RAJASTHAN HIGH COURT
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HIGH COURT OF JUDICATURE FOR RAJASTHAN
AT JODHPUR

S.B. Civil Writ Petition No. 983/2026

CNR: RJHC010048482026 | URN: CW / 1777U / 2026

Vishnu Prakash R Punglia Ltd., Through Its Authorized Signatory Jayant Punglia S/o Manohar Lal Punglia, Aged About 29 Years, Having Its Office At, B-31-32, Second Floor, Industrial Estate, New Power-House Road, Jodhpur, Rajasthan.

----Petitioner

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Versus

1. Union Of India, Through General Manager, North-Western Railway, Jaipur, Rajasthan.
2. Chief Administrative Officer (Construction), North-Western Railway, Jaipur, Rajasthan.
3. Chief Engineer (Construction) Iii, North-Western Railway, Jaipur, Rajasthan.
4. Deputy Chief Engineer (Construction)-V, North-Western Railway, Jaipur, Rajasthan.

----Respondents

CONNECTED WITH

S.B. Civil Writ Petition No. 8878/2026

CNR: RJHC010395302026 | URN: CW / 16319U / 2026

Vishnu Prakash R Punglia Ltd., Through Its Authorized Signatory Jayant Punglia S/o Manohar Lal Punglia, Aged About 29 Years, Having Its Office At, B-31-32, Second Floor, Industrial Estate, New Power House Road, Jodhpur, Rajasthan.

----Petitioner

Versus

1. Union Of India, Through General Manager, North-Western Railway, Jaipur, Railway, Jaipur, Rajasthan.
2. Chief Administrative Officer, (Construction), North-Western Railway, Jaipur, Rajasthan.
3. Chief Engineer (Construction) Iii, North-Western Railway, Jaipur, Rajasthan.
4. Deputy Chief Engineer (Construction)-V, North-Western Railway, Jaipur, Rajasthan.

----Respondents

For Petitioner(s) : Mr. Samar Bansal, Sr. Advocate
assisted by Mr. Himanshu Choudhary Mr. Additya Soni
Mr. Pradyuman Singh
Mr. Reddy Amar
Mr. Aditya Choudhary
Mr. Sachin Vyas
Mr. Naresh Tak

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For Respondent(s) : Mr. Bharat Vyas, ASG (through VC)
Mr. Vaibhav Bhansali
Mr. B.P. Bohra, Sr. CGC with
Ms. Divyanshi Thanvi Mr. Dharmendra Sharma, Chief Legal Advisor
Mr. B.R. Jat, Chief Legal Advisor
Mr. Manish Padmawat, Dy. Chief Engineer-V, Jaipur
Mr. Santosh Kumar Meena, Dy. Chief Engineer, Bikaner
Mr. Vijay Pal, Executive Engineer, Bikaner
Mr. Praveen Kumar, Assistant Engineer, Jaipur

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HON'BLE MR. JUSTICE SAMEER JAIN

Judgment

1	Arguments concluded on	21/07/2026
2	Judgment Reserved on	21/07/2026
3	Full Judgment or Operative Part Pronounced	Full Judgment
4	Pronounced on	17/08/2026

REPORTABLE

1. Having regard to the nature of the controversy involved and the factual and legal questions arising for consideration, this Court finds that the present petitions are founded upon interwoven and substantially connected facts and give rise to substantially identical questions of fact as well as law. In such circumstances, and with a view to avoiding multiplicity of proceedings, ensuring consistency in adjudication, and facilitating a comprehensive and efficacious determination of the issues involved, this Court deems it appropriate to hear, consider and adjudicate upon all the petitions by way of a common judgment.

2. Accordingly, the issues arising for consideration in the present batch of petitions are being taken up together and shall be considered and decided conjointly. It is further made clear that the findings, conclusions and directions recorded herein shall apply

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mutatis mutandis to both the petitions, and shall govern their respective adjudication henceforth, to the extent applicable to the facts and circumstances of each case. With the consent of learned counsel appearing for all the parties, **S.B. Civil Writ Petition No. 983/2026** titled **Vishnu Prakash R. Pungalia Ltd. Vs. Union of India & Ors.,** is taken up as the lead case for the purpose of examining and determining the questions arising in the present batch of petitions.

3. The **S.B. Civil Writ Petition No. 983/2026**, titled **Vishnu Prakash R. Pungalia Ltd. Vs. Union of India & Ors.,** has been instituted before this Court seeking, *inter alia*, the following reliefs/prayers:

> *(i) By an appropriate writ(s), order(s) or direction(s) quash and set aside the impugned order of rescission dated 13.01.2026 & 13.01.2026 (Annex-16), passed by the Respondents in purported exercise of Clause 62 of the Standard General Conditions of Contract, being arbitrary, non-speaking, violative of Articles 14 and 19(1)(g) of the Constitution of India, and vitiated by non-application of mind, along with all consequences flowing therefrom; and*
>
> *(ii) By an appropriate writ(s), order(s) of direction(s) declare that the rescission of the contract pursuant to the impugned order dated 13.01.2026 is illegal, void and inoperative, and consequently direct the Respondents to restore the contract in favour of the Petitioner and permit continuation of the work in accordance with the contract terms; and*
>
> *(iii) By an appropriate writ(s), order(s) or direction(s) restrain the Respondents from invoking or encashing any of the Bank Guarantees furnished by the Petitioner in relation to the subject contract, the*

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proposed invocation being purely consequential to and founded upon the impugned rescission; and

(iv) By an appropriate writ(s), order(s) or direction(s) quash and set aside all consequential actions, directions and communications issued or taken pursuant to the impugned order of rescission dated 13.01.2026, including any step towards execution of the work at the Petitioner's risk and cost, imposition of penal or adverse consequences, or any other measure prejudicial to the rights and interests of the Petitioner arising therefrom; and

(v) Declare that any action taken by the Respondents during the pendency of the present writ petition, in furtherance of or founded upon the impugned order of rescission dated 13.01.2026, shall be void ab initio, non est in the eye of law and unenforceable, as if never taken; and

(vi) Pass such other or further order(s) as this Hon'ble Court may deem fit and proper in the facts and circumstances of the case, in the interest of justice.

4. The **S.B. Civil Writ Petition No.8878/2026 (Vishnu Prakash R. Pungalia Ltd. Vs. Union of India & Ors.)** has been instituted before this Court seeking, *inter alia*, the following reliefs/prayers:

a. By an appropriate writ, order or direction quash and set aside the impugned Notice Inviting Tender (NIT) dated 6.5.26 (Annexure-19), issued by the Respondents for execution of the subject work, being arbitrary, illegal, mala fide and unsustainable in law; and

b. By an appropriate writ, order or direction declare that the impugned NIT, being founded upon and consequential to the disputed and illegal rescission

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dated 13.01.2026, is non est in the eyes of law and liable to be set aside; and

c. By an appropriate writ, order or direction restrain the Respondents from proceeding further pursuant to the impugned NIT dated including finalization of tender, award of contract, or creation of any third-party rights in relation to the subject work; and

d. By an appropriate writ, order or direction declare holding that the Respondents cannot take advantage of their own wrong, particularly where delays in execution arose due to non-availability of drawings, delayed approvals and unresolved hindrances within their exclusive domain; and

e. Pass such further orders or directions as may be deemed fit and proper in the facts and circumstances of the case, in the interest of justice.

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FACTUAL MATRIX

5. The petitioner-company is a Public Limited Company, duly incorporated and registered under the provisions of the Indian Companies Act, 1956, having its registered office at Jodhpur, and is engaged in the business of infrastructure development and execution of infrastructure-related works across the territories of India. The respondents floated an NIT/Tender with closing date 15.07.2024 for execution of infrastructure works between Jaipur–Chaksu Railway Tracks/Railway Stations, from Km 131.27 to Km 87.60, in connection with the Jaipur–Sawai Madhopur Doubling Project.

6. The petitioner participated in the aforesaid tender process and, upon completion of the technical and financial evaluation, was declared successful. Consequently, a Letter of Acceptance

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(LoA) dated 10.10.2024 (Annexure-1) was issued in favour of the petitioner. In compliance with the contractual stipulations and conditions, the petitioner furnished Bank Guarantee No. 76260ILG014924 dated 24.10.2024, issued by Punjab National Bank, Jodhpur, for an amount of Rs.8,04,30,150/-, and Bank Guarantee No. 1872IGB005938724 dated 10.07.2024, issued by Bank of Baroda, Jodhpur, for an amount of Rs.82,60,300/-, along with a duly stamped indemnity bond for an amount of Rs.3 crore, in terms of Clause 27 of the Special Conditions of Contract. In addition thereto, further Bank Guarantees were furnished on 05.06.2025, issued by Bank of Baroda, Jodhpur, for amounts of Rs.5 crore and Rs.3.85 crore, respectively (the aforesaid Bank Guarantees have been collectively placed on record as Annexure-2 to the writ petition).

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7. The immediate cause giving rise to the present proceedings is the rescission of the contract vide order dated 13.01.2026. The petitioner contends that the impugned action has been taken notwithstanding the fact that it had been continuously and diligently undertaking execution of the contracted work. According to the petitioner, the delay, if any, was attributable to the respondents, who failed to discharge their corresponding contractual obligations, including furnishing approved drawings, providing hindrance-free sites, securing and issuing requisite NOCs, 'Right to way' and obtaining necessary approvals, all of which were required to be facilitated by the Railway Administration.

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8. The grievance of the petitioner is that despite repeated communications and requests bringing the aforesaid impediments to the notice of the respondents, neither were the grievances adequately considered nor were the requisite corrective measures undertaken. Instead, while the impediments at the work front continued to subsist, the respondents proceeded to rescind the contract, allegedly in an arbitrary and mala fide manner. Therefore, contended that the decision-making process culminating in the rescission of the contract stands vitiated in law and is consequently unsustainable.

SUBMISSIONS ON BEHALF OF THE PETITIONER :

9. Learned counsel appearing for the petitioner submitted that the Letter of Acceptance dated 10.10.2024 was issued by the North-Western Railway, Jaipur, Rajasthan, stipulating a contractual period of 24 months. Under the contractual arrangement, the targeted section between Chaksu and Sheodaspura was required to be completed within a period of 15 months, whereas the construction of the station buildings at Chaksu–Sheodaspura was to be undertaken thereafter within the remaining period of 9 months. The formal contract agreement came to be executed on 25.03.2025, retrospectively. It was submitted that, notwithstanding the contractual obligations cast upon the respondents, several essential prerequisites for execution of the work were not fulfilled. In particular, the respondents failed to provide requisite and approved drawings, clear and hindrance-free work sites, necessary NOCs and approvals, and failed to remove

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encroachments and other impediments obstructing execution of the work.

10. Learned counsel submitted that the petitioner, at regular and repeated intervals, brought the aforesaid difficulties and impediments to the specific notice of the respondents through various communications and letters. Despite the petitioner repeatedly seeking removal of the constraints which were impeding execution of the work, the respondents failed to address the same and instead, proceeded to allege slow progress on the part of the petitioner-company. It was further submitted that, despite repeated communications dated 24.01.2025, 10.02.2025, 06.03.2025 and 07.04.2025, whereby the petitioner had specifically apprised the respondents of the difficulties being faced in execution of the work, the respondent Department, without addressing or resolving the issues raised therein, issued a notice dated 29.04.2025 alleging unsatisfactory progress of the work. It was apprised to the Court that the petitioner duly responded to the said notice vide its reply dated 19.05.2025, furnishing requisite explanations and justifications. Thereafter, vide communications dated 07.07.2025 and 02.09.2025, the petitioner once again requested the respondents to provide the necessary drawings and hindrance-free sites so as to enable timely execution and completion of the contracted work. However, no effective heed was paid to the said requests and instead, the respondents proceeded to issue another Show Cause Notice dated 30.09.2025, alleging slow progress, without first resolving the impediments repeatedly brought to their notice by the petitioner.

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11. It was contended that the repeated issuance of notices alleging deficient or slow progress was wholly unjustified, particularly when the respondents were fully aware of the subsisting constraints and impediments at the work site. The petitioner was legitimately entitled to expect that its detailed representations, factual explanations and requests for removal of hindrances would be duly considered and appropriately addressed. However, instead of undertaking such consideration, the respondents issued a 7-day notice dated 10.11.2025 (Annexure-12). The petitioner duly submitted its reply to the notice dated 10.11.2025 and categorically explained that the delay could not be attributed to it. It was submitted that in the said reply the petitioner, in detail, stated the various components of the work, the factual position emerging from the record and the circumstances demonstrating that the delay, if any, was attributable to the respondents and not to the petitioner.

12. It was further submitted that, without duly considering the aforesaid explanation, the respondents once again issued a seven-day notice dated 02.01.2026, under Clause 62 of the General Conditions of Contract, alleging slow progress. The petitioner responded thereto vide reply dated 06.01.2026, reiterating and reaffirming its earlier stand. However, without properly considering the said reply, the respondents proceeded to issue a 48-hour notice dated 10.01.2026, proposing rescission of the contract. Learned counsel submitted that the petitioner immediately submitted a detailed reply dated 11.01.2026 to the notice dated 10.01.2026, specifically requesting withdrawal thereof. The

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petitioner reiterated that the alleged delay was attributable to the respondents, who had failed to discharge their corresponding contractual obligations. It was specifically pointed out that the requisite drawings had not been supplied, necessary approvals had not been accorded, contractual obligations on the part of the respondents remained unperformed, requisite hindrances had not been removed and necessary NOCs had not been issued.

13. It was submitted that without considering or dealing with the aforesaid replies and representations, the respondents proceeded, on 13.01.2026, to rescind the contract in an arbitrary, illegal and unsustainable manner. Simultaneously, encashment of the Bank Guarantees furnished by the petitioner was proposed in an ex parte manner. It was further submitted that, notwithstanding the pendency of the aforesaid controversy, the respondents proceeded to re-tender the remaining work at the risk and cost of the petitioner, allegedly involving an additional expenditure of approximately Rs.30 crore.

14. According to learned counsel, the aforesaid sequence of events demonstrates a predetermined and arbitrary course of action on the part of the respondents. It was submitted that the decision to rescind the contract and thereafter proceed with re-tendering had effectively been taken without affording meaningful consideration to the repeated representations and explanations furnished by the petitioner. The action of the respondents, therefore, stood vitiated by arbitrariness, mala fides and non-application of mind, thereby necessitating invocation of the writ jurisdiction of this Court.

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15. Learned counsel for the petitioner submitted that the matter at hand warrants judicial review qua the decision-making process adopted by the respondents and that both the rescission of the contract and the consequential initiation of the fresh tender deserve to be interfered with and set aside, *inter alia*, on the following grounds:

15.1 That a part of the cause of action has arisen within the territorial jurisdiction of this Court at Jodhpur, and that the petitioner-company has its registered office at Jodhpur and the consequences of the impugned action, including the proposed encashment of the Bank Guarantees, would operate at Jodhpur. Therefore, it was contended that the requisite cause of action, within the meaning of Article 226(2) of the Constitution of India, has arisen within the jurisdiction of this Court.

15.2 That the existence of disputed questions of fact or the contractual nature of the dispute does not, by itself, render the writ petition non-maintainable, particularly where the impugned action of a State instrumentality is alleged to be arbitrary, unreasonable, *mala fide* and violative of principles of natural justice.

15.3 That the respondents despite being repeatedly apprised through letters, communications and representations regarding non-supply of requisite drawings, non-issuance of NOCs, non-provision of clear and hindrance-free sites and non-discharge of other corresponding contractual obligations, proceeded to rescind the contract in an ex parte manner. It was contended that such action, particularly without meaningful consideration of the

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petitioner's replies and representations, is violative of the principles of natural justice and warrants interference in exercise of the writ jurisdiction of this Court.

16. It was further submitted that the material available on record *prima facie* demonstrates that the decision-making process adopted by the respondents was arbitrary, mala fide and predetermined. According to learned counsel, the subsequent decision to re-tender the remaining work, coupled with the manner in which the petitioner's representations were dealt with, reinforces the allegation that the decision to rescind the contract had been taken without an objective and fair consideration of the petitioner's defence.

17. Learned counsel further submitted that the factual controversy involved in the matter is capable of being determined substantially on the basis of the contemporaneous documentary record; and that the adjudication of the dispute, according to the petitioner, does not necessarily require appreciation of oral evidence, and the relevant facts emerge from the correspondence, notices, replies, contractual documents and other materials forming part of the record. It was, contended that the contractual character of the dispute does not, in the facts of the present case, constitute an absolute impediment to the exercise of jurisdiction under Article 226 of the Constitution.

18. Relying upon various judgments of the Hon'ble Supreme Court and other Courts, *inter alia,* for maintainability of the writ petition; **Nawal Kishore Sharma v. Union of India and Ors.: (2014) 9 SCC 329; Kusum Ingots Alloys Ltd. v. Union of**

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India; (2004) 6 SCC 254; Ambica Industries v. Commissioner of Central Excise: (2007) 6 SCC 769; Hanil Era Textiles Ltd. v. Puromatic Filters (P) Ltd.: (2004) 4 SCC 671; Sterling Agro Industries Ltd. v. Union of India and Ors.: 2011 (123) DRJ 76 (FB); Rajasthan Advocates Court High Association v. Union of India and Ors.: (2001) 2 SCC 294; Pawan Prajapati v. Union of India, judgment dated 27.02.2026 in DBSAW No. 873/2023; Sri Pankaj Panwar v. Lalit Kala Akademi and Ors.: 2014 SCC OnLine Cal 14154; Ultra Home Constructions Pvt. Ltd. V. Purushottam Kumar Chaubey & Ors.: FAO (OS) 494/2015 & CM 17816/2015; Indian Performing Rights Society Ltd. V. Sanjay Dalia & Anr.: Civil Appeal No. 10643. For the issue whether the Writ Court can entertain a petition involving disputed facts, reliance was placed upon following judgments: **ABL. International Ltd. and Anr. v. Export Credit Guarantee Corporation of India Ltd. and Ors.: (2004) 3 SCC 553; Gunwant Kaur (Smt) and Ors. v. Municipal Committee Bhatinda and Ors.: (1969) 3 SCC 769; JCL Infra Private Limited v. Jaipur Development Authority : 2026 SCC OnLine Raj 3549; Real Estate Agencies v. State of Goa : (2012) 12 SCC 170; MP Power Management Company Ltd. v. Sky Power Southeast Solar India Private Ltd. and Ors. : 2023) 2 SCC 703; Popatrao Vyanaktrao Patil v. State of Maharashtra : (2020) 19 SCC 241; Gas Authority of India Ltd. v. Indina Petro Chemicals Corporation Limited and Ors.: (2023) 3 SCC 629; Aakash Exploration Service Ltd. v. Oil and Natural Gas Company:**

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2019 SCC OnLine Guj 7040; Uttar Pradesh power transmission and Industrial Solutions ltd and Anr. : (2021) corporation limited and Anr. V. CG Power 6 SCC; UNITECH limited and Ors. V. Telangana State Industrial Infrastructure Corporation (TSIIC) & Ors. Further, reliance was placed for the issue writ petition is maintainable notwithstanding the arbitration clause; **Tata Projects Limited v. Union of India and Ors.: Writ C No.4559/2026; Harbanslal Sahnia and Anr. v. Indian Oil Corporation Ltd. and Ors. : (2003) 2 SCC; Union of India and Ors. v. Tantia Construction Pvt. Ltd. : (2011) 5 SCC 697; Famous Security Services v. State of Odisha and Ors. : 2020 SCC OnLine Ori 753; Whirlpool Corporation v. Registrar of Trade Marks, Mumbai and Ors. : (1998) 8 SCC 1.** On the issue that Termination of the Petitioner's matter falls under the exceptions from arbitration under Clause 62 of the GCC, **reliance was placed on the judgments - Harsha Construction v. Union of India : (2014) 9 SCC 246; M/s MH Khanusiya v. Union of India and Anr.. judgment dated 03.08.2022 in S.B. Arbitration Application No. 89/2021 of the High Court of Rajasthan; M/s S.R. Goyal and Co. v. Union of India and Ors., judgment dated 24.08.2022 in S.B. Arbitration Application No. 56/2021 of the High Court of Rajasthan.** On the issue that Validity of the impugned order must be judged by the reasons mentioned in it and cannot be supplemented by subsequent affidavit, following judgment was relied upon; **Mohinder Singh Gill and Anr. v. Chief Election**

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Commissioner: (1978) 1 SCC 405. For the issue that judicial review is required when there is public interest involved, following judgments were relied upon; M/s Master Marine Services Pvt. Ltd. v. Metcalfe and Hodgkinson Pvt. Ltd. and Anr. : (2005) 6 SCC 138; BSN Joshi and Sons Ltd. v. Nair Coal Services Ltd. and Ors. : (2006) 11 SCC 548; Joshi Technologies International INC v. Union of India, (2015) 7 SCC 728. Learned counsel submitted that the mere existence of an arbitration clause or the presence of disputed questions of fact does not operate as an absolute bar to the exercise of writ jurisdiction under Article 226 of the Constitution of India. It was contended that where the impugned action is alleged to suffer from arbitrariness, violation of natural justice or illegality in the decision-making process, the availability of an alternative contractual or arbitral remedy cannot, by itself, foreclose the jurisdiction of this Court.

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19. It was further submitted that the present petition does not seek enforcement of a mere private contractual right against the respondents. Rather, the challenge is directed against the arbitrary, unreasonable and allegedly mala fide exercise of contractual powers by a State instrumentality, which, according to the petitioner, is demonstrable from the contemporaneous record and is consequently amenable to judicial review.

20. Learned counsel also submitted that the General Conditions of Contract and Special Conditions of Contract themselves contain provisions dealing with the nature and treatment of certain matters, including the provision contained in Clause 62 relating to

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"excepted matters". It was contended that the controversy raised by the petitioner falls within the contractual framework and that the respondents could not have resorted to an arbitrary course of action contrary to the stipulations governing the contract.

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21. On the factual aspect, learned counsel further submitted that there was, on the part of the respondent Railway, an admission or acknowledgment regarding the requirement of providing clear sites, requisite drawings, NOCs and other necessary inputs for execution of the contracted work. Such circumstances, according to the petitioner, materially demonstrate that the impediments complained of were not imaginary or attributable to any default on the part of the petitioner, but arose from the failure of the respondents to discharge their corresponding obligations.

22. At last, learned counsel for the petitioner submitted that the impugned action of rescission of the contract, the proposed encashment of the Bank Guarantees and the consequential re-tendering of the remaining work are arbitrary, illegal, unsustainable and liable to be set aside. It was, accordingly, prayed that the present petitions be allowed and appropriate reliefs be granted in favour of the petitioner, with exemplary/heavy costs against the respondents.

SUBMISSIONS MADE BY THE RESPONDENTS :

23. *Per contra,* learned ASG, Mr. Bharat Vyas, appearing on behalf of the respondents, at the outset, submitted that the present writ petition, instituted under Article 226 of the Constitution of India, is founded upon proceedings of a summary nature and is, therefore, not an appropriate remedy for

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adjudication of a contractual dispute involving disputed questions of fact. It was contended that the petitioner has not approached this Court with complete candour and has suppressed and/or concealed material facts having a direct bearing upon the maintainability as well as merits of the petition. Thus, on this ground, coupled with the availability of an efficacious alternative remedy, learned counsel submitted that the writ petition deserves to be dismissed with heavy costs.

24. Learned counsel for the respondents, while opposing the maintainability as well as the merits of the writ petition, advanced the following submissions:

24.1 As regards territorial jurisdiction, it was submitted that the principal and material components of the cause of action arose within the territorial jurisdiction of the Rajasthan High Court, Jaipur Bench, Jaipur, and not at Jodhpur. According to learned counsel, the petitioner has sought to invoke the jurisdiction of this Court merely on the basis of incidental and consequential circumstances which, in law, do not constitute a substantial or integral part of the cause of action. It was submitted that the subject matter of the tender relates to doubling works between Jaipur and Chaksu Railway Stations, both of which fall within Jaipur District. The entire physical execution of the contracted work is consequently connected with the territorial jurisdiction of Jaipur and not Jodhpur.

24.1.1 Learned counsel further submitted that the contract was awarded by the North-Western Railway Headquarters at Jaipur, and the Officer-in-Charge responsible for the subject work

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and its execution was also stationed at Jaipur. Thus, the principal decision-making authority and the administrative machinery concerned with the contract were situated at Jaipur.

24.2 It was further pointed out that both the Letter of Acceptance dated 10.10.2024 as well as the Contract Agreement dated 25.03.2025 were executed at Jaipur. According to the respondents, the execution of these foundational contractual documents at Jaipur constitutes a material and substantial part of the cause of action.

24.3 Learned counsel submitted that the physical site of work, extending from Km 131.27 to Km 87.60, lies between Jaipur and Chaksu and is situated entirely within Jaipur District. It was contended that the allegations concerning slow progress, issuance of notices, rescission of the contract and consequential fresh tender arose substantially in connection with the work site and the authorities situated at Jaipur. Merely because the registered office of the petitioner-company is situated at Jodhpur, or because the Bank Guarantees were issued by Punjab National Bank, Jodhpur and Bank of Baroda, Jodhpur, no part of the substantial cause of action can be said to have arisen at Jodhpur. It was particularly submitted that the aforesaid banks have not even been impleaded as necessary parties to the writ petition. Consequently, the situs of the petitioner's registered office or the place where the Bank Guarantees were issued cannot, by itself, confer territorial jurisdiction upon this Court.

24.4 Learned counsel further submitted that the petitioner has suppressed the existence and effect of the contractual dispute-

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resolution mechanism, including the relevant contractual clauses and the arbitration remedy available to it; as that the petitioner has attempted to circumvent the agreed contractual mechanism by directly invoking the extraordinary writ jurisdiction of this Court, despite the availability of an efficacious alternative remedy.

25. It was submitted that disputes arising out of the contract are amenable to adjudication under the applicable statutory and contractual framework. The provisions of the Commercial Courts Act, 2015 as well as the Arbitration and Conciliation Act, 1996 (hereinafter referred to as "the Act of 1996"), provide an effective and efficacious mechanism for determination of contractual disputes and for grant of interim as well as final reliefs, wherever warranted. Therefore, the petitioner ought to pursue the remedy specifically agreed upon by the parties instead of invoking Article 226. Learned counsel submitted that the controversy involved in the present matter is predominantly contractual and fact-intensive in nature. The competing assertions regarding delay in providing clear and hindrance-free sites, supply of drawings, issuance of NOCs, issuance and service of notices, and the alleged defaults attributable to either party constitute disputed questions of fact which cannot appropriately be determined in summary writ proceedings. It was submitted that the respondents have, on the basis of the contemporaneous record and site-related material, demonstrated that the petitioner had undertaken only negligible execution of the contracted work and had failed even to reach the requisite bank marks/benchmarks stipulated under the contract.

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26. It was further submitted that the notices alleging slow progress were issued under Clause 62 of the General Conditions of Contract, as the petitioner had achieved only approximately 6% overall progress over a period exceeding 12 months, despite more than 50% of the original completion period having elapsed from the appointed date. Learned counsel submitted that no machinery had been deployed by the petitioner since June, 2025, the targeted earthwork remained below half of the required quantity, a substantial portion of the site work had not commenced, and the station-building work had not been undertaken at all despite repeated opportunities. It was further submitted that several meetings were convened, minutes thereof were recorded and undertakings were furnished by the petitioner to remedy the deficiencies and accelerate the progress. However, despite such repeated opportunities, no substantial improvement in performance was achieved. According to the respondents, the petitioner had failed to utilize the available contractual period effectively and had merely sought to prolong the matter. Learned counsel also submitted that it had subsequently come to the knowledge of the respondents that the petitioner was facing financial distress and that its work orders at various locations throughout India were also suffering from similar deficiencies.

27. Learned counsel emphasised that the subject work concerns railway infrastructure of substantial public importance, the ultimate beneficiary whereof is the public at large, as the work pertains to the railway station and railway track infrastructure and, therefore, its timely completion is of considerable public

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consequence. It was submitted that time is of the essence of the contract, and continuation of the contractual dispute, particularly on account of an interim order and pendency of the writ petition, would cause serious and continuing prejudice to the public interest as well as to the respondents.

28. It was further submitted that the contractual action taken by the respondents was traceable to and supported by the relevant provisions, including Clauses 62, 16, 22 and 6A of the General Conditions of Contract and Special Conditions of Contract. Therefore, the impugned action was not dehors the contract but was undertaken strictly within the contractual framework governing the parties. It was further submitted that the exercise of writ jurisdiction under Article 226 cannot be converted into a substitute for a civil trial or arbitral adjudication, particularly where resolution of the controversy requires determination of conflicting factual assertions and appreciation of evidence. The competent authorities acted within the powers conferred upon them by the contractual clauses and, before taking the ultimate action, afforded repeated opportunities to the petitioner.

29. It was submitted that the petitioner was issued successive notices concerning slow progress, including show-cause notices, followed by a 48-hour notice, and thereafter the contract was rescinded and the remaining work was put to fresh tender. The sequence of action, unambiguously demonstrates that the petitioner was afforded adequate opportunity to explain its position and that the ultimate decision was taken only after following the procedure contemplated under the contract.

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30. Learned counsel for the respondents, in support of the submissions made insofar placed reliance upon a catena of judgments passed by the Hon'ble Supreme Court and other Courts and submitted, *inter alia,* **Oil & Natural Gas Commission Vs. Utpal Kumar Basu & Ors., (1994) 4 SCC 711,** and contended that the mere location of the petitioner or the existence of an incidental consequence within a particular territorial jurisdiction does not, by itself, confer jurisdiction upon the High Court, what is required to be demonstrated is the accrual of a material and integral part of the cause of action within the territorial jurisdiction of the Court; on **State of Rajasthan & Ors. Vs. M/s Sawika Properties & Anr., (1985) 3 SCC 217;** upon **Union of India Vs. Adani Exports Ltd. & Ors., (2002) 1 SCC 567; Kusum Ingots & Alloys Ltd. Vs. Union of India, (2004) 6 SCC 254; Surendra Singh Vs. State of Rajasthan & Ors., S.B. Civil Writ Petition No. 21768/2013.**

31. Whilst placing reliance upon the aforementioned ratios learned counsel submitted that the material events in the present matter, including award of the contract, execution of the LoA and agreement, location of the work site, administrative control of the project, issuance of contractual notices and the decision to rescind the contract, are substantially connected with Jaipur. The mere location of the petitioner's registered office at Jodhpur and the location of the banks which issued the Bank Guarantees, according to the respondents, do not constitute a substantive part of the cause of action so as to confer jurisdiction upon this Court.

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32. Learned counsel further submitted that the present dispute arises directly out of a commercial contract and concerns questions relating to performance, delay, compliance with contractual obligations, rescission and consequential financial liabilities. Such questions, according to the respondents, are ordinarily required to be adjudicated through the remedies provided under the contract and the applicable statutory framework rather than in summary proceedings under Article 226. In support of the said contention, reliance was placed upon the ratio encapsulated in **State of Bihar Vs. Jain Plastics and Chemicals Ltd., (2002) 1 SCC 216,** wherein it was held that contractual disputes involving disputed questions of fact ordinarily do not warrant exercise of writ jurisdiction, particularly when an alternative remedy is available. Learned counsel also relied upon the dictum enunciated in **National Highways Authority of India Vs. Ganga Enterprises, (2003) 7 SCC 410; State of Kerala & Ors. Vs. M.K. Jose, (2015) 9 SCC 433; Kerala State Electricity Board & Anr. Vs. Kurien E. Kalathil, (2000) 6 SCC 293; Tata Motors Ltd. Vs. Brihan Mumbai Electric Supply and Transport Undertaking (BEST) & Ors., (2023) 19 SCC 1; United Education Society Vs. Rajasthan Skill and Livelihood Development Corporation, S.B. Civil Writ Petition No. 8943/2025, MKC Infrastructure Ltd. Vs. Union of India, D.B. Civil Special Appeal (Writ) No. 1245/2025, M/s Khodal Corporation Vs. West Central Railway, S.B. Civil Writ Petition No. 6148/2026, M/s MVV Satyanarayan Vs. General Manager, Central Railways, Writ Petition No. 606 of**

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2026, and M/s Badri Narayan Shukla Associates Vs. State of U.P. & Ors., AIR ONLINE 2020 ALL 2482 to contend that where the parties have voluntarily entered into a contractual arrangement containing a specified mechanism for resolution of disputes, the extraordinary jurisdiction of the High Court ought not ordinarily to be invoked to circumvent such mechanism; and to reinforce the submission that disputes arising essentially from contractual/commercial arrangements, particularly where disputed questions of fact arise, ought ordinarily to be relegated to the appropriate alternative forum.

33. Learned counsel for the respondents submitted that in the matter at hand the parties, having voluntarily entered into a contract containing an arbitration/dispute-resolution mechanism, are bound by the terms thereof. Therefore, the petitioner cannot bypass the agreed mechanism merely by giving the contractual dispute a constitutional colour. In support of the aforesaid submission, reliance was placed upon **State of U.P. & Ors. Vs. Bridge & Roof Co. (India) Ltd., (1996) 6 SCC 22, A. Ayyasamy Vs. A. Paramasivam & Ors., (2016) 10 SCC 386; 2016 INSC 948, as well as M.P. Power Management Co. Ltd. Vs. Sky Power Southeast Solar India (P) Ltd., (2023) 2 SCC 703, R.G. and R.A. JV Vs. North Central Railways (NCR) & Another, Writ-C No. 11400 of 2025, Neutral Citation: 2025:AHC:56952-DB, Twamev Construction and Infrastructure Ltd. Vs. The Kolkata Municipal Corporation & Ors., WPO/1444/2021, and M/s Lalloo Ji Rajiv Chandra and Sons Vs. Meladhikari Prayagraj Mela Authority & Others,**

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Writ-C No. 3467/2019; 2019:AHC:44274-DB; A.H. Wheeler and Company Pvt. Ltd. Vs. Senior Divisional Commercial Manager, NWR Ajmer, S.B. Civil Writ Petition No. 12672/2025, MKC Infrastructure Ltd. Vs. Union of India, D.B. Civil Special Appeal (Writ) No. 1245/2025, and M/s Khodal Corporation Vs. West Central Railway, S.B. Civil Writ Petition No. 6148/2026, and contended that contractual disputes involving the Railway Administration should ordinarily be examined within the contractual dispute-resolution framework and not by converting writ proceedings into a substitute for arbitral adjudication.

34. Learned counsel subsequently submitted that the controversy in the present case involves several seriously disputed questions of fact, including the extent of work actually executed by the petitioner, the availability of work fronts, deployment of machinery, supply of drawings, removal of hindrances, issuance of NOCs, progress achieved against contractual milestones, attribution of delay and compliance with the terms of the contract; and that determination of these questions would necessarily require examination of contemporaneous records, contractual documents, site records, measurements, correspondence, minutes of meetings and other evidence. The respondents contended that such an exercise is fundamentally inconsistent with the summary nature of proceedings under Article 226 and cannot appropriately be undertaken in writ jurisdiction. In support of the aforesaid proposition, learned counsel relied upon **Shubhas Jain Vs. Rajeshwari Shivam & Ors., 2021 INSC 345; Civil Appeal No.**

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2848 of 2021, Rajesh Kumar Joshi & Ors. Vs. State of Rajasthan, S.B. Civil Writ Petition No. 15395/2021, submitting that where adjudication of the dispute requires determination of disputed factual issues, particularly on the basis of evidence, the High Court ought to exercise restraint in invoking its extraordinary writ jurisdiction.

35. In summation, learned Additional Solicitor General, submitted that the present writ petition represents an attempt to convert a purely contractual dispute into a public law remedy; and that the petitioner has an efficacious alternative remedy under the contractual dispute-resolution mechanism and the Act of 1996, while the controversy itself involves disputed questions of fact which cannot appropriately be adjudicated in summary writ proceedings; that the impugned action was taken strictly in accordance with the contractual stipulations after affording the petitioner repeated opportunities to explain and rectify the alleged deficiencies. On the aforesaid premises, learned counsel for the respondents submitted that the writ petition is not maintainable either on the ground of want of territorial jurisdiction, availability of an efficacious alternative remedy, existence of an arbitration clause, or the disputed questions of fact involved therein.

DISCUSSION AND FINDINGS :

36. Having accorded careful consideration to the rival submissions advanced by learned counsel for the parties, and ante-proceeding to advert to the merits of the instant *lis*, this court deemeth it apposite to jot down the following observations:

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37. The controversy, though arising out of a contractual arrangement, has been examined from the standpoint of the maintainability of the writ petitions, the territorial jurisdiction of this Court, the existence of an efficacious alternative remedy, the nature of the disputed questions involved, and the extent to which the decision-making process adopted by the respondents can be subjected to judicial review under Article 226 of the Constitution of India.

38. Before proceeding to examine the rival contentions, it would be apposite to notice the material facts in their chronological sequence, as they emerge from the record.

38.1 On 10.10.2024, the North-Western Railway issued a Letter of Acceptance (LoA) in favour of the petitioner for construction works between Jaipur–Chaksu Stations, from Km 131.27 to Km 87.60, forming part of the Jaipur–Sawai Madhopur Doubling Project. The overall contractual period was stipulated to be 24 months, with the targeted section between Chaksu and Sheodaspura (CKS-SAS) required to be completed within 15 months from the LoA.

38.2 During October-November, 2024, the petitioner was required to mobilise its resources and commence execution of the work. The formal Contract Agreement came to be executed on 25.03.2025, retrospectively formalising the contractual arrangement. In terms of the contractual requirements, the petitioner furnished Bank Guarantee No. 76260ILG014924 for Rs.8,04,30,150/-, Bank Guarantee No. 1872IGB005938724 for Rs.82,60,300/-, an Indemnity Bond for Rs.3,00,00,000/-, and

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additional Bank Guarantees bearing Nos. 1872IGF001816825 and 1872IGF001817025, for amounts of Rs.5 crore and Rs.3.85 crore, respectively.

38.3 On 11.01.2025, the petitioner addressed a communication to the Railway Administration requesting provision of approved working drawings and identification/provision of requisite locations and sites for execution of station buildings, LHS extensions, bridges, RUBs, staff quarters and retaining/toe walls. The petitioner asserts that the request remained largely unaddressed (Annexure-3).

38.4 Thereafter, on 24.01.2025, the petitioner undertook a joint inspection of the alignment from Jaipur to Chaksu and identified as many as 123 site hindrances, including S&T structures, OHE, cables and encroachments. The impediments were documented chainage-wise in tabular form and the Railway Administration was requested to take appropriate steps for removal thereof. According to the petitioner, no effective response was received.

38.5 On 10.02.2025, the petitioner again addressed a communication to the respondents seeking removal of the identified hindrances, clearance of the work sites and issuance of approved drawings. The petitioner maintains that the said communication also remained substantially unaddressed (Annexure-5).

38.6 On 13.03.2025, the first progress meeting was convened. During the meeting, the petitioner submitted its Bar Chart programme. Issues concerning earthwork and formation

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were discussed and the proceedings of the meeting were acknowledged by the respondents. The petitioner, however, asserts that no concrete remedial action was thereafter undertaken by the Railway Administration in respect of the hindrances pointed out by it.

38.7 The record further reflects that on 01.03.2025, the Railway Administration issued the first notice alleging slow progress. The petitioner contends that the said notice was issued notwithstanding its pending requests concerning drawings and removal of site hindrances.

38.8 On 25.03.2025, the formal Contract Agreement was executed, which has been placed on record as Annexure-1 to the writ petition.

38.9 On 29.03.2025, structural drawings for the Chaksu Station Building were handed over to the petitioner. Thus, according to the chronology placed before the Court, the drawings were made available nearly six months after issuance of the LoA. Drawings relating to bridges and LHS works in the targeted CKS-SAS section were thereafter handed over piecemeal.

38.10 On 29.04.2025, the Railway Administration issued a further communication alleging slow progress. The position recorded therein was that earthwork in the targeted CKS-SAS section stood at 35,592 cubic metres against the total requirement of 1,32,100 cubic metres, i.e. approximately 27%, while blanketing work had not commenced.

38.11 On 09.06.2025, the Engineering Scale Plan (ESP) for Chaksu Station Yard was approved by the competent authority.

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According to the petitioner, such approval came more than eight months after issuance of the LoA and, in its submission, execution of the yard works could not effectively proceed in the absence of the approved ESP.

38.12 On 08.07.2025, the Railway Administration issued a further communication alleging slow progress and reiterating that the petitioner was lagging behind the Bar Chart programme.

38.13 On 28.08.2025, permission for tree cutting was granted by the District Collector, Jaipur. The petitioner relies upon the said event as an essential prerequisite for site clearance and points out that such permission was granted nearly ten months after issuance of the LoA.

38.14 On 03.09.2025, another progress meeting was held, during which the petitioner furnished Target Date of Completion (TDC) commitments in respect of Chaksu and Shivdaspura Stations and the platform works. On 01.10.2025, the ESP for Sheodaspura (SAS) Station Yard was approved, nearly twelve months after issuance of the LoA.

38.15 On 10.10.2025, the General Arrangement Drawing (GAD) of RUB-60A was issued to the petitioner, while certain structural drawings relating to the station building continued to remain pending, in part.

38.16 On 10.11.2025, the Railway Administration issued yet another slow-progress notice. The work position recorded at that stage was that 65,000 cubic metres of earthwork had been completed against 1,17,000 cubic metres targeted in the formation section; blanketing work stood at 3,500 cubic metres

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against 47,000 cubic metres; in respect of minor bridges, 5 RCC boxes had been cast out of 11 drawings handed over; work on RUB-60A Extension had not commenced; and, in relation to LHS for LC Elimination, the thrust-bed drawing had not been submitted. On the same date, i.e. 10.11.2025, the Railway Administration issued the first 7-day notice under Clause 62 of the General Conditions of Contract (GCC) to the petitioner.

38.17 The petitioner submitted a comprehensive reply to the said notice on 17.11.2025, contending that the alleged delay was not attributable to it. The petitioner relied upon, inter alia, non-availability of drawings, delayed approval of ESPs, site hindrances and departmental stoppages.

38.18 Thereafter, on 09.12.2025, a second 7-day notice was issued by the Railway Administration under Clause 62 of the GCC, alleging continued slow progress.

38.19 On 02.01.2026, another notice, described as the second 7-day notice under Clause 62 of the GCC, was issued by the Railway Administration. The petitioner submitted its reply on 06.01.2026, reiterating the factual position earlier placed before the respondents and requesting revocation of the proposed action.

38.20 On 10.01.2026, the Railway Administration issued a 48-hour notice under Clause 62 of the GCC proposing termination of the contract. The petitioner submitted its response, setting out its factual and contractual defence.

38.21 Finally, on 13.01.2026, the Railway Administration issued the impugned termination/rescission order. The Bank Guarantees were directed to be encashed. The rescission was

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effected under Clause 62 of the GCC read with Clause 16(4)(f). The said order constitutes the principal subject matter of challenge in the present writ petition.

38.22 Aggrieved by the aforesaid action, the petitioner-company, whose registered office is situated at Jodhpur, instituted S.B. Civil Writ Petition No.983/2026 on 23.01.2026 before this Court, challenging the rescission order dated 13.01.2026 and the proposed encashment of the Bank Guarantees. It is, however, an admitted position on the record that the contract, physical work site, concerned Railway offices and the material events forming the foundation of the contractual dispute are connected with Jaipur/North-Western Railway.

39. **The first question which falls for consideration is whether the present writ petition, as instituted before this Court at Principal Seat Jodhpur, is maintainable on the ground of territorial jurisdiction.**

40. Article 226(2) of the Constitution of India confers jurisdiction upon a High Court where the cause of action, wholly or in part, arises within its territorial limits, notwithstanding that the seat of the Government or authority or the residence of the person against whom the writ is sought may be situated outside such territory. The expression "cause of action" has consistently been understood as the bundle of material facts which the petitioner must establish, if traversed, in order to obtain the relief claimed. In the ratio encapsulated in **Oil & Natural Gas Commission (supra)**, the Hon'ble Supreme Court explained the ambit of Article 226(2) and emphasised that the facts relied upon for

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invoking territorial jurisdiction must constitute an integral and material part of the cause of action. The mere fact that a petitioner resides or carries on business within the territorial jurisdiction of a particular High Court, or that some incidental consequence is felt there, does not *ipso facto* confer jurisdiction. The said principle is apposite to the facts at hand. The present controversy does not arise from any independent act performed by the respondents at Jodhpur. The subject matter of the contract is the execution of railway infrastructure between Jaipur and Chaksu, the contractual work site is situated there, the contract was awarded by the North-Western Railway Headquarters at Jaipur, the LoA and Contract Agreement were executed at Jaipur, and the administrative machinery responsible for the project is situated at Jaipur.

41. The fact that the petitioner has its registered office at Jodhpur, though relevant as a matter of corporate identity, does not by itself constitute a material part of the cause of action. *Ubi jus ibi remedium* cannot be invoked in the abstract; the existence of a legal grievance does not dispense with the constitutional requirement that the grievance must have arisen, wholly or in part, within the territorial jurisdiction of the Court approached. Equally, the circumstance that the Bank Guarantees were issued by Punjab National Bank, Jodhpur and Bank of Baroda, Jodhpur cannot, in the facts of the present case, be treated as furnishing an independent and substantive cause of action. Admittedly, the said banks have not been arrayed as necessary parties to the writ petition. More importantly, the challenge is directed against the

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contractual decision of the Railway Administration to rescind the contract and not against any independent decision of the issuing banks. Applying the aforesaid principle and ratio as held in **Oil & Natural Gas Commission (supra)**, the situs of the registered office of the petitioner and the situs of the issuing banks, in isolation, cannot displace the overwhelming territorial nexus which the present dispute bears with Jaipur. Thus, in the peculiar facts of the present case, the material and integral components of the cause of action are situated at Jaipur, whereas the facts relied upon to invoke the jurisdiction of this Court at Jodhpur are essentially consequential and incidental. The jurisdictional objection raised by the respondents, therefore, merits acceptance.

42. **The second and equally significant aspect concerns the existence of a comprehensive contractual mechanism for resolution of disputes between the parties.**

43. The parties have entered into the contract subject to the General Conditions of Contract and Special Conditions of Contract, which contain specific provisions governing performance, progress, notices, defaults, termination/rescission and dispute resolution. Clause 62, in particular, assumes significance in the context of the notices and ultimate rescission impugned before this Court. The petitioner has sought to contend that the contractual provisions themselves contain exceptions and explanations which render the action of the respondents arbitrary. However, the question whether a particular contractual clause applies, whether the circumstances constitute an "excepted matter", whether the petitioner complied with the Bar Chart,

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whether the respondents failed to perform reciprocal obligations and whether the termination was contractually justified are matters which require examination of the contract as a whole and appreciation of the contemporaneous record.

44. The principle of competence-competence, embodied in Section 16 of the Act of 1996, recognises the competence of the arbitral tribunal to rule upon its own jurisdiction, including objections concerning the existence or validity of the arbitration agreement. The statutory scheme thereby permits the arbitral forum to undertake determination of jurisdictional and contractual issues arising within the arbitral framework. For the sake of handiness the relevant extract from the aforementioned Act is reproduced hereinbelow:

***"16. Competence of arbitral tribunal to rule on its jurisdiction**.—(1) The arbitral tribunal may rule on its own jurisdiction, including ruling on any objections with respect to the existence or validity of the arbitration agreement, and for that purpose,—*

(a) an arbitration clause which forms part of a contract shall be treated as an agreement independent of the other terms of the contract; and

(b) a decision by the arbitral tribunal that the contract is null and void shall not entail ipso jure the invalidity of the arbitration clause.

(2) A plea that the arbitral tribunal does not have jurisdiction shall be raised not later than the submission of the statement of defence; however, a party shall not be precluded from raising such a plea merely because that he has appointed, or participated in the appointment of, an arbitrator.

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(3) A plea that the arbitral tribunal is exceeding the scope of its authority shall be raised as soon as the matter alleged to be beyond the scope of its authority is raised during the arbitral proceedings.

(4) The arbitral tribunal may, in either of the cases referred to in sub-section (2) or sub-section (3), admit a later plea if it considers the delay justified.

(5) The arbitral tribunal shall decide on a plea referred to in sub-section (2) or sub-section (3) and, where the arbitral tribunal takes a decision rejecting the plea, continue with the arbitral proceedings and make an arbitral award.

(6) A party aggrieved by such an arbitral award may make an application for setting aside such an arbitral award in accordance with section 34."

45. The Hon'ble Supreme Court in **Joshi Technologies International Inc. Vs. Union of India & Ors., (2015) 7 SCC 728,** has comprehensively explained that although there is no absolute constitutional prohibition against exercising writ jurisdiction in contractual matters, the High Court ordinarily exercises restraint where the contract contains a specific dispute-resolution mechanism, particularly arbitration, or where resolution of the controversy involves serious disputed questions of fact requiring evidence. The aforesaid principle is reinforced by **M.P. Power Management Co. Ltd. Vs. Sky Power Southeast Solar India (P) Ltd., (2023) 2 SCC 703**, wherein the Supreme Court recognised that even contractual action of the State may, in an appropriate case, attract judicial review where a genuine public-law element and arbitrariness are demonstrable; however, a matter involving a genuinely disputed factual controversy

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ordinarily does not constitute an appropriate case for exercise of writ jurisdiction.

46. The principle may therefore be stated thus: the contractual character of a dispute is not, by itself, an absolute bar to Article 226; conversely, the mere allegation of arbitrariness does not automatically transform every contractual dispute into a public-law controversy. The Court must examine the substance of the grievance and the nature of adjudication required. Thus, the principle of *quando aliquid conceditur, conceditur et id sine quo res esse non potest*, meaning thereby, when the law confers a power, it also confers the means necessary for its effective exercise is squarely applicable qua the present case as the contractual and statutory mechanism available to the petitioner is not an illusory remedy but a recognised adjudicatory mechanism capable of examining the very contractual questions which form the substratum of the present dispute.

47. **The next pertinent issue before this Court for consideration, is that the nature of the disputed questions of fact, as are in the matter at hand; and scope of judicial review in the present contractual dispute.**

48. The record demonstrates that the controversy cannot be reduced to a simple or admitted question of law. On the contrary, the rival parties have placed materially divergent factual narratives before the Court. The following questions, amongst others, arise for determination:

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(i) Whether the petitioner achieved the contractually stipulated progress in accordance with the Bar Chart submitted under Clause 19(3) of the General Conditions of Contract;

(ii) Whether the 7-day notices and the subsequent 48-hour notice were validly issued and complied with the requirements of Clause 62 of the General Conditions of Contract;

(iii) Whether the delay in execution of the work was attributable to the petitioner or to the respondents, particularly in view of the competing allegations regarding drawings, ESPs, hindrances, NOCs, site availability and departmental stoppages;

(iv) Whether, having regard to the contractual stipulation that time was of the essence, the petitioner failed to discharge its obligations within the stipulated period;

(v) Whether the respondents had discharged their corresponding and reciprocal contractual obligations so as to legitimately attribute the delay to the petitioner; and

(vi) Whether the ultimate decision to rescind the contract was arbitrary, mala fide, predetermined or otherwise vitiated by non-application of mind.

49. These questions cannot be answered merely by examining isolated communications. They require a holistic appreciation of the contractual documents, Bar Chart, site records, progress reports, drawings, approvals, minutes of meetings, notices, replies and other contemporaneous material. The competing claims concerning the number and nature of site hindrances, availability of drawings, dates of approvals, deployment of machinery, quantum of work actually executed and attribution of delay are

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matters which are capable of being proved or disproved by documentary and, if necessary, oral evidence. The principle of *audi alteram partem,* has significance not merely at the administrative stage but also in determining the appropriate forum for adjudication. Where the Court is confronted with materially conflicting factual versions requiring evidence, the parties ought ordinarily to be relegated to the forum equipped to undertake such fact-finding. Thus, reliance in this regard can be placed upon the ratio encapsulated in **Tata Motors Ltd. Vs. Brihan Mumbai Electric Supply (supra),** relevant extract of which is reproduced hereinbelow:

> *"55.* ***Ordinarily, a writ court should refrain itself from imposing its decision over the decision of the employer as to whether or not to accept the bid of a tenderer unless something very gross or palpable is pointed out. The court ordinarily should not interfere in matters relating to tender or contract. To set at naught the entire tender process at the stage when the contract is well underway, would not be in public interest. Initiating a fresh tender process at this stage may consume lot of time and also loss to the public exchequer to the tune of crores of rupees. The financial burden/implications on the public exchequer that the State may have to meet with if the Court directs issue of a fresh tender notice, should be one of the guiding factors that the Court should keep in mind.*** *This is evident from a three-Judge Bench decision of this Court in Association of Registration Plates v. Union of India and Ors.*
>
> *56.* ***The law relating to award of contract by the State and public sector corporations was***

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reviewed in Air India Ltd. v. Cochin International Airport Ltd., reported in (2000) 2 SCC 617 and it was held that the award of a contract, whether by a private party or by a State, is essentially a commercial transaction. *It can choose its own method to arrive at a decision and it is free to grant any relaxation for bona fide reasons, if the tender conditions permit such a relaxation. It was further held that the State, its corporations, instrumentalities and agencies have the public duty to be fair to all concerned.* ***Even when some defect is found in the decision-making process, the court must exercise its discretionary powers Under Article 226 with great caution and should exercise it only in furtherance of public interest and not merely on the making out of a legal point.*** *The court should always keep the larger public interest in mind in order to decide whether its intervention is called for or not. Only when it comes to a conclusion that overwhelming public interest requires interference, the court should interfere.*

57. ***As observed by this Court in Jagdish Mandal v. State of Orissa and Ors. reported in (2007) 14 SCC 517, that while invoking power of judicial review in matters as to tenders or award of contracts, certain special features should be borne in mind that evaluations of tenders and awarding of contracts are essentially commercial functions and principles of equity and natural justice stay at a distance in such matters.*** *If the decision relating to award of contract is bona fide and is in public interest, courts will not interfere by exercising powers of judicial review even if a procedural aberration or error in assessment or prejudice to a tenderer, is made out. Power of judicial review will not be invoked to protect private interest at*

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the cost of public interest, or to decide contractual disputes.

58. In such circumstances referred to above, we set aside that part of the judgment and order passed by the High Court by which the decision of BEST to accept the tender of EVEY was set aside and it was left to the discretion of BEST to undertake a fresh tender process."

(emphasis supplied)

50. Thus, it is hereby opined that a writ Court, exercising summary constitutional jurisdiction, ought not to embark upon a detailed factual inquiry where the very foundation of the dispute requires determination of contested contractual facts through an evidentiary process.

51. The Court is conscious that the State and its instrumentalities do not shed their constitutional obligations merely because they enter into a contract. Even in the contractual sphere, State action remains subject to the constitutional discipline of fairness, reasonableness and non-arbitrariness. However, that proposition does not mean that every contractual dispute involving a State instrumentality must necessarily be adjudicated under Article 226 of the Constitution. The Hon'ble Supreme Court in **Jain Plastics and Chemicals Ltd. (supra)** has recognised precisely as follows:

*"3. **Settled law - writ is not the remedy for enforcing contractual obligations. It is to be reiterated that writ petition under Article 226 is not the proper proceeding for adjudicating such disputes. Under the law, it was open to the respondent to approach the Court of competent***

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jurisdiction for appropriate relief for breach of contract. It is settled law that when an alternative and equally efficacious remedy is open to the litigant, he should be required to pursue that remedy and not invoke the writ jurisdiction of the High Court. *Equally, the existence of alternative remedy does not affect the jurisdiction of the Court of issue writ, but ordinarily that would be a good ground in refusing to exercise the discretion under Article 226.*

7. In our view, it is apparent that the order passed by the High Court is on the face of it illegal and erroneous.

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

(emphasis supplied)

52. The present matter falls within the category, where the challenge is inseparably intertwined with questions of contractual performance, attribution of delay, compliance with notices, availability of drawings and work fronts, and the justification for

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rescission. These are not merely incidental questions; they constitute the very substratum of the dispute.

53. **The next vital issue is whether the decision-making process as adopted by the respondents was arbitrary or mala fide**

54. The petitioner has principally sought judicial review on the premise that the rescission was arbitrary, mala fide and predetermined, particularly because, according to it, its repeated representations concerning non-availability of drawings, NOCs, hindrance-free sites and other impediments were not duly considered. The respondents, on the other hand, have relied upon the progress records and have contended that the petitioner had achieved only 6% overall progress against the stipulated period, despite approximately 12 months having elapsed out of the 24-month contractual period. They have further relied upon the absence of substantial machinery deployment since June, 2025, incomplete earthwork, non-commencement of substantial station-building work and the repeated opportunities allegedly granted to the petitioner.

55. The Court is not, at this stage, required to finally pronounce upon the correctness of either factual version. The limited question is whether the record, at the threshold, discloses such manifest arbitrariness, mala fides or perversity as would justify displacement of the agreed contractual adjudicatory mechanism. It is well settled that judicial review is directed primarily against the decision-making process and not against the merits of the decision as if the Court were sitting as an appellate authority. The

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Wednesbury principle requires the Court to examine whether the decision is so unreasonable that it falls outside the range of lawful decision-making, or whether the authority has acted upon irrelevant considerations, ignored relevant considerations, acted in bad faith or violated the governing legal framework. The present record, however, does not disclose a case in which the respondents acted without reference to the contractual framework. On the contrary, there were repeated communications regarding progress, successive notices were issued, replies were furnished by the petitioner, and ultimately the impugned action was taken by reference to Clause 62 of the GCC read with Clause 16(4)(f).

56. The existence of competing factual versions, by itself, militates against a conclusion that the decision is demonstrably mala fide or Wednesbury unreasonable. Needless to say that *mala fides non praesumuntur,* meaning thereby that bad faith is not to be presumed; it must be established by cogent material.

57. Having regard to the material presently before the Court, and without undertaking an adjudication on the ultimate correctness of the competing claims, this Court finds that the record reflects poor performance of the contractor, as evidenced by various communications issued by the respondents and the corresponding replies submitted by the petitioner. In such circumstances, it cannot, at this stage, be conclusively held that the impugned action was actuated by arbitrariness or mala fides, or that the decision-making process suffered from such manifest

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unreasonableness as would warrant interference under Article 226.

58. Further, it is essential to note that the judgments relied upon by learned counsel for the petitioner have been carefully considered. There can be no quarrel with the settled proposition that there is no absolute embargo upon exercise of Article 226 in contractual matters. However, the precedents cited by the petitioner have to be applied in the factual matrix in which they were rendered. The principle that a writ petition may be entertained against arbitrary State action in the contractual field does not imply that the High Court must adjudicate every contractual controversy, particularly where the dispute involves contested facts and an efficacious alternative remedy exists. For the same reliance can be placed upon the ratio encapsulated in **M/S Khodal Corporation (supra),** relevant extract of which is reproduced hereinbelow:

> "*Having heard the submissions made by learned counsel representing the parties, scanning the material available on record, and perusing the judgments cited at Bar,* ***this Court is not inclined to interfere in the present writ petition for the following reasons:***
>
> *7.1* ***That disputed questions of facts are involved.***
>
> *7.2 T****hat there is an alternate available remedy as the concerned agreement has an 'arbitration clause'.***
>
> *7.3 That as per settled position of law, where there are disputed question of facts, appellate/writ courts should restrain to interfere. The said view is made unambiguous, yet again, in the ratio encapsulated in*

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Tata Motors Limited *(supra), the relevant extract from which is reproduced hereinbelow:*

> *"52.* ***Ordinarily, a writ court should refrain itself from imposing its decision over the decision of the employer as to whether or not to accept the bid of a tenderer unless something very gross or palpable is pointed out. The court ordinarily should not interfere in matters relating to tender or contract.*** *To set at naught the entire tender process at the stage when the contract is well underway, would not be in public interest. Initiating a fresh tender process at this stage may consume lot of time and also loss to the public exchequer to the tune of crores of rupees. The financial burden/implications on the public exchequer that the State may have to meet with if the Court directs issue of a fresh tender notice, should be one of the guiding factors that the Court should keep in mind. This is evident from a three-Judge Bench decision of this Court in* Association of Registration Plates v. Union of India and Others*, reported in (2005) 1 SCC 679."*
>
> *(Emphasis supplied)*

8. Accordingly, and in view of the ratio encapsulated in MKC Infrastructure Ltd. *(supra), the present writ petition is dismissed. However, it is clarified that if the petitioner is desirous, to avail the remedy as specified by the respondents, he is free to choose the same. It is made clear that no prejudice be caused to the petitioner on account of dismissal of the present writ petition."*

(Emphasis supplied)

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59. The present case is distinguishable because the respondents have placed material on record demonstrating substantial deficiency in progress, whereas the petitioner has placed material to attribute the delay to the respondents. Determination of the competing versions requires factual adjudication. Thus, it is opined that judicial precedents cannot be applied mechanically without examining the factual foundation upon which the ratio operates.

60. Consequently, the judgments cited on behalf of the petitioner, though laying down correct propositions of law in their respective factual contexts, do not persuade this Court to exercise its discretionary jurisdiction in the present matter.

61. Another relevant consideration is the nature of the contracted work. The subject matter concerns railway infrastructure, including works connected with railway tracks and stations forming part of the Jaipur–Sawai Madhopur Doubling Project. Such infrastructure has a direct bearing upon the travelling public and the functioning of the railway network. The respondents have specifically contended that delay in completion would cause hardship to the public at large. While public interest cannot be invoked as a talisman to immunise administrative action from judicial scrutiny, it is nevertheless a legitimate consideration while determining whether the Court should exercise discretionary relief in a contractual dispute. It is a settled principle of law that *salus populi suprema lex*, meaning, the welfare of the people is the supreme law, thus, it offers that equitable and discretionary jurisdiction of constitutional Courts. Thence, it can be concluded that where the contractual dispute can adequately be examined by

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the designated arbitral or statutory forum, the Court must also balance the private contractual interest of the petitioner against the larger public consequences of stalling an infrastructure project.

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CONCLUSION AND DIRECTIONS :

62. Having considered the matter in its entirety, this Court is of the considered view that the petitioner has not been able to establish, for the purpose of invoking the jurisdiction of this Court at Jodhpur, that a material and integral part of the cause of action arose within its territorial jurisdiction. The overwhelming factual nexus of the dispute is with Jaipur; the work site is situated there; the contract was awarded there; the LoA and Contract Agreement were executed there; the concerned Railway Administration is situated there; and the notices and impugned rescission arise from the execution and performance of the work at the said location. The location of the petitioner's registered office at Jodhpur and the fact that certain Bank Guarantees were issued by banks situated at Jodhpur are insufficient, in the peculiar facts of the present case, to constitute a substantive part of the cause of action.

63. Further, the controversy is governed by the General Conditions of Contract and Special Conditions of Contract, and the petitioner has an efficacious alternative remedy under the contractual/statutory mechanism. The existence of such remedy, coupled with the disputed factual questions noticed hereinabove, constitutes a compelling reason for this Court to decline exercise of its discretionary jurisdiction. The present case is, not one in

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which the Court can satisfactorily determine the controversy merely by examining the legality of an admitted or undisputed action. Rather, the Court would necessarily be required to undertake an adjudication of the competing factual narratives of the parties. Where a remedy is provided, the forum contemplated for its effective adjudication must ordinarily be respected. The petitioner cannot be left remediless; however, the appropriate remedy must be pursued before the forum competent to adjudicate the contractual controversy.

64. However, it is pertinent to note that the Co-ordinate Bench of this Court, vide order dated 15.01.2026, had granted interim protection, and the petitioner has thereafter been heard substantially in the present proceedings. The fact that an interim order had earlier been granted does not, by itself, create a vested right in favour of the petitioner to have the writ petition adjudicated on merits notwithstanding the jurisdictional and maintainability objections. An interim order is interlocutory in character and does not conclude the ultimate rights of the parties. Nevertheless, having regard to the fact that the petitioner has already approached this Court, has been granted interim protection and has been heard substantially, this Court considers it appropriate, in the interests of justice and to ensure that the petitioner is not left without an effective opportunity to pursue its contractual remedy, to grant reasonable time for invocation thereof.

65. Thus, in view of the foregoing discussion and having regard to the totality of facts and circumstances, this Court is not

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persuaded to exercise its discretionary jurisdiction under Article 226 of the Constitution of India for adjudication of the contractual controversy raised by the petitioner.

66. Accordingly, and in view of the ratios enunciated in **Tata Cellular v. Union of India : 1994 SCC (6) 651, M/S Khodal Corporation (supra), MKC Infrastructure Ltd. (supra),** and **Tata Motors Ltd. (supra),** the petitioner is directed to avail the alternative efficacious remedy available to it under the contract and applicable law, if so advised, within a period of 45 days from the date of pronouncement of this judgment.

67. However, in order to preserve the subject matter of the dispute and to ensure that the petitioner is not prejudiced merely on account of the transition from the writ forum to the appropriate alternative forum, it is directed that the status *quo,* as maintained on the date when this judgment was reserved, shall continue to till the expiry of the aforesaid period of 45 days, qua both the petitions connected herein.

68. It is also clarified that this Court has not expressed any final opinion on the merits of the rival contractual claims of the parties, including the question as to whether the delay was attributable to the petitioner or the respondents, whether the petitioner achieved the contractually stipulated progress, whether the notices issued under Clause 62 were valid, whether the contractual obligations relating to drawings, sites, NOCs and approvals were duly discharged, or whether the ultimate rescission of the contract was justified. The appropriate forum, while considering the dispute, shall consequently remain free to examine all such questions in

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accordance with law and on the basis of the material and evidence which may be placed before it. The observations contained in the present judgment are confined to the question of territorial jurisdiction, maintainability and propriety of exercising writ jurisdiction in the facts presently before this Court.

69. Therefore, it is expressly clarified that no prejudice shall be caused to either party by any observation contained in the present judgment, and the competent forum shall adjudicate the contractual dispute independently, uninfluenced by any *prima facie* observations made herein.

70. In view of the aforesaid discussion, the present petitions are **disposed of** with liberty to the petitioner to avail the alternative efficacious remedy available under the contract and applicable law within 45 days from the date of pronouncement of this judgment. Till expiry of the aforesaid period, the **status *quo,*** as retained on the date when this judgment was reserved, be maintained.

71. With the aforesaid observations and directions, the present petitions stand disposed of. The stay application(s) and/or pending application(s), if any, also stand disposed of.

72. A copy of the present judgment shall be separately placed in the connected file.

(SAMEER JAIN), J.

Preeti Asopa

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