



2026:DHC:3654



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* IN THE HIGH COURT OF DELHI AT NEW DELHI

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Judgment pronounced on: 30.04.2026+ W.P.(C) 7184/2023, CM APPLs.27969/2023, 58654/2023, 68502/2024 & 73233/2025

GLOBAL SERVICES

.....Petitioner

Through: Mr. Tanmay Mehta, Mr. Ankit Siwach
and Ms. Soumya Sannidhanam,
Advocates.

versus

INDRAPRASTHA GAS LIMITED & ANR.

.....Respondents

Through: Mr. Prashant Mehta, Ms. Divye
Chugh, Ms. Prachi Kohli, Ms. Priya
Wadhwa, Advocates for R-1.**CORAM:****HON'BLE MR. JUSTICE SACHIN DATTA****JUDGMENT**

1. The present petition has been filed by the petitioner assailing a letter/communication dated 11.05.2023 issued by respondent no.1/Indraprastha Gas Limited, whereby, the respondent no.1 formally ceased all relationships with the petitioner which existed in terms of a Letter of Intent dated 21.01.2020 (hereinafter referred as "the LOI"). In terms of the LOI, the petitioner was appointed/engaged as a 'facilitator' for facilitating development of respondent no.1's CNG facility site situated at Minto Road, Delhi.

2. The petitioner also seeks that the respondent no.1 be directed to execute a dealership agreement *qua* the concerned facility in its favour and further restrain the said respondent from engaging/appointing any other operator/third party rights thereof.



3. *Vide* a Note of Approval dated 10.06.2019, Company Owned, Dealer Operated (CODO) Model was introduced by the respondent no.1. Under the said model respondent no.1 *inter-alia* proposed to engage agencies/individuals willing to resolve dispute/s of respondent no.1 with the locals concerning lands which although already allotted to respondent no.1 for commissioning CNG facility/station, remained non-operational for over 6 months due to the said disputes. The relevant portion of the said Note of Approval reads as under:-

“This policy would also be applicable for lands which have already been allotted to IGL but are not operational for more than 6 months after allotment due to dispute. Any individual/agency offering to solve the problem put the station to operation will be awarded dealership for a limited period of 10 years at the discretion of management on recommendation of the panel.

At present following are the sites which are under possession of IGL but work has not commenced or being hindered due to disputes:

1) Minto Road - *The site at Minto Road was allotted to IGL on 20th August, 2008 from land and Development Office. The possession of same was taken on 18th November, 2008 (Copy of same attached as Annexure - B). Since the time of possession the site was encroached by local slum dwellers. Various attempts of eviction were made but IGL was not successful. Accordingly, IGL took the matter to Hon'ble Delhi High court and the judgement was given in favour of IGL. Subsequently, after various attempts the site was evicted on 11.02.2019 with the help of Officials of Delhi Police and Delhi Urban Shelter Improvement Board (DUSIB).*

However, when the construction started the anti-social elements from the local area have been disturbing the work time and again. IGL has not been able to work at the site properly due to such disturbances.



It is proposed to appoint a consultant for the Minto Road Site who can resolve the matter and enable IGL to construct the CNG Station. The advertisement would be on IGL website for a period of 15 days. If the consultant is successful and IGL is able to construct the CNG Station, the consultant would be appointed as a dealer.

2)Mangolpuri - The site at Mangolpuri was allotted to IGL on 30th August, 2017 from DUSIB Development Office. The possession of same was taken on 06th October, 2017 (Copy of same attached as Annexure - C). Since the time of possession IGL has been trying to commence the work at site. However, each time the construction activity has commenced at the site, the local residents have not allowed the construction to take place.

This site was previously allotted in the same park but on the opposite side in December 2009. At that time also the work could not take place due to the residents and the site was relocated to this side of the park.

It is proposed to appoint a consultant for the Mangolpuri Site who can resolve the matter and enable IGL to construct the CNG Station. The advertisement would be on IGL website for a period of 15 days. If the consultant is successful and IGL is able to construct the CNG Station, the consultant would be appointed as a dealer.

Recommendation: *Approval is initiated for advertising for requirement of consultant for the 19 above mentioned stretches/lands, Mangolpuri and Minto Road. The advertisement would be put up on IGL's Website as approved in the policy. If the applicant is found suitable and allots the land in favour of IGL, would be appointed as a dealer for the respective site.*

Financial Implications: *At present financial implication is nil, however, on finalization of land and dealer we may take approval from Competent Authority.*

Approving Authority: *Managing Director and Director Commercial”*



4. Pursuant thereto, the respondent no.1 issued an Expression of Interest (EOI) dated 03.07.2019, inviting agencies and entrepreneurs who could support respondent no.1 in amicably resolving the aforementioned disputes and assist in commissioning of the said facility. The said EOI reads as under:-

Expression of Interest 03/7/19

IGL has been allotted government lands from various land owning agencies. However, in certain cases IGL has not been able to start the construction activities due to disputes with the local residents. IGL invites agencies, entrepreneurs who can support IGL in amicably solving the disputes and putting the station to operation.

1. The applicant can select the IGL site in the drop down menu which is under this category and can apply for the location under following category
 - a) Individual
 - b) Partnership
 - c) Partnership Firm
2. After the application all the applicants who have applied for a particular site would be called for the interview process.
4. The suitable candidate will be selected
5. Once the applicant is selected, will be appointed as consultant for that particular site
6. The applicant has to carry out all the work required to get the land free from disputes and get the site operational.
7. If the candidate is successful in getting the matter resolved, the candidate would be appointed as a dealer for that particular site for a period of 10 years.
8. The dealer would have to update IGL regarding the progress made on fortnightly basis.
9. IGL has the right to terminate the LOI on basis of non-performance if IGL is not satisfied with the progress made by the applicant.

Eligibility Criteria :

The minimum eligibility criteria for an individual/partnership (all partners) would be as follows:

S.No	Eligibility Factor	Eligibility Criteria
1	Education	12 th Equivalent or Passed
2	Age	Minimum 25 years
3	Citizenship	The candidate should be a citizen of India

The minimum eligibility criteria for a Private Limited Firm would be as follows:

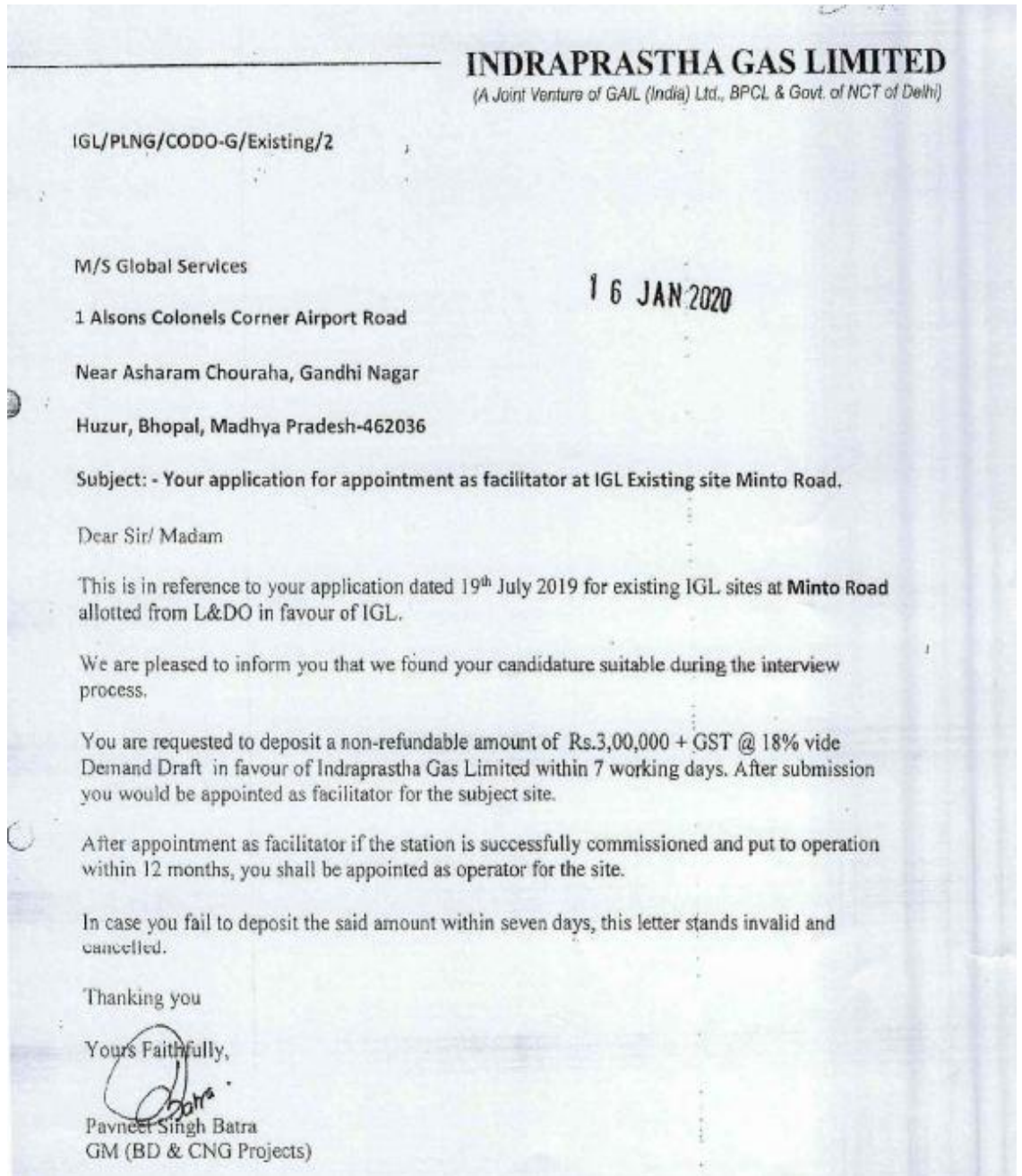
S.No	Eligibility Factor	Eligibility Criteria
1	Age	The Private Limited firm should be in existence and profitable for a minimum period of 3 years
2	Registration	The company should be registered under relevant Indian companies act



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5. The petitioner participated in the aforesaid process, seeking to be appointed as a facilitator for the site situated at Minto Road, Delhi, allotted by the L&DO/respondent no.2 to the respondent no.1. Subsequently, respondent no.1 issued a Letter of Intent dated 16.01.2020 directing as under:-



6. Pursuant thereto, respondent no.1 issued LOI dated 21.01.2020 and



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appointed the petitioner as a ‘facilitator’ in respect of the concerned site for the purpose of obtaining statutory clearances and operationalization of the CNG Station therein. The LOI reads as under:-

“IGL/PLNG/CODO-G/Existing/2.1

21 JAN 2020

*M/S Global Services
1 Alsons Colonels Corner Airport Road
Near Asharam Chouraha, Gandhi Nagar,
Huzur, Bhopal, Madhya Pradesh-462036*

Subject: - Your application for appointment as facilitator at IGL Existing site Minto Road.

Dear Sir/Madam,

This is in reference to your application dated 19th July 2019 for existing IGL site at Minto Road allotted from L&DO in favour of IGL.

We are pleased to inform you that we are appointing you as facilitator for the subject site for getting all the statutory clearances and for making the CNG station operational.

Thanking you,

Yours Faithfully,

Sd/-

*Pavneet Singh Batra
GM (BD & CNG Projects)”*

7. The scope of work appended along with the LOI *inter-alia* stipulated that (i) the said engagement was valid for a period of 6 months, extendable for a period of another 6 months (3+3) with approval of the concerned authority (subject to the progress of the case the work) and to be completed within a period of 12 months from the date of issuance of the letter (ii) the petitioner would be awarded the operatorship of the concerned CNG facility for a period of 10 years (5+5) by the respondent no.1, at the discretion of the management. The relevant portion of the scope of work reads as under: -

“The applicant would be awarded the operatorship for a limited period of



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10 years (5+5) at the discretion of management.

Note: Valid documentation/reference/recommendation/record from facilitator shall be submitted showing his/her efforts for the said land allotment from the land owning agency for being eligible for operatorship.

The validation of engagement as a facilitator is for 06 months. The same may be extended for a period of 06 months (03+03) depending on the progress of the case after approval from competent authority. No further extension would be given after completion of 12 months from the date of issue of this letter.”

8. The petitioner asserts that the respondent no.1 ought to have executed the operatorship agreement in favour of the petitioner since as a ‘facilitator’ the petitioner fulfilled its mandate of commissioning the concerned CNG station well within the stipulated timeline and inaugurated the concerned site on 18.08.2020 in presence of the officials of respondent no.1.

9. However, the said position has been vehemently refuted by the respondent no.1. It is contended that failure of the petitioner to commission the concerned CNG station in terms of the LOI, impelled the respondent no.1 to issue a show-cause notice dated 06.10.2022 against the petitioner. The said show-cause notice reads as under:-

NOTICE TO SHOW CAUSE

Date : 06.10.2022

To,
M/s Global Services
1, Alsons Colonels Corner Airport Road
Near Ashram Chouraha, Gandhi Nagar
Hazur, Bhopal – 462036
Madhya Pradesh

Reference: Letter of Intent dated 21.01.2020 appointing M/s Global Services as Facilitator of Minto Road Site

Subject: Notice to show cause why the Letter of Intent dated 21.01.2020 should not be terminated by IGL

Dear Sir/Madam,



We are writing in reference to your appointment as Facilitator pursuant to the captioned Letter of Intent dated 21.01.2020 for the Minto Road site of Indraprastha Gas Limited ("IGL") for getting all the statutory clearances and for making the CNG Station operational. Please take note that the arrangement between IGL and M/s Global Services was such that after the appointment of Global Services as Facilitator, if the station was successfully commissioned and put to operation within 12 months, the facilitator shall be appointed as operator for the site.

However, it is an admitted fact that the time period of 12 months from the date of appointment as Facilitator expired on 20.01.2021, and the CNG station at the Minto Road site was neither operational, nor were all pending permissions and disputes settled.

It is apposite to state with emphasis that your appointment as facilitator was made pursuant to you clearing the Interview process, and subsequently, by way of Letter dated 16.01.2020, you were Informed about your selection as Facilitator subject to a non-refundable deposit of an amount of Rs. 3,00,000/- + GST @ 18% vide Demand Draft within 7 days. By way of the same Letter dated 21.01.2020, you were informed about the scope of work and that the validity of engagement as facilitator was for 6 months, subject to an extension of 6 months (3+3) depending on the progress of the case after the approval from competent authority.

It is also not in dispute that you have not sought any extension inspite of the expiry of the term of engagement. Further, It is reiterated that the work allotted to you by way of the Letter of Intent' has not been completed by you, since the CNG Station has not been commissioned.

Therefore, in light of the above-stated facts, you are hereby called upon to show cause why the 'Letter of Intent dated 21.01.2020 should not be terminated by IGL.

You may submit your reply within 15 days of the receipt of this Letter, failing which the Letter of Intent would be automatically terminated on account of 'no response'.

Yours faithfully,

Sd/-

Sanjeev Kumar Bhatia,

Vice President (Business Development & Gas Sourcing)"

10. A reply dated 20.10.2022 to the show-cause notice was submitted by the petitioner vehemently opposing the allegations levied against it. Further, an opportunity of hearing was also granted to the petitioner on 11.11.2022.



11. Subsequently, the 172nd meeting of the Board of Directors of the respondent no.1, which convened on 07.04.2023 and 08.04.2023, after considering legal opinion and internal committee recommendations, passed a resolution to (i) cancel the LOI issued in favour of the petitioner and other similarly situated allottees under the CODO model (ii) operate the concerned sites as IGL retail outlets under the Company Owned, Company Operated (COCO) model. The Minutes of the said meeting reads as under:-

MINUTES OF THE 172ND BOARD MEETING OF THE BOARD OF DIRECTORS OF INDRAPRASTHA GAS LIMITED HELD ON APRIL 7, 2023 AT 6:30 PM AND ON APRIL 8, 2023 AT 11:00 AM AT HOTEL MAYFAIR, PURI, ODISHA

Item No. A-8 - TO CANCEL LOIs ISSUED FOR SETTING UP OF CNG STATIONS AT MINTO ROAD AND MANGOLPURI CNG SITES

Managing Director and VP (BD & GS) explained the agenda to the Board. It was informed that status of CNG sites at Minto Road and Mangolpuri was put up to the Board in its 168th meeting held on February 21, 2023, wherein Board members observed that the report of internal committee lacks clarity and needs to be revisited. Board had advised that revised report of internal committee be put up to the Board for consideration. Accordingly, revised agenda is now put up for consideration of the Board.

Board discussed the matter at length and observed as under:

- (i) Legal opinion from former judge of Supreme Court concludes that Letter of Intents (LOIs) can be cancelled on account of non-performance and same having been lapsed.
- (ii) Internal committee has also recommended to cancel the LOIs issued to the parties and close the matter.

After discussion, Board members were of view that considering the legal opinion, recommendation of internal committee and overall facts and circumstances of the case, the Company should cancel LOIs issued for setting up of CNG Stations at Minto road and Magolpuri CNG sites.

Board advised the management to cancel LOIs within one month and thereafter, passed the following resolution:

RESOLVED THAT approval of the Board is hereby given for cancellation of Letter of Intents issued to M/s Global Services and M/s Riva Traders terminating their appointment as Facilitators for Minto Road and Mangolpuri CNG sites, respectively and to operate these CNG stations as IGL retail outlets under COCO model.

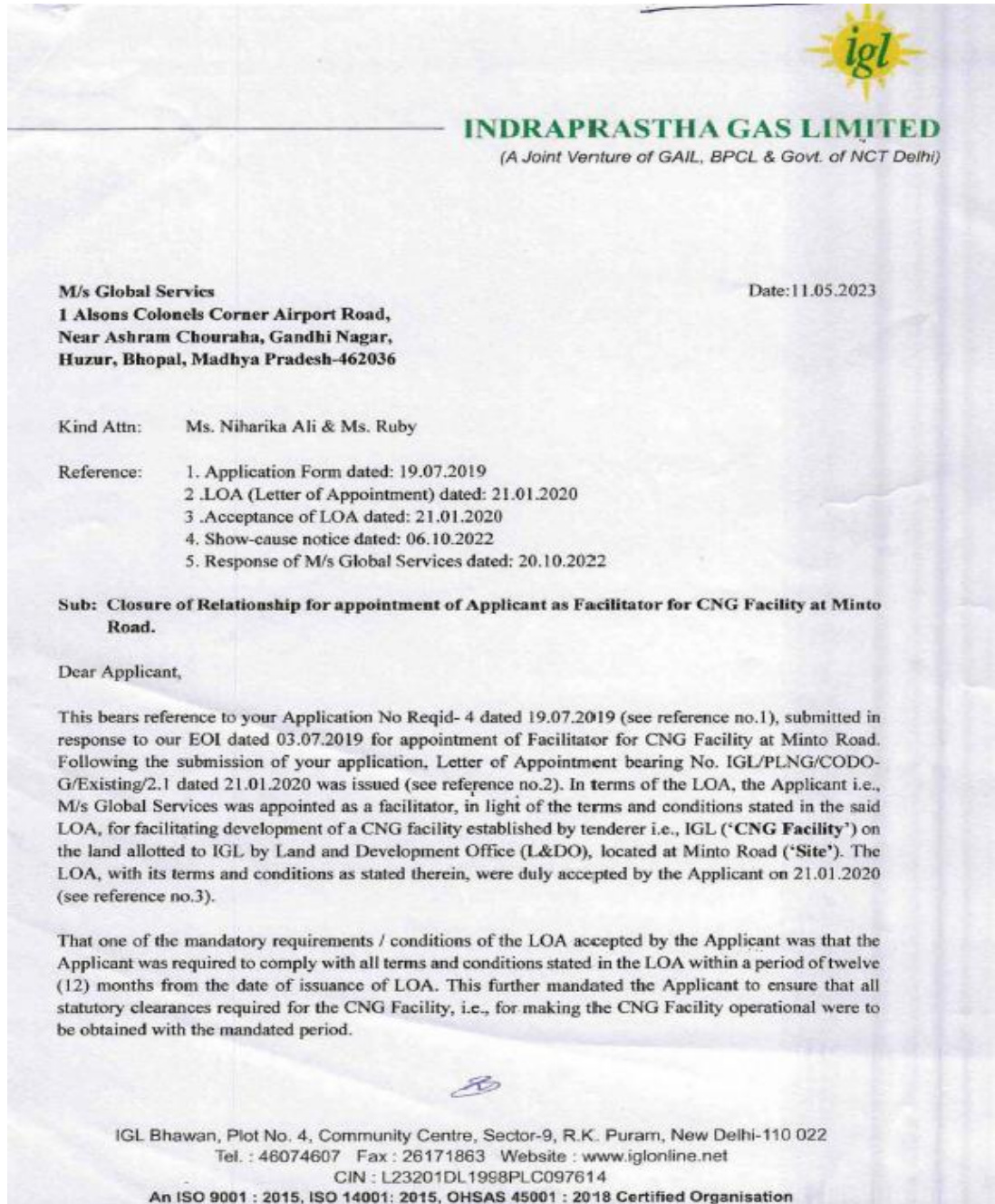
FURTHER RESOLVED THAT Managing Director and Director (Commercial) are authorized to take all necessary actions/steps to implement the above resolution.



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12. Consequently, the impugned letter/communication dated 11.05.2023 came to be issued by the respondent no.1, formally ceasing all relationship which existed with the petitioner. The impugned letter/communication reads as under: -





INDRAPRASTHA GAS LIMITED

The validity of LOA dated 21.01.2020, expired on 20.01.2021 due to efflux of time and thereafter no further extension was granted by IGL.

It is pertinent to state the arrangement arrived at in terms of the EOI, Application and the LOA, between M/s Global Services and IGL was such, that only upon successful commissioning of the CNG Facility at the Site (in mandated terms of the LOA) would M/s Global Services be appointed / engaged as "Operator" for the said CNG Facility at the Site. However, it is a matter of great concern, that the CNG Facility at Site has still not been operationalized, despite all efforts, resources and money invested by IGL towards setting up of CNG Facility, and for reasons solely attributable to M/s Global Services.

M/s Global Services has not been able to fulfill the role assigned to it since neither was it able to make the CNG Station at Site operational within the time stipulated in terms of the EOI and the LOA, and nor has its tenure as a Facilitator been extended. The breach of these said conditions, in turn is a breach of the LOA, and delays on the part of M/s Global Services has resulted in losses of revenue and reputation to IGL, and grave discomfort to our esteemed CNG customers. While M/s Global Services has contended it helped in clearing the site, however, most of the work it purportedly claims to do was prior to its appointment as Facilitator.

Followed by response of M/s Global Services to the show-cause letter of IGL, vide letter dated 04.11.2022, IGL invited M/s Global Services, by way of a final opportunity, for attending a personal hearing on 11.11.2022 by the Committee constituted by IGL.

Pursuant to the said meeting, the Committee constituted for the review was of the opinion that apart from verbal claims of helping IGL remove the encroachments and assisting in getting various permissions etc., no documentary evidence was submitted by M/s Global Services to substantiate its claims.

The details and reasons submitted to the Committee were neither cogent nor satisfactory which, in turn, warrant issuing the instant formal communication of ceasing all relationships with M/s Global Services' appointment (pursuant to Application dated 19.07.2019 and LOA dated 21.01.2020) as a facilitator which have otherwise come to an end due to efflux of time. The reasons for closure of relationship, *inter alia* include:

1. Failure on the part of M/s Global Services in obtaining the requisite mandatory statutory clearances for the site and the resultant failure in making the Site operational, during the valid period of 12 months i.e. 21.01.2020 till 20.01.2021,
2. That resultant appointment of M/s Global Services as a facilitator had expired due to efflux of time on 20.01.2021.

For the sake of clarity, and avoidance of any doubt, it is reiterated that while the arrangement of M/s Global Services stood expired with the efflux of time, the instant communication is being issued for formally closing all arrangements with M/s Global Services.



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13. In the aforesaid conspectus, being aggrieved, the petitioner filed the present petition seeking to set-aside the impugned letter/communication and to direct the respondent no.1 to execute dealership agreement *viz.* the CNG facility situated at the Minto Road, Delhi, in its favour.

SUBMISSIONS ON BEHALF OF THE PETITIONER

14. Learned counsel on behalf of the petitioner submitted that the concerned CNG Station was commissioned and inaugurated on 18.08.2020. The said position has been admitted by the respondent no.1 in its document dated 17.10.2022 and can be corroborated from the inauguration photographs attached by the petitioner as Annexure 30 to the present petition. However, despite the petitioner fulfilling its mandate of commissioning the CNG Station within the prescribed timeline, the respondent no.1 terminated the LOI instead of honouring the same by executing the dealership agreement.

15. It is submitted that the LoI dated 16.01.2020 clearly stipulated that the



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petitioner “shall” be appointed as the operator if the station is successfully commissioned and put to operation.

16. It is also contended that the LOI dated 20.01.2020 and the scope of work appended thereunder having been unequivocally accepted/confirmed by the parties resulted in a concluded contract. Further, the parties having acted upon the said terms, stood bound by the concluded contract and thus, it was no longer within the discretion of respondent no. 1 to withhold execution of the dealership agreement; rather, it was incumbent upon it to execute the same pursuant to the successful commissioning of the CNG station by the petitioner. In this regard reliance has been placed upon judgment rendered by the Supreme Court in *South Eastern Coalfields Ltd. v. S. Kumar’s Associates AKM (JV)*, (2021) 9 SCC 166 and this Court in W.P (C) No. 10124/2022 captioned as *York Tech Pvt. Ltd. v. Delhi Development Authority*.

17. It is further submitted that the respondent no.1 is a ‘State’ within the meaning of Article 12 of the Constitution of India inasmuch as respondent no.1 is (i) responsible for setting up CNG Station in Delhi-NCR region, which falls in the domain of public duty (ii) more than 51% shareholding of respondent no.1 is with the State and its PSUs (22.5% shareholding are held by BPCL and GAIL respectively, 7% shareholding is held LIC and 5% is held by GNCTD)

18. Further, by placing reliance upon judgment rendered by the Supreme Court in *Mihan India Ltd vs GMR Airports.*, (2022) SCC OnLine SC 574 it is contended that the issuance of a letter of acceptance/award is a concluded contract, even if the formal agreement was not executed.

19. It is contended that even otherwise, a discretion cannot be unfettered



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and absolute in nature and must satisfy the rigours of Article 14 of the Constitution of India and principles of natural justice; any arbitrary or unreasonable exercise of such discretion by the State or its instrumentality even in contractual matters, renders it amenable to judicial review.

20. It is also contended that in terms of the LOI and its own policy, respondent no.1 was obligated to appoint the petitioner as operator of the concerned CNG station, upon its successful commissioning. Thus, unilateral termination of LOI, despite the mandate being fulfilled by the petitioner clearly amounts to breach/violation of the principle of legitimate expectations, and bounds the respondent no.1 by the doctrine of promissory estoppel.

21. It is further submitted that petitioner made various representation to the respondent no.1 intimating that the work allotted in terms of the LOI at the subject site is complete and CNG station can be operated therein. However, the respondent no.1 without considering the said representations, issued the show cause notice dated 06.10.2022.

22. It is stated that the subject site at Minto Road was admittedly allotted by the respondent no.2 to respondent no.1 way back in the year 2008, however, prior to appointment of the petitioner as facilitator/without assistance of the petitioner, respondent no.1's effort to operationalise the said site remained futile.

23. It is also contended that the impugned decision has been passed without taking into consideration reply dated 20.10.2022 to the show-cause notice and thus is in clear contravention of the principles of natural justice. By placing reliance on *Nareshbhai Bhagubai & Ors. v. Union of India.*,(2019) 15 SCC 1; *Ravi Yashwant Bhoir v. District Collector, Raigad and Ors.*,(2012) 4 SCC



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407; *Tarlochan Dev Sharma v. State of Punjab.*, (2001) 6 SCC 260 it is contended that adjudication of reply to show cause notice cannot be a mere empty formality and consideration of same should clearly be borne out in the final decision.

24. Further, it is stated that the plea/defences set up in the counter-affidavit for undertaking/justifying the impugned action, particularly the alleged discretion of the respondent no.1 to execute the dealership agreement, have not been taken in the impugned letter/communication. It is contended that the respondent no.1 has in fact sought to improve its case in the counter-affidavit which is wholly impermissible.

SUBMISSIONS ON BEHALF OF THE RESPONDENT NO.1

25. Learned counsel on behalf of the respondent submitted that the present petition is not maintainable inasmuch as:

- i. Respondent no.1 is not a 'State' under Article 12 of the Constitution of India as it is a registered non-governmental company (incorporated in 1988) and listed on BSE and NSE. Thus, it is not amenable to writ jurisdiction.
- ii. LOI dated 21.01.2020 is commercial in nature, non-statutory and respondent no.1 was not acting in discharge of any public function. Even otherwise, a contract would not become statutory merely because it pertains to construction of public utility or has been awarded by a statutory body. In this regard reliance is placed upon judgment rendered by the Supreme Court in *Kerala State Electricity Board and Ors vs Kurien E. Kalathil and Ors.*, MANU/SC0435/2000.
- iii. The impugned decision came to be issued only pursuant to the internal



committee advise, which ultimately led to the respondent no.1 in 172nd Board Meeting dated 08.04.2023 resolving that the LOI dated 21.01.2020 issued to the petitioner has already expired due to efflux of time and that the petitioner has failed to fulfil its obligation under the scope of work. Therefore, impugned action being a pure policy decision ought to be not interfered by this Court.

- iv. The petitioner categorically denies committing any breach of contract and also the Scope of Work issued with the LOI dated 21.01.2020, despite the same bearing its signatures. Further, the formation of contract itself is disputed. It is a settled position of law that where execution and obligations under the contract are in dispute and/or the contractual interpretations are disputed, a writ court cannot interfere.
- v. The petitioner herein virtually seeks specific performance of the contract/LOI issued by the respondent no.1. However, it is trite law that remedy for specific performance lies under the Specific Performance Relief Act, 1963 and thus no writ can be issued for furtherance of the same.

26. It is further submitted that the arrangement between the parties did not tantamount to a concluded contract inasmuch as the essential terms were not agreed upon like principal to principal or principal to agent.

27. By placing reliance upon judgment rendered by the Supreme Court in *Speech and Software Technologies (India) Pvt. Ltd vs Neos Interactive Ltd.*, MANU/SC/8370/2008 it is contended that the law is well settled that an agreement to enter into an agreement is neither enforceable nor confers any right upon the parties. Even otherwise, since the petitioner disputes the Scope of Work, the LOI dated 21.01.2020 is an agreement to agree and not



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enforceable.

28. Furthermore, it is stated that the petitioner was appointed as a ‘facilitator’ for a period of 12 months and ‘dealership for 10 years’ was contingent only upon its successful commissioning. However, since the petitioner did not obtain any licenses/approvals/compliances as outlined in the Scope of Work, it failed to perform its obligations under the LOI dated 21.01.2020.

29. It is also contended that the LOI dated 20.01.2020 categorically stipulated awarding of operatorship/dealership to the petitioner as a “discretion” of respondent no.1 and in terms of Clause 9 of the EoI dated 03.07.2019, the respondent no.1 confers the right to terminate the LoI on account of non-performance.

30. Pursuant to the issuance of the impugned notice, upon request of the petitioner, the respondent no.1 refunded the security deposit and further provided its approval/no objection *vide* discharge letter dated 10.01.2025 for cancelation of BG furnished. The aforesaid request of the petitioner and subsequent acceptance of refunded security deposit, evidently can be construed as deemed acceptance to the impugned decision.

31. It is further submitted that the reliance placed by the petitioner on a document dated 17.01.2022 to substantiate its commissioning of the CNG station in terms of the LOI is misplaced as the said document is an internal departmental noting which has no sanction of law and cannot be construed as a final authority. Furthermore, the petitioner has wrongfully portrayed the pictures (annexed as Annexure-30) taken during an inspection by respondent no.1 as that of inauguration of the concerned CNG station.



ANALYSIS AND CONCLUSION

32. At the outset, this Court is not persuaded to accept the plea that the respondent no.1 is not amenable to writ jurisdiction on account of being a company incorporated under the Companies Act, 2013 which does not fall within the meaning of 'State' under Article 12 of the Constitution of India.

33. The law is well settled that under Article 226 of the Constitution of India a writ can be issued even against an entity which may not be a 'State' within the meaning of Article 12 of the Constitution of India if it discharges a public duty or a positive obligation that is public in nature, provided that the relief/rights ought to be agitated against an action must be in direct nexus with discharge of a public function by the concerned entity.

34. The said view has been reiterated time and again by the Supreme Court in various judgments including in *S. Shobha vs Muthoot Finance Ltd.*, 2025 SCC OnLine SC 177 wherein it has been observed as under:-

"8. A body, public or private, should not be categorized as "amenable" or "not amenable" to writ jurisdiction. The most important and vital consideration should be the "function" test as regards the maintainability of a writ application. If a public duty or public function is involved, any body, public or private, concerned or connection with that duty or function, and limited to that, would be subject to judicial scrutiny under the extraordinary writ jurisdiction of Article 226 of the Constitution of India.

9. We may sum up thus:

(1) For issuing writ against a legal entity, it would have to be an instrumentality or agency of a State or should have been entrusted with such functions as are Governmental or closely associated therewith by being of public importance or being fundamental to the life of the people and hence Governmental.

(2) A writ petition under Article 226 of the Constitution of India may be maintainable against (i) the State Government; (ii) Authority; (iii) a



statutory body; (iv) an instrumentality or agency of the State; (v) a company which is financed and owned by the State; (vi) a private body run substantially on State funding; (vii) **a private body discharging public duty or positive obligation of public nature;** and (viii) a person or a body under liability to discharge any function under any Statute, to compel it to perform such a statutory function.

(3) Although a non-banking finance company like the Muthoot Finance Ltd. with which we are concerned is duty bound to follow and abide by the guidelines provided by the Reserve Bank of India for smooth conduct of its affairs in carrying on its business, yet those are of regulatory measures to keep a check and provide guideline and not a participatory dominance or control over the affairs of the company.

(4) A private company carrying on banking business as a Scheduled bank cannot be termed as a company carrying on any public function or public duty.

(5) Normally, mandamus is issued to a public body or authority to compel it to perform some public duty cast upon it by some statute or statutory rule. In exceptional cases a writ of mandamus or a writ in the nature of mandamus may issue to a private body, but only where a public duty is cast upon such private body by a statute or statutory rule and only to compel such body to perform its public duty.

(6) Merely because a statute or a rule having the force of a statute requires a company or some other body to do a particular thing, it does not possess the attribute of a statutory body.

(7) If a private body is discharging a public function and the denial of any rights is in connection with the public duty imposed on such body, the public law remedy can be enforced. The duty cast on the public body may be either statutory or otherwise and the source of such power is immaterial but, nevertheless, there must be the public law element in such action.

(8) According to Halsbury's Laws of England, 3rd Ed. Vol.30, p.682, "a public authority is a body not necessarily a county council, municipal corporation or other local authority which has public statutory duties to perform, and which perform the duties and carries out its transactions for the benefit of the public and not for private profit". There cannot be any general definition of public authority or public action. The facts of each case decide the point."

35. Likewise, the Supreme Court in *St. Mary's Education Society and*



Anr. vs Rajendra Prasad Bhargava and Ors., (2023) 4 SCC 498 observed as under:-

“43. In the background of the above legal position, it can be safely concluded that power of judicial review under Article 226 of the Constitution of India can be exercised by the High Court even if the body against which an action is sought is not State or an authority or an instrumentality of the State but there must be a public element in the action complained of.

44. A reading of the above extract shows that the decision sought to be corrected or enforced must be in the discharge of a public function. No doubt, the aims and objective of Appellant 1 herein are to impart education, which is a public function. However, the issue herein is with regard to the termination of service of Respondent 1, which is basically a service contract. A body is said to be performing a public function when it seeks to achieve some collective benefit for the public or a section of the public and is accepted by the public or that section of the public as having authority to do so.

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66. Merely because a writ petition can be maintained against the private individuals discharging the public duties and/or public functions, the same should not be entertained if the enforcement is sought to be secured under the realm of a private law. It would not be safe to say that the moment the private institution is amenable to writ jurisdiction then every dispute concerning the said private institution is amenable to writ jurisdiction. It largely depends upon the nature of the dispute and the enforcement of the right by an individual against such institution. The right which purely originates from a private law cannot be enforced taking aid of the writ jurisdiction irrespective of the fact that such institution is discharging the public duties and/or public functions. The scope of the mandamus is basically limited to an enforcement of the public duty and, therefore, it is an ardent duty of the court to find out whether the nature of the duty comes within the peripheral of the public duty. There must be a public law element in any action.”

(emphasis supplied)

36. Further, in line with the aforesaid, vide order dated 06.02.2026 passed in W.P.(C) 4160/2019 a coordinate Bench of this Court discussed the maintainability of writ petition against respondent no.1 as under: -

*“Analysis Maintainability: Article 12 and the public law threshold
6. The Petitioner proceeds on the premise that IGL is ‘State’ under Article*



12. The material placed by IGL, however, points in a different direction. IGL is a listed company. The shareholding disclosed is that 50% is public shareholding, 22.5% is held by GAIL (India) Ltd., 22.5% by BPCL, and 5% by GNCTD. It is also asserted that IGL does not receive governmental grants or budgetary support, and it operates on internal accruals. Its dividends are distributed to shareholders. The Board, as described, comprises nominee directors of the shareholders and independent directors.

7. The Article 12 inquiry is not concluded by the presence of government shareholding. The controlling tests, post *Ajay Hasia v. Khalid Mujib*⁵ and its later elucidation in *Pradeep Kumar Biswas v. Indian Institute of Chemical Biology*, look to deep and pervasive governmental control, the source of financial dependence, and whether the body is essentially an instrumentality or agency of the State. On the material pleaded, the element of decisive governmental ownership and control is not made out. Public shareholding is substantial. The Petitioner has not placed any cogent material to show that governmental control is so pervasive as to render IGL a state instrumentality in its management and decision-making.

8. There is, however, a distinct strand of law which recognises that a writ may, in exceptional circumstances, issue even to a non-State entity when it is discharging a public duty of a public character. Decisions such as *Andi Mukta Sadguru Shree Muktajee Vandas Swami Suvarna Jayanti Mahotsav Smarak Trust v. V.R. Rudani*, and *Binny Ltd. v. V. Sadasivan* explain the underlying principle. However, this route does not dispense with the core requirement that the *lis* must have a public law element. A writ is not a forum to enforce purely private service rights in the guise of public duty.

9. IGL's business of supplying natural gas to consumers in the National Capital Region has an undeniable public interface. Even so, the present dispute is not about supply obligations, consumer rights, regulatory compliance, or a statutory duty owed to the public. The Petitioner asks for a mandamus to grant him three promotions, retrospectively and in one sweep, based on an internal promotion policy and performance management framework. That claim, at its heart, is a service dispute of a private character. Even if IGL were assumed to discharge certain public functions, a writ of mandamus does not ordinarily lie to adjudicate and enforce *inter se* service entitlements of employees, where the grievance does not bear upon any public duty owed by the entity to the public at large. The petition therefore falters at the threshold."

37. As a matter of fact, the respondent no.1 took over the Delhi City Gas



Distribution Project in 1999 from GAIL and since then has been a government authorised agency for distribution of Piped Natural Gas and operation of CNG facilities for domestic, industrial and commercial purposes across Delhi-NCR region. Undoubtedly, the respondent no.1 has been engaged in supply of essential services/commodities to individuals across Delhi-NCR region and is therefore performing an important public function, carried out for the benefit of the public, and is therefore amenable to writ jurisdiction.

38. However, having held that the respondent no.1 is amenable to writ jurisdiction, it remains to be seen whether the said jurisdiction is liable to be exercised in the present case.

39. In the factual conspectus of the present case, the petitioner has failed to make out any case for grant of relief sought by way of the present petition. The reasons are enumerated hereunder:

39.1. Essentially, the disputes between the parties are not in relation to any obligation, rights and duty that the respondent no.1 owes to the petitioner in discharging any public function. Instead, the disputes between the parties are purely contractual in nature. In *S. Shobha* (supra) and *St. Mary's Education Society and Anr* (supra), it has been categorically held that even in the context of a body/entity discharging public duty, writ ought not to be entertained, if the controversy is in the realm of private law.

39.2. There are serious factual disputes pertaining to (i) scope of work (ii) alleged inauguration of site (iii) alleged breaches committed by the petitioner (vi) apportionment of responsibilities in taking approvals and licenses (v) whether any actual work was performed by the petitioner (vi) whether there existed any concluded contract between the parties. The



legal position is well settled that it would be inapposite to adjudicate disputed factual and contractual issues, in exercise of writ jurisdiction. In this regard, reference may be made to the observations of the Supreme Court in *State of Bihar and Ors. Vs. Jain Plastics and Chemicals Ltd.* (2002) 1 SCC 216, it has been held as under:

“3. 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 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.

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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.

Also, in *Municipal Council, Gondia Vs. Divi Works & Suppliers, HUF and Ors.* 2022 SCC OnLine SC 247, it has been held as under:

“8. At the outset, it is required to be noted that by the impugned judgment and order the High Court has issued a writ of mandamus virtually granting the relief of specific performance of the contract/work order. From the impugned judgment and order passed by the High Court it appears that the High Court was made to believe that the original writ Petitioners had already manufactured the goods which are customized



and as per the specifications and the work order. However, it is now found that there are no manufactured goods readily available which can be supplied to the Appellant - Council. There are disputed questions of fact such as whether in fact the goods were manufactured as per the specifications or not. Nothing was on record before the High Court that goods were in fact and actually manufactured by the original writ Petitioner No. 1, as per the specifications and the requirements of the Council and as per the work order. In absence of any evidence and material on record and there being disputed questions of facts the High Court ought not to have passed the impugned judgment and order directing the Council to continue the work order and accept the goods from the original writ Petitioner No. 1 and to make the payments as per the work order. Even otherwise, no writ of mandamus could have been issued virtually granting the writ for specific performance of the contract/work order in a writ petition Under Article 226 of the Constitution of India. The original writ Petitioners ought to have been relegated to file a civil suit for appropriate relief of losses/damages, if any, sustained.

8.1. Even otherwise on merits also the High Court has erred in setting aside the communication dated 18.05.2020 and 07.07.2020. The High Court has not at all appreciated the reasons for suspending/cancelling the work order till further orders. It is to be noted that the decision dated 07.07.2020 was taken pursuant to the G.R. dated 04.05.2020 which was necessitated due to Covid-19 Pandemic and there was a lockdown and the schools were closed and that the Council had no sufficient funds. Even the said decision was taken after calling for a report from the Education Officer in regard to the tender/work order issued to the original writ Petitioner No. 1 and the Education Officer informed that the original writ Petitioner No. 1 has not taken any further steps in regard to supply of material as per the work order. Therefore, the High Court has erred in quashing and setting aside the communication dated 07.02.2020 in exercise of powers Under Article 226 of the Constitution of India.”

39.3. It is also noticed that prayer (b) as sought by the petitioner in the present petition, reads as under:

“b) In view of prayer (a), issue an appropriate Writ under Article 226 directing the Respondent no.1 to execute the Dealership Agreement, in terms of its own policy, in favour of the Petitioner.”

It is evident that the petitioner in the present case seeks execution of a dealership agreement in its favour and the relief sought virtually tantamounts to seeking specific performance, which again cannot be



granted in exercise of writ jurisdiction. In this regard, reference may be made to observations of the Supreme Court *Noble Resources Ltd. Vs. State of Orissa and Ors.* (2006) 10 SCC 236, the same reads as under:

“32. Moreover, certain serious disputed questions of fact have arisen for determination. Such disputed questions of facts ordinarily could not have been entertained by the High Court in exercise of its power of judicial review. Ordinarily, a specific performance of contract would not be enforced by issuing a writ of or in the nature of mandamus, particularly when keeping in view the provisions of the Specific Relief Act, 1963 damages may be an adequate remedy for breach of contract.”

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34. For the reasons aforementioned, we are of the opinion that although the approach of the High Court was not entirely correct, its ultimate decision to refuse to exercise its discretionary jurisdiction cannot be faulted with. The appeal is, therefore, dismissed. We, however, leave it open to the Appellant to take recourse to the other remedy which is available in law. In the facts and circumstances of the case, there shall be no order as to costs.”

Likewise, in *Joshi Technologies International Inc. vs Union of India*, (2015) 7 SCC 728, the Supreme Court *inter-alia* observed as under:

“.....70.6. Ordinarily, where a breach of contract is complained of, the party complaining of such breach may sue for specific performance of the contract, if contract is capable of being specifically performed. Otherwise, the party may sue for damages.”

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70.11. The scope of judicial review in respect of disputes falling within the domain of contractual obligations may be more limited and in doubtful cases the parties may be relegated to adjudication of their rights by resort to remedies provided for adjudication of purely contractual disputes.”

39.4. It also transpires that as a policy decision, the Board of Directors of respondent no.1 in 139th Meeting held on 12.01.2021, considering the shortcomings and difficulties faced under the “CODO on Government land” model proposed for its discontinuation. Consequently, it was directed



that various modalities involved thereof, particularly pertaining to the LOIs already issued thereunder be appropriately decided/dealt with, in a time bound manner, as per the provisions of the LOIs. Subsequently, in the 172nd Meeting of the Board of Directors, convened between 07.04.2023 and 08.04.2023, the Board observed that (i) Legal opinion from former judge of Supreme Court concludes that LOI can be cancelled on account of non-performance and same having been lapsed(ii) Internal committee also recommended to cancel the LOIs issued to the petitioner. On 08.04.2023, a policy decision considering the aforesaid was taken *inter-alia* to the effect that the LOI issued in favour of the petitioner was resolved to be cancelled and the CNG station at the Minto Road, Delhi be operated under the “Company Owned Company Operated Model (COCO model)”. It was in pursuance to this policy decision that the impugned order was passed to cancel the LOI issued in favour of the petitioner.

In these proceedings, there is no scope for this Court to interfere with the aforesaid policy decision taken by the respondent no.1. Essentially, the petitioner seeks that the respondent no.1 be directed to appoint the petitioner as dealer in respect of a company owned site/station at Minto Road in derogation of the extant policy. The same is clearly untenable.

40. Learned counsel for the petitioner seeks to contend that the terms of the LOI tantamount to a dealership itself. According to the petitioner, successful facilitation and award of dealership are intertwined and cannot be separated; they are two stages of the same contract. However, the said contention is also unmerited for reasons enumerated under: -

41. It is untenable for the petitioner to equate grant of LOI with grant of dealership inasmuch as-



- a. In the LOI dated 21.01.2020, it is categorically recorded that the petitioner has been appointed as “facilitator for getting all the statutory clearance and making the CNG stations operational”.
- b. As regards the awarding of the dealership/operatorship, it is noticed that the Note of Approval dated 10.06.2019 categorically records that awarding of dealership/operatorship shall be “at the discretion of management”. The relevant portion therein reads as under: -

“This policy would also be applicable for lands which have already been allotted to IGL but are not operational for more than 6 months after allotment due to dispute. Any individual/agency offering to solve the problem put the station to operation will be awarded dealership for a limited period of 10 years at the discretion of management on recommendation of the panel.”

Again, the note at the foot of the scope of work appended to the LOI dated 21.01.2020 clearly mentions that the award of dealership would be at the “discretion of the management”. The relevant portion thereof reads as under: -

“The applicant would be awarded the operatorship for a limited period of 10 years (5+5) at the discretion of the management”.

Further, in the Expression of Interest dated 03.07.2019, it has been mentioned as under:

“7. If the candidate is successful in getting the matter resolved, the candidate would be appointed as a dealer for that particular site for a period of 10 years.”

As such, it is evident that the appointment of the petitioner as a “facilitator” does not automatically translate into an indefeasible right to award / grant of dealership/operatorship of the concerned



CNG facility/station. Thus, this Court does not find any merit in the contention of the petitioner that the appointment of the petitioner as “facilitator” tantamount to grant of dealership/operatorship.

42. A dealership agreement of the kind as sought by the petitioner is inherently terminable. In this regard, reference may be made to judgment rendered by a three Judge Bench of the Supreme Court in ***Indian Oil Corpn. Ltd. v. Amritsar Gas Service, (1991) 1 SCC 533***, as under:-

“12. The arbitrator recorded finding on Issue No. 1 that termination of distributorship by the appellant-Corporation was not validly made under clause 27. Thereafter, he proceeded to record the finding on Issue No. 2 relating to grant of relief and held that the plaintiff-respondent 1 was entitled to compensation flowing from the breach of contract till the breach was remedied by restoration of distributorship. Restoration of distributorship was granted in view of the peculiar facts of the case on the basis of which it was treated to be an exceptional case for the reasons given. The reasons given state that the Distributorship Agreement was for an indefinite period till terminated in accordance with the terms of the agreement and, therefore, the plaintiff-respondent 1 was entitled to continuance of the distributorship till it was terminated in accordance with the agreed terms. The award further says as under:

“This award will, however, not fetter the right of the defendant Corporation to terminate the distributorship of the plaintiff in accordance with the terms of the agreement dated April 1, 1976, if and when an occasion arises.”

This finding read along with the reasons given in the award clearly accepts that the distributorship could be terminated in accordance with the terms of the agreement dated April 1, 1976, which contains the aforesaid clauses 27 and 28. Having said so in the award itself, it is obvious that the arbitrator held the distributorship to be revokable in accordance with clauses 27 and 28 of the agreement. It is in this sense that the award describes the Distributorship Agreement as one for an indefinite period, that is, till terminated in accordance with clauses 27 and 28. The finding in the award being that the Distributorship Agreement was revokable and the same being



admittedly for rendering personal service, the relevant provisions of the Specific Relief Act were automatically attracted. Sub-section (1) of Section 14 of the Specific Relief Act specifies the contracts which cannot be specifically enforced, one of which is 'a contract which is in its nature determinable'. In the present case, it is not necessary to refer to the other clauses of sub-section (1) of Section 14, which also may be attracted in the present case since clause (c) clearly applies on the finding read with reasons given in the award itself that the contract by its nature is determinable. This being so granting the relief of restoration of the distributorship even on the finding that the breach was committed by the appellant-Corporation is contrary to the mandate in Section 14(1) of the Specific Relief Act and there is an error of law apparent on the face of the award which is stated to be made according to 'the law governing such cases'. The grant of this relief in the award cannot, therefore, be sustained."

The said view has also been reiterated by a Coordinate Bench of the Punjab and Haryana High Court in **Jaipur Metals and Electricals Ltd. vs Jain Industries, Rohtak and Ors.**, 1993 SCC OnLine P&H 989 as under:-

"6..... The learned Additional District Judge has not appreciated that under subsection (1) of Section 14 of the Specific Relief Act, certain contracts are not enforceable, one of which, clause (c) is a contract which in its nature is determinable. The word 'determinable' means that which can be put an end to Determination is the putting of a thing to an end, Clause (c) enacts that the contract cannot be specifically enforced, if it in its nature, is determinable. Section 41, clause (e) of the Specific Relief Act provides that an injunction cannot be granted to prevent the breach of a contract, the performance of which would not specifically be enforced. Thus, if the plaintiff cannot enforce a contract which is determinable, then how the defendant can be restrained from not terminating it. Apart from this, assuming for the sake of argument that the dealership had been wrongly terminated, even then in law, the dealer can claim damages but in no case the dealership can be restored. Dealership is inherently terminable in law and normally no order of injunction can be granted restraining the terminating of the dealership because the effect would be decreeing the suit at the initial stage.

43. Lastly, even in the context of termination of a dealership, this Court would be loath to interfere with the same, especially, where the controversy is in a purely contractual conspectus and there are disputed questions of fact (as



in the present case). In numerous judicial precedents, it has been held that in such cases the aggrieved party must be relegated to claim damages. In this regard, reference may be made to judgment rendered by the Division Bench of this Court in **Rajasthan Breweries Ltd. v. The Stroh Brewery Company**, 2000 SCC OnLine Del 481, which observed as under:

“Even in the absence of specific clause authorising and enabling either party to terminate the agreement in the event of happening of the events specified therein, from the very nature of the agreement, which is private commercial transaction, the same could be terminated even without assigning any reason by serving a reasonable notice. At the most, in case ultimately it is found that termination was bad in law or contrary to the terms of the agreement or of any understanding between the parties or for any other reason, the remedy of the appellants would be to seek compensation for wrongful termination but not a claim for specific performance of the agreements and for that view of the matter learned Single Judge was justified in coming to the conclusion that the appellant had sought for an injunction seeking to specifically enforce the agreement. Such an injunction is statutorily prohibited with respect of a contract, which is determinable in nature. The application being under the provisions of Section 9(ii)(e) of the Arbitration and Conciliation Act, relief was not granted in view of Section 14(i)(c) read with Section 41 of the Specific relief Act. It was rightly held that other clauses of Section 9 of the Act shall not apply to the contract, which is otherwise determinable in respect of which the prayer is made specifically to enforce the same.”

Likewise, a coordinate Bench of this Court in **R.P.S Educational Society (REGD.) vs. Delhi Development Authority**, 2009: DHC:3604 observed as under: -

“6. Termination of the contract is one of the facets of the commercial law and if a party is aggrieved that the contract was wrongly terminated, the remedy lies in claiming damages. The party cannot insist that the contract should be specifically performed and it should be restored to the position prior to the breach of the contract.....”

44. The judgment of the Supreme Court in **Mihan India Ltd. v. GMR Airports** (2022) SCC Online 574, strongly relied upon by the petitioner, is



2026:DHC:3654



clearly distinguishable in the facts and the circumstances of the present case. In *Mihan India Ltd (supra)* findings rendered by the Supreme Court were specifically as regard the deviation from the mandatory procedures outlined in the concerned Request for Proposal (RfP). Dispute arose between the parties as regards the decision of the authority to annul a tender just before the execution of the concession agreement, despite the petitioner therein unequivocally satisfying the stipulated pre-bid conditions. The Supreme Court held that contract was already concluded between the parties as the petitioner therein had completed all formalities in terms of the pre bid-conditions stipulated in the RfP i.e., (i) qualified the test of responsiveness (ii) was declared selected upon making offer of the highest revenue (iii) the letter issued pursuant thereto accepting revised proposal of the petitioner therein, was in the nature of a Letter of Acceptance (vi) draft of Concession Agreement was issued by the Concessionaire. Thus, annulment of bidding process post acceptance of a bid was found to be untenable, in the light of the peculiar facts and circumstances. As noticed hereinabove, the factual conspectus in the present case is totally different.

45. For the above reasons, no merit is found in the present petition and the same is, accordingly, dismissed. All interim order/s stand vacated. There shall be no orders as to cost. Pending applications also stand disposed of.

SACHIN DATTA, J

APRIL 30, 2026/sl/at