What the petitioner receives from the hands of the 3rd

respondent is cancellation/withdrawal of the contract/work by a cryptic communication indicating no reason as to why it was being withdrawn. The petitioner, on receipt of the communication through electronic mail, replies to it on 27-10-2022 placing on record the time, money and other things spent on creation of 3D film and the project was ready to be handed over to the 3rd respondent who had issued the work order. The respondents did not respond. It is then, the petitioner knocked at the doors of this Court in the subject petition.

7. This Court, in terms of its order dated 28-10-2022, granted an interim order of stay of the communication dated 25-10-2022 withdrawing the contract and directed the matter to be listed on 31-10-2022. On 31-10-2022 it was submitted that the respondents are not permitting the petitioner to display 3D film. This Court again directed to do the needful. On 03-11-2022 the matter was moved by the State without permitting the petitioner to display 3D film. On 03.11.2022 the interim order was modified and directed that all actions would remain subject to the result of the writ petition. The fact remains that the film of the petitioner was never displayed.

8. The learned senior counsel Sri Aditya Sondhi, appearing for the petitioner would contend with vehemence that the State which is a contracting party, in the case at hand, cannot act so arbitrarily after entering into contract and the petitioner taking the contract to its logical conclusion, cancel the contract without any rhyme or reason. He would submit that the petitioner has spent several crores on the 3D film pursuant to the agreement entered into between the petitioner and the State. He is now left in the lurch without permitting display of the film nor payment made for such investment that went into creation of the film.

9. The learned counsel representing the 3rd respondent and the learned Additional Government Advocate representing the State i.e., respondents 1 and 2 would in unison contend that the film of the petitioner was not up to the mark and, therefore, a decision was taken to deny display of the film in the global investors meet as it would be of no use to do so and it is for the poor quality of the film the decision was taken.

10. The learned senior counsel for the petitioner in reply would take this court through the documents appended to the petition to contend that it is not the poor quality of the film, but

the communication of the Hon'ble Minister that led to cancellation of contract. Therefore, the petitioner is entitled to be compensated with exemplary damages from the hands of the State and also recovery of the amount that is spent.

11. I have given my anxious consideration to the submissions made by the respective learned counsel and have perused the material on record.

12. The afore-narrated facts, dates, and link in the chain of events are not in dispute and therefore they would not require reiteration. For the purpose of display of film in the global investors meet of "Invest Karnataka 2022" the 3rd respondent which is the subsidiary of Mysore Sales International and the Forum which is a wing of the Government began their efforts to scout the probable's of display of the image of the State in the said meet and therefore, sought expression of interest from the stake holders for the said purpose. The petitioner submitted his expression of interest and also communicated what would be the probable cost. The expression of interest of the petitioner was accepted. The acceptance is at the hands of the 3rd respondent, the 3rd respondent had communicated to the 2nd

respondent/Forum, sought its approval and then accepted the proposal of the petitioner by its communication dated 14-07-2022. The communication reads as follows:

"ಸಂಖ್ಯೆ:ಎಂಸಿಎ/ಒಎಂಇ/೧೩೫೦/೨೦೨೨-೨೩

ದಿನಾಂಕ:14.07.2022

ಟೆಂಡರ್‌ದಾರರಿಗೆ,

ಮಾನ್ಯರೇ,

ವಿಷಯ: ಎಂಸಿಎ ಸಂಸ್ಥೆಯ ಇವೆಂಟ್ ಮತ್ತು ಇತರೆ ಮಾಧ್ಯಮ ವಿಭಾಗದಲ್ಲಿ
ವ್ಯವಹಾರ ಸಹವರ್ತಿಗಳನ್ನಾಗಿ ನೇಮಕಾತಿ ಮಾಡುವ ಬಗ್ಗೆ.

ಉಲ್ಲೇಖ: EOI ಸಂಖ್ಯೆ ಎಂಸಿಎ/ಇಟಿಎ/ವ್ಯ.ಸ/ಇ-ಪೋರ್ಟಲ್/ಇವೆಂಟ್-
22/2022-23 ದಿನಾಂಕ:16/06/2022.

ಮೇಲ್ಕಂಡ ವಿಷಯಕ್ಕೆ ಸಂಬಂಧಿಸಿದಂತೆ, ನಮ್ಮ ಸಂಸ್ಥೆಯು ಉಲ್ಲೇಖದನ್ವಯ ಇವೆಂಟ್ ಸಂಬಂಧಿತ ಚಾಹಿರಾತು ಕಾರ್ಯಗಳನ್ನು ನಿರ್ವಹಿಸಲು ಆಸಕ್ತರಿಂದ ವ್ಯವಹಾರ ಸಹವರ್ತಿಗಳ ನೇಮಕಾತಿಗಾಗಿ ಇ-ಪೋರ್ಟಲ್‌ಮೇಂಟ್ ವೆಬ್‌ಸೈಟ್‌ನಲ್ಲಿ ಪ್ರತ್ಯೇಕವಾಗಿ ಆಸಕ್ತಿ ವ್ಯಕ್ತಪಡಿಸುವಿಕೆಯ ಮೂಲಕ ಪ್ರಿ ಕ್ವಾಲಿಫಿಕೇಷನ್ ಟೆಂಡರ್‌ಗಳನ್ನು ಆಹ್ವಾನಿಸಲಾಗಿರುತ್ತದೆ. ಸದರಿ ಪ್ರಿ ಕ್ವಾಲಿಫಿಕೇಷನ್ ನೇಮಕಾತಿಯ ಪ್ರಕ್ರಿಯೆಯನ್ವಯ ತಾವು ದಾಖಲಾತಿಗಳನ್ನು ಸಲ್ಲಿಸಿದ್ದು, ಇವುಗಳನ್ನು ಪರಿಶೀಲಿಸಲಾಗಿರುತ್ತದೆ. ಈ ಮೂಲಕ ತಮ್ಮ ಸಂಸ್ಥೆಯನ್ನು ವ್ಯವಹಾರ ಸಹವರ್ತಿಗಳ ನೇಮಕಾತಿ ಪ್ರಕ್ರಿಯೆಯಲ್ಲಿ ಆಯ್ಕೆ ಮಾಡಲಾಗಿರುತ್ತದೆ ಎಂಬ ವಿಷಯವನ್ನು ಈ ಮೂಲಕ ತಿಳಿಸಿದೆ.

ಮುಂದುವರೆದು, ಆಸಕ್ತಿ ವ್ಯಕ್ತಪಡಿಸುವಿಕೆಯ ದಾಖಲಾತಿಯಲ್ಲಿ ನಮೂದಿಸಿರುವ ಮರುಪಾವತಿಸಲಾಗದ (Non-Refundable) ಭದ್ರತಾ ಠೇವಣಿ ಮೊತ್ತಗಳಲ್ಲಿ ತಾವು ವ್ಯವಹಾರವನ್ನು ಮಾಡುವ ಮೊತ್ತಗಳಿಗನುಗುಣವಾಗಿ ತಮ್ಮ ಆಯ್ಕೆಯ ಮೊತ್ತವನ್ನು ಸಲ್ಲಿಸಬಹುದು. ವಿವರವು ಈ ಕೆಳಗಿನಂತಿದೆ.

Sl. No.	Category	Amount (Rs.)	GST @ 18% (Rs.)	Total (Non Refundable Security Deposit) Rs.
1	Category - I	Rs.50,000/-	Rs.9,000/-	Rs.59,000/-
2	Category - II	Rs.1,00,000/-	Rs.18,000/-	Rs.1,18,000/-
3	Category - III	Rs.2,00,000/-	Rs.36,000/-	Rs.2,36,000/-
4	Category - IV (Only for Start Up Companies)	Rs.25,000/-	Rs.4,500/-	Rs.29,500/-

ಮುಂದಿನ ದಿನಗಳಲ್ಲಿ ಎಂಸಿ&ಎ ಸಂಸ್ಥೆಯ ಮೂಲಕ ಅಧಿಕ ವ್ಯವಹಾರವನ್ನು ನಡೆಸಿದರೆ ಅದಕ್ಕನುಗುಣವಾಗಿ ಮರುಪಾವತಿಸಲಾಗದ ಭದ್ರತಾ ಠೇವಣಿಯ ಮೊತ್ತವನ್ನು ಸಲ್ಲಿಸಬೇಕಾಗಿರುತ್ತದೆ. ಈಗ ಸಲ್ಲಿಸಲಾಗುವ ಮರುಪಾವತಿಸಲಾಗದ ಭದ್ರತಾ ಠೇವಣಿ ಮೊತ್ತವನ್ನು Demand Draft (DD)ರೂಪದಲ್ಲಿ "M/s Marketing Communication & Advertising Limited, Bengaluru" ರವರ ಹೆಸರಿಗೆ Nationalised/Scheduled Bank ನಿಂದ ಪಡೆದು ಸಲ್ಲಿಸತಕ್ಕದು. ಹಾಗೆಯೇ ರೂ.200/- ಗಳ e-stamp paper ನಲ್ಲಿ ತಮ್ಮ ಸಂಸ್ಥೆಯ ಅಧಿಕೃತ ವ್ಯಕ್ತಿಯ ಸಹಿಯುಳ್ಳ ಕರಾರು ಒಪ್ಪಂದದ ಪತ್ರವನ್ನು ಸಿದ್ಧಪಡಿಸಿ, ಜೊತೆಗೆ ತಮ್ಮ ಈಗಿನ ಭಾವಚಿತ್ರ, ಪ್ಯಾನ್‌ಕಾರ್ಡ್ ಹಾಗೂ ಆಧಾರ್ ಕಾರ್ಡ್ ಪ್ರತಿಗಳನ್ನು ಮುಂದಿನ ಕ್ರಮಗಳಿಗಾಗಿ ಸಲ್ಲಿಸಬೇಕೆಂದು ಈ ಮೂಲಕ ತಿಳಿಸಿದೆ. ಸಿದ್ಧಪಡಿಸಿದ ಕರಾರು ಪತ್ರ ಮತ್ತು ಮರುಪಾವತಿಸಲಾಗದ ಭದ್ರತಾ ಠೇವಣಿಯ ಮೊತ್ತವನ್ನು ಸದರಿ ಪತ್ರವು ಸ್ವೀಕೃತಗೊಂಡ 7 ದಿನಗಳೊಳಗಾಗಿ ಸಲ್ಲಿಸತಕ್ಕದ್ದು. ಕರಾರು ಪತ್ರದ ವಿವರಗಳನ್ನು ಲಗತ್ತಿಸಿದೆ.

ವಂದನೆಗಳೊಂದಿಗೆ,"

An agreement also comes to be executed between the 3rd respondent and the petitioner. The agreement had several covenants of completion of the project in time. Pursuant to the agreement, the petitioner submitted his proposal indicating the cost of production of 3D film to be at ₹ 4,08,87,000/-. This is communicated to the Forum by the 3rd respondent. The Forum approves the same and communicates it to the 3rd respondent directing issuance of work order. The communication dated 11-08-2022 reads as follows:

"No.IKF/DD-1/IK-Main Film/62/2022-23 Date: 11-08-2022

Managing Director,
M/s Marketing Communications & Advertising Limited,
MCA House, No.42, Millers Road,
Bengaluru-560 052.

Sir,

Sub: Creation of a 3D film showcasing Karnataka for the upcoming "Invest Karnataka 2022: Global Investors Meet".

Ref: 1. This office letter of even no. dated 18.07.2022.
2. Your costing proposal No.MCA/IKF/Film/OM&E/2022-23, dated 2-08-2022.
3. Govt.Order No.C1/129/SPI/2021, dated 23.07.2021.

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With reference to subject and this office letter cited at ref.(1) above, the costing of Rs.4,08,87,000/- (including MC&A) Service charges and GST) provided by you vide your proposal cited at ref.(2) above for creation of a 3D film showcasing Karnataka for the upcoming "Invest Karnataka 2022 - Global Investors Meet" has been accepted by the competent authority.

Accordingly, you are requested to execute the work as specified in this office letter cited at ref.(1) above at the earliest. The related tax invoice may be submitted to this office for payment after completion of the work along with the final approved version of the film.

This work order is issued in accordance with the provisions of the Government Order cited at ref.(3) above."

(Emphasis added)

Advance payment of ₹ 1,50,00,000/- was sought to be released from the Forum in a communication by the 3rd respondent on 16-09-2022 which was released and the petitioner issued a cheque for ₹ 1,42,85,714/- as a guarantee in the event it would not complete the work. After all the aforesaid proceedings another agreement comes to be executed between the 3rd respondent and the petitioner which was in furtherance of the

earlier agreement. The agreement was entered into on 01-10-2022.

13. The petitioner began to work on the film and claims to have kept the film ready for delivery. At that juncture a communication dated 25-10-2022 comes to the petitioner as a bolt from the blue. The communication read as follows:

"On 25-Oct-2022, at 7.56 PM, Marketing Communication & Advertising Limited, Bangalore. eventmca@gmail.com wrote:

Dear Sir/Madam,

In continuation to the office work order towards creation of a 3D film showcasing Karnataka for the upcoming "Invest Karnataka 2022": Global investors Meet, this is to inform that the work order issued stands withdrawn, as our esteemed client M/s Invest Karnataka Forum, Bengaluru has withdrawn their work order for the said work (copy of the letter is attached below for the reference).

*Regards,
Marketing Communication and Advertising Limited,
Bengaluru."*

The communication read that it was to inform that the work order issued to the petitioner stood withdrawn. Except saying this, there is no reason indicated as to why the work order has stood withdrawn nor any notice issued to the petitioner prior to the said communication of any shortcomings. This communication is called in question before this Court. This Court

has passed several orders, first of which was passed on 28-10-2022 and it reads as follows:

"Heard Sri Udaya Holla, learned senior counsel for the petitioner.

Learned Additional Government Advocate waives notice for respondent Nos.1 and 2.

Issue emergent notice to respondent No.3.

Learned senior counsel would take this Court through the documents appended to the petition seeking to demonstrate that the petitioner was issued with a work order on 11.08.2022, for creation of 3D film showcasing Karnataka for "Invest Karnataka 2022: Global Investors Meet" and the petitioner has also performed substantial work in terms of the work order so issued. On 25.10.2022, an electronic mail communication is sent to the petitioner withdrawing the said work order that was issued on 11.08.2022, after about 2.5 months.

The order comes to the petitioner as a bolt from the blue as the entrustment of the work was completed substantially by the time when the impugned communication is sent. The communication does not contain any reason, it is bald and cryptic.

Therefore, there shall be an interim order of stay of the electronic mail communication dated 25.10.2022, till the next date of hearing.

List the matter on 31.10.2022."

Later on 31-10-2022 when a submission was made that the petitioner was not being permitted to display the film, this Court passed the following:

"Heard the learned counsel for the petitioner.

This Court by an order dated 28.10.2022, granted an interim order of stay of the electronic mail communication dated 25.10.2022/order, cancelling the contract dated 11.08.2022.

The contract was for the purpose of creation of 3D film showcasing Karnataka in "Invest Karnataka 2022: Global Investors Meet" for projection of cultural heritage of Karnataka. After the contract has been executed to a large extent, the contract comes to be cancelled and the same is stayed by this Court.

Learned counsel for the petitioner now submits that in the light of the interim order of stay granted by this Court, respondents should be directed to display or show the final version of the 3D film in the Karnataka Investors Meet.

In the light of the stay being granted, if all other parameters are in tune with the law, there should be no impediment for respondent No.2 to display the film.

List the matter on 04.11.2022."

The matter was moved by the State and on hearing the learned Advocate General, this Court on 03-11-2022 modified the order on the submission of the learned Advocate General that an internal committee is constituted to submit all the final versions of what is to be displayed in the Investors Meet and the petitioner's film has not passed through the said committee. He assured the Court that by the end of the day the Committee would see the film and come to the conclusion as to whether it was in tune with the parameters for it to be displayed in the Investors Meet. This Court directed that the aforesaid scrutiny of the Committee would remain subject to the result of the petition and without prejudice to the right of the State to defend its action. After which, the film was placed before the Committee.

The Committee saw the film and rejected for a display at the meet.

14. The composition of the Committee is what is required to be noticed. The composition of the Committee is as follows:

"List of Members attended the meeting:

1. *Shri R.Ramesh,
Director (TC),
Commerce & Industries Department.*
2. *Shri H.M.Srinivasa,
Additional Director (MSME),
Department of Industries & Commerce.*
3. *Shri B.K. Shivakumar,
Chief Operating Officer,
Invest Karnataka Forum.*
4. *Shri Siddalingappa B.Pujari,
Managing Director,
Marketing Communication & Advertising Limited."*

The composition was the Director, Commerce and Industries Department; Additional Director of the same Department, Chief Operating Officer of the Forum and the Managing Director of the 3rd respondent. The decision reads as follows:

"4) *After detailed viewing of the film and elaborate discussions, the following decisions are taken unanimously.*

- (a) *The film submitted by M/s BBP Studio Virtual Bharat Pvt.Ltd., Mumbai is raw generic, incomplete, unfinished and sub-standard and not meeting the requirements as per the scope of work.*

- (b) *The version of the film submitted by M/s BBP Studio Virtual Bharat Pvt.Ltd., Mumbai is not acceptable, appropriate, worthful and suitable to be exhibited before the global dignitaries and delegates in the flagship event of Karnataka State, Invest Karnataka 2022: Global Investors Meet.*
- (c) *Further, it was decided to communicate the decision of the Committee vide this proceedings to M/s BBP Studio Virtual Bharat Pvt.Ltd., Mumbai and Government”.*

The decision was that the film is not up to the mark. There was no expert or an independent entity to assess the film. Who assessed the film are the persons who needed to toe the lines of the Minister for Industries and Commerce Department. It is the communication of the Minister that led to cancellation of the contract with the petitioner and, therefore, the constitution of the committee of interested persons, would inspire no confidence of this Court for their act of rejection of the film. In the light of the aforesaid events, it now becomes germane to notice the communication of the Minister which has lead to the entire litigation. The communication of the Minister for Industries and Commerce reads as follows:

“ನವೆಂಬರ್ 2, 3 ಮತ್ತು 4, 2022 ರಂದು “Invest Karnataka - 2022” ಜಾಗತಿಕ ಬಂಡವಾಳ ಹೂಡಿಕೆದಾರರ ಸಮಾವೇಶವನ್ನು (GIM) ಆಯೋಜಿಸಿದ್ದು ಸದರಿ ಸಮಾವೇಶಕ್ಕೆ ಸಂಬಂಧಪಟ್ಟಂತೆ ಒಂದು ಕಿರು ಚಿತ್ರವನ್ನು ನಿರ್ಮಿಸಲು ವಾಣಿಜ್ಯ ಮತ್ತು ಕೈಗಾರಿಕೆ ಇಲಾಖೆಯು ಕ್ರಮ ಕೈಗೊಂಡಿದ್ದು, ಸದರಿ ಕಿರುಚಿತ್ರ ನಿರ್ಮಾಣಕ್ಕಾಗಿ ಚಿತ್ರ ನಿರ್ಮಾಣ ಸಂಸ್ಥೆಯೊಂದಿಗೆ ಸುಮಾರು ರೂ.450.00 ಲಕ್ಷ ದಷ್ಟು ಮೌಲ್ಯದ ಒಡಂಬಡಿಕೆಯನ್ನು ಮಾಡಿರುವುದಾಗಿ ತಿಳಿದುಬಂದಿರುತ್ತದೆ. ಸದರಿ ಸುಮಾರು 5 ನಿಮಿಷಗಳ ಈ ಕಿರುಚಿತ್ರ ನಿರ್ಮಾಣಕ್ಕೆ ಸುಮಾರು

ರೂ.450.00 ಲಕ್ಷ ವಷ್ಟು ಮೌಲ್ಯವನ್ನು ನಿಗದಿಪಡಿಸಿರುವುದು ತುಂಬಾ ಹೆಚ್ಚಾಗಿರುವುದು ಕಂಡು ಬರುತ್ತದೆ. ಒಂದು ಪಕ್ಷ, ಇಲಾಖೆಯು ಮೇಲ್ಕಂಡ ಮೌಲ್ಯಕ್ಕೆ ಒಡಂಬಡಿಕೆ ಮಾಡಿಕೊಂಡು ಕಾರ್ಯದೇಶ ನೀಡಿರುವುದು ನಿಜವೇ ಆದಲ್ಲಿ, ಇಷ್ಟೊಂದು ಹೆಚ್ಚು ಮೌಲ್ಯಕ್ಕೆ ನಿಗದಿಪಡಿಸಿದ ಒಡಂಬಡಿಕೆಯು ಇಂದಿನ ಪರಿಸ್ಥಿತಿಗೆ ಅಗತ್ಯ ಹಾಗೂ ಸೂಕ್ತವಿರುವುದಿಲ್ಲವೆಂದು ಭಾವಿಸಿದ್ದು, ಸದರಿ ಒಡಂಬಡಿಕೆಯ ಕಾರ್ಯದೇಶವನ್ನು ವಜಾಕರಿಸಲು ಸೂಚಿಸಿದೆ. ಮುಂದುವರೆದು, ಇನ್ನು ಮುಂದೆ ಇಂತಹ ಪ್ರಕರಣಗಳಲ್ಲಿ ಇಲಾಖಾ ಸಚಿವರು ಹಾಗೂ ಅನುಭವಿಗಳ ಜೊತೆಗೆ ಸಮಾಲೋಚನೆ, ಬೆಚ್ ನಟೀ ತೀರ್ಮಾನ ಕೈಗೊಳ್ಳಲು ಸೂಚಿಸಿದೆ.”

(Emphasis added)

The Minister on 21-10-2022 communicates that the proposal of the petitioner was too high and it was not needed for the department and therefore, the contract was directed to be cancelled. By then close to 3 months after issuance of work order was over. Ultimately, the global investors meet was over between 2nd November and 4th November, 2022. The State did not permit the petitioner to display the film and what now remains is the effort, money and time that was spent on the film by the petitioner and the arbitrary action of the State in cancelling the contract long after issuance of work order and the petitioner executing the work under the contract. The petitioner has also placed on record the total investment made by him, seeking release of the said amounts which now becomes a money claim being brought before this Court against the State.

15. The learned counsel appearing for the respondents have in unison vehemently contended that a money claim should not be entertained in exercise of the jurisdiction of this Court

under Article 226 of the Constitution of India. In the light of the said averment, I deem it appropriate to notice the line of law, as laid down by the Apex Court, on entertainment of a petition for the purpose of money claim, against the State in exercise of jurisdiction under Article 226 of the Constitution of India. The Apex Court right from the judgment in the case of **K.N. GURUSWAMY v. STATE OF MYSORE AND OTHERS – AIR 1954 SC 592** has held that on given set of facts, if the State acts in an arbitrary manner, even in a matter of contract, an aggrieved party can approach the Court under Article 226 of the Constitution of India and depending upon the facts of the case the Courts are empowered to grant such relief. This principle is reiterated by the Apex Court in the case of **ABL INTERNATIONAL LIMITED AND ANOTHER v. EXPORT CREDIT GUARANTEE CORPORATION OF INDIA AND OTHERS**¹ wherein the Apex Court has held as follows:-

"23. *It is clear from the above observations of this Court, once the State or an instrumentality of the State is a party of the contract, it has an obligation in law to act fairly, justly and reasonably which is the requirement of Article 14 of the Constitution of India. Therefore, if by the impugned repudiation of the claim of the appellants the first respondent as an instrumentality of the State has acted in contravention of the above said requirement of Article 14, then we have no hesitation in holding that a writ court can issue suitable directions to set*

¹ (2004) 3 SCC 553

right the arbitrary actions of the first respondent. In this context, we may note that though the first respondent is a company registered under the Companies Act, it is wholly owned by the Government of India. The total subscribed share capital of this Company is 2,50,000 shares out of which 2,49,998 shares are held by the President of India while one share each is held by the Joint Secretary, Ministry of Commerce and Industry and Officer on Special Duty, Ministry of Commerce and Industry respectively. The objects enumerated in the memorandum of association of the first respondent at para 10 read:

"To undertake such functions as may be entrusted to it by the Government from time to time, including grant of credits and guarantees in foreign currency for the purpose of facilitating the import of raw materials and semi-finished goods for manufacture or processing goods for export."

Para 11 of the said object reads thus:

"To act as agent of the Government, or with the sanction of the Government on its own account, to give the guarantees, undertake such responsibilities and discharge such functions as are considered by the Government as necessary in national interest."

24. It is clear from the above two objects of the Company that apart from the fact that the Company is wholly a Government-owned company, it discharges the functions of the Government and acts as an agent of the Government even when it gives guarantees and it has a responsibility to discharge such functions in the national interest. In this background it will be futile to contend that the actions of the first respondent impugned in the writ petition do not have a touch of public function or discharge of a public duty. Therefore, this argument of the first respondent must also fail.

25. The learned counsel for the respondent then contended that though the principal prayer in the writ petition is for quashing the letters of repudiation by the first respondent, in fact the writ petition is one for a "money claim" which cannot be granted in a writ petition under Article 226 of the Constitution of India. In our opinion, this argument of the learned counsel also cannot be accepted in its absolute terms. This Court in the case of *U.P. Pollution Control Board v. Kanoria Industrial Ltd.* [(2001) 2 SCC 549] while dealing with the question of refund of money

in a writ petition after discussing the earlier case-law on this subject held: (SCC pp. 556-58, paras 12 & 16-17)

"12. In the para extracted above, in a similar situation as arising in the present cases relating to the very question of refund, while answering the said question affirmatively, this Court pointed out that the courts have made distinction between those cases where a claimant approached a High Court seeking relief of obtaining refund only and those where refund was sought as a consequential relief after striking down of the order of assessment etc. In these cases also the claims made for refund in the writ petitions were consequent upon declaration of law made by this Court. Hence, the High Court committed no error in entertaining the writ petitions.

*16. In support of the submission that a writ petition seeking mandamus for mere refund of money was not maintainable, the decision in *Suganmal v. State of M.P.* [AIR 1965 SC 1740] was cited. In AIR para 6 of the said judgment, it is stated that*

'we are of the opinion that though the High Courts have power to pass any appropriate order in the exercise of the powers conferred under Article 226 of the Constitution, such a petition solely praying for the issue of a writ of mandamus directing the State to refund the money is not ordinarily maintainable for the simple reason that a claim for such a refund can always be made in a suit against the authority which had illegally collected the money as a tax'.

17. Again in AIR para 9, the Court held:

'We, therefore, hold that normally petitions solely praying for the refund of money against the State by a writ of mandamus are not to be entertained. The aggrieved party has the right of going to the civil court for claiming the amount and it is open to the State to raise all possible defences to the claim, defences which cannot, in most cases, be appropriately raised and considered in the exercise of writ jurisdiction.'

This judgment cannot be read as laying down the law that no writ petition at all can be entertained where claim is made for only refund of money consequent upon declaration of law that levy and collection of tax/cess is unconstitutional or without the authority of law. It is one thing to say that the High Court has no power under Article 226 of the Constitution to issue a writ of mandamus for making refund of the money illegally collected. It is yet another thing to say that such power can be exercised sparingly depending on facts and circumstances of each case. For instance, in the cases on hand where facts are not in dispute, collection of money as cess was itself without the authority of law; no case of undue enrichment was made out and the amount of cess was paid under protest; the writ petitions were filed within a reasonable time from the date of the declaration that the law under which tax/cess was collected was unconstitutional. There is no good reason to deny a relief of refund to the citizens in such cases on the principles of public interest and equity in the light of the cases cited above. However, it must not be understood that in all cases where collection of cess, levy or tax is held to be unconstitutional or invalid, the refund should necessarily follow. We wish to add that even in cases where collection of cess, levy or tax is held to be unconstitutional or invalid, refund is not an automatic consequence but may be refused on several grounds depending on facts and circumstances of a given case."

26. Therefore, this objection must also fail because in a given case it is open to the writ court to give such monetary relief also.

27. From the above discussion of ours, the following legal principles emerge as to the maintainability of a writ petition:

- (a) In an appropriate case, a writ petition as against a State or an instrumentality of a State arising out of a contractual obligation is maintainable.**
- (b) Merely because some disputed questions of fact arise for consideration, same cannot be a ground to refuse to entertain a writ petition in all cases as a matter of rule.**
- (c) A writ petition involving a consequential relief of monetary claim is also maintainable.**

28. However, while entertaining an objection as to the maintainability of a writ petition under Article 226 of the Constitution of India, the court should bear in mind the fact that the power to issue prerogative writs under Article 226 of the Constitution is plenary in nature and is not limited by any other provisions of the Constitution. The High Court having regard to the facts of the case, has a discretion to entertain or not to entertain a writ petition. The Court has imposed upon itself certain restrictions in the exercise of this power. (See Whirlpool Corpn. v. Registrar of Trade Marks [(1998) 8 SCC 1] .) And this plenary right of the High Court to issue a prerogative writ will not normally be exercised by the Court to the exclusion of other available remedies unless such action of the State or its instrumentality is arbitrary and unreasonable so as to violate the constitutional mandate of Article 14 or for other valid and legitimate reasons, for which the Court thinks it necessary to exercise the said jurisdiction."

(Emphasis supplied)

The said judgment is followed by the Apex Court in **SURYA CONSTRUCTIONS v. STATE OF UTTAR PRADESH AND OTHERS²** wherein the Apex Court has held as follows:

"2. By an order dated 21-10-2013 [Surya Construction v. State of U.P., 2013 SCC OnLine All 14604], the High Court asked the appellant to make a representation and finally, in a contempt petition moved on 7-2-2014, directed [Surya Construction v. Rajendra Kumar, 2014 SCC OnLine All 16549] Uttar Pradesh Jal Nigam to answer this representation. The representation so made was answered by Uttar Pradesh Jal Nigam as follows:

"Due to aforesaid facts and description it is clear that Rs 113.29 lakhs has to be released by Government/Mela Administration against the Budget presented by U.P. Jal Nigam, Magh Mela 2008 of 2009. There is no money available under account of Magh Mela 2008 of 2009 of U.P. Jal Nigam. And could not obtain the

² (2019) 16 SCC 794

rest of amount from the Mela Administration/Government. Therefore, payment regarding M/s Surya Construction, 323/3, Alopibagh, Allahabad will be paid after availability of the money from the Government."

3. It is clear, therefore, from the aforesaid order dated 22-3-2014 that there is no dispute as to the amount that has to be paid to the appellant. Despite this, when the appellant knocked at the doors of the High Court in a writ petition being Writ Civil No. 25216 of 2014, the impugned judgment dated 2-5-2014 [Surya Construction v. State of U.P., 2014 SCC OnLine All 6071] dismissed the writ petition stating that disputed questions of fact arise and that the amount due arises out of a contract. We are afraid the High Court was wholly incorrect inasmuch as there was no disputed question of fact. On the contrary, the amount payable to the appellant is wholly undisputed. Equally, it is well settled that where the State behaves arbitrarily, even in the realm of contract, the High Court could interfere under Article 226 of the Constitution of India (ABL International Ltd. v. Export Credit Guarantee Corpn. of India Ltd. [ABL International Ltd. v. Export Credit Guarantee Corpn. of India Ltd., (2004) 3 SCC 553])

4. This being the case and the work having been completed long back in 2009, we direct Uttar Pradesh Jal Nigam to make the necessary payment within a period of four weeks from today. Given the long period of delay, interest @ 6% p.a. may also be awarded."

(Emphasis supplied)

The aforesaid principle is again followed by the Apex Court in its later judgment in the case of **UNITECH LIMITED AND OTHERS v. TELANGANA STATE INDUSTRIAL INFRASTRUCTURE CORPORATION AND OTHERS**³ wherein the Apex Court has held as follows:

³ 2021 SCC OnLine SC 99

"E.1. Maintainability of the writ petition under Article 226

38. Much of the ground which was sought to be canvassed in the course of the pleadings is now subsumed in the submissions which have been urged before this Court on behalf of the State of Telangana and TSIIC. As we have noted earlier, during the course of the hearing, learned Senior Counsel appearing on behalf of the State of Telangana and TSIIC informed the Court that the entitlement of Unitech to seek a refund is not questioned nor is the availability of the land for carrying out the project being placed in issue. Learned Senior Counsel also did not agitate the ground that a remedy for the recovery of moneys arising out a contractual matter cannot be availed of under Article 226 of the Constitution. However, to clear the ground, it is necessary to postulate that recourse to the jurisdiction under Article 226 of the Constitution is not excluded altogether in a contractual matter. A public law remedy is available for enforcing legal rights subject to well-settled parameters.

39. A two judge Bench of this Court in *ABL International Ltd. v. Export Credit Guarantee Corporation of India [ABL International]* analyzed a long line of precedent of this Court to conclude that writs under Article 226 are maintainable for asserting contractual rights against the state, or its instrumentalities, as defined under Article 12 of the Indian Constitution. Speaking through Justice N Santosh Hegde, the Court held:

"27. ...the following legal principles emerge as to the maintainability of a writ petition:

- (a) In an appropriate case, a writ petition as against a State or an instrumentality of a State arising out of a contractual obligation is maintainable.
- (b) Merely because some disputed questions of fact arise for consideration, same cannot be a ground to refuse to entertain a writ petition in all cases as a matter of rule.
- (c) A writ petition involving a consequential relief of monetary claim is also maintainable."

40. This exposition has been followed by this Court, and has been adopted by three-judge Bench decisions of this Court

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

"28. However, while entertaining an objection as to the maintainability of a writ petition under Article 226 of the Constitution of India, the court should bear in mind the fact that the power to issue prerogative writs under Article 226 of the Constitution is plenary in nature and is not limited by any other provisions of the Constitution. The High Court having regard to the facts of the case, has a discretion to entertain or not to entertain a writ petition. The Court has imposed upon itself certain restrictions in the exercise of this power. (See *Whirlpool Corpn. v. Registrar of Trade Marks* [(1998) 8 SCC 1].) **And this plenary right of the High Court to issue a prerogative writ will not normally be exercised by the Court to the exclusion of other available remedies unless such action of the State or its instrumentality is arbitrary and unreasonable so as to violate the constitutional mandate of Article 14 or for other valid and legitimate reasons, for which the Court thinks it necessary to exercise the said jurisdiction.**"

(emphasis supplied)

41. Therefore, while exercising its jurisdiction under Article 226, the Court is entitled to enquire into whether the action of the State or its instrumentalities is arbitrary or unfair and in consequence, in violation of Article 14. The jurisdiction under Article 226 is a valuable

constitutional safeguard against an arbitrary exercise of state power or a misuse of authority. In determining as to whether the jurisdiction should be exercised in a contractual dispute, the Court must, undoubtedly eschew, disputed questions of fact which would depend upon an evidentiary determination requiring a trial. But equally, it is well-settled that the jurisdiction under Article 226 cannot be ousted only on the basis that the dispute pertains to the contractual arena. This is for the simple reason that the State and its instrumentalities are not exempt from the duty to act fairly merely because in their business dealings they have entered into the realm of contract. Similarly, the presence of an arbitration clause does oust the jurisdiction under Article 226 in all cases though, it still needs to be decided from case to case as to whether recourse to a public law remedy can justifiably be invoked. The jurisdiction under Article 226 was rightly invoked by the Single Judge and the Division Bench of the Andhra Pradesh in this case, when the foundational representation of the contract has failed. TSIIC, a state instrumentality, has not just reneged on its contractual obligation, but hoarded the refund of the principal and interest on the consideration that was paid by Unitech over a decade ago. It does not dispute the entitlement of Unitech to the refund of its principal.”

(Emphasis supplied)

The Apex Court in the case of **UNITECH**, formulates a specific issue of maintainability of a writ petition under Article 226 of the Constitution of India and answers it by following ABL International and holding that in certain circumstances, even on a money claim, the writ would be maintainable, if the action of the State smacks arbitrariness.

16. On a coalesce of the judgments rendered by the Apex Court as quoted hereinabove, what would unmistakably emerge is that in an appropriate case a writ petition against a State or its instrumentality arising out of a contractual obligation is maintainable; merely because some disputed question of fact arise for consideration, it would not be a ground to refuse entertainment of writ petition; a writ petition involving a consequential relief of a monetary claim is also maintainable and a writ for such monetary claim would be maintainable notwithstanding an arbitration clause existing in any agreement. All the aforesaid circumstances would be the reason for maintaining or entertaining a writ petition, if the action of the State challenged is arbitrary. Therefore, it is such arbitrariness that empowers the Court to entertain a petition arising out of a contractual obligation or for a monetary claim.

17. On the bedrock of the principles so laid down by the Apex Court, if the facts of the case as narrated hereinabove are considered, it cannot but be held to be arbitrary. The reason for such arbitrariness, is that the expression of interest submitted by the petitioner was accepted by the 3rd respondent on the

approval of the Forum – 2nd respondent. After its approval the contract was awarded in favour of the petitioner, agreement was executed for execution of the work and the petitioner executed the work and took the execution of such work to its logical conclusion. Just before delivery of the final product the contract is cancelled, not on any merit/quality of the film, but on political interference i.e., a communication of the Minister (*quoted supra*). Therefore, this becomes a classic case where arbitrariness is writ large.

18. As held by the Apex Court, if it is once established that the action of the respondents which are instrumentalities of the State is vitiated by non-observation of the constitutional tenets of Article 14 of the Constitution of India and arbitrariness in such action is writ large, the State cannot claim comparison with a private individual even in the field of contract. If the aforesaid facts are present in any given case, the person aggrieved can approach the constitutional Court by way of a writ petition under Article 226 of the Constitution of India and the Court depending on the facts of the case, would be empowered to grant the relief and not relegate such a petitioner to approach the civil Court or

direct him to explore the option of arbitration for redressal of his grievance, as **Article 14 is that golden thread that is woven through the entire fabric of Constitution of India and every bead of State action should pass through that golden thread. Action of the State cannot be arbitrary.**

19. For the aforesaid reasons, I pass the following:

ORDER

- (i) The Writ Petition is allowed in part.
- (ii) The impugned communication dated 25-10-2022 issued by the 3rd respondent stands quashed.
- (iii) A *mandamus* issues to the 1st respondent/State to release balance payments due to the petitioner in terms of its invoice dated 27-10-2022.
- (iv) The petitioner is at liberty to seek arbitration of any other dispute that remains unresolved, apart from what is considered in the case at hand.

Pending applications also stand disposed, as a consequence.

**Sd/-
JUDGE**

bkp