IN THE COURT OF APPEAL OF THE DEMOCRATIC SOCIALIST REPUBLIC OF SRI LANKA

In the matter of an application for mandates in the nature of a Writ Mandamus in terms of Article 140 of the Constitution of the Democratic Socialist Republic in Sri Lanka.

Romet Construction Pvt. Ltd.
69, 2/1, Walukarama Road,
Colombo 03.

Petitioner

CA (Writ) Application No:

610/2024

Vs.

1. The Sabaragamuwa University of Sri Lanka
   Belihuloya.

2. The Vice-Chancellor
   Sabaragamuwa University of Sri Lanka,
   Belihuloya.

3. The Works Engineer
   The Sabaragamuwa University of Sri Lanka,
   Belihuloya.

4. Senior Assistant Registrar
   The Sabaragamuwa University of Sri Lanka,
   Belihuloya.

5. CML MTD Construction Limited
No 18 St Michael's Road,
Colombo 03.

Presently represented by
G. K. Sudath Kumar
3rd Floor, Yathama Building,
No.142, Galle Road,
Colombo 03.

6. The Minister of Education
The Ministry of Education (Higher Education),
Isurupaya,
Battaramulla.

7. The University Grants Commission of Sri Lanka
20, Ward Place,
Colombo.

8. The Minister of Finance
Colombo 01,
Sri Lanka.

9. Department of Treasury
Ministry of Finance,
Colombo 01,
Sri Lanka.

10. The National Development Bank
Head Office,
40, Navam Mawatha, Colombo 02.

11. Hon. Attorney General
The Attorney General's Department,
Colombo 12.

<u>Respondents</u>

Before	:	Dhammika Ganepola, J. Adithya Patabendige, J.
Counsel	:	Rikaz Riffad with Stefania Perera instructed by Bushra Hasim for the Petitioner. Rajika Aluwihare, S.C for the 1st – 4th, 6th – 9th and 11th Respondents. Shehan Kuruneru for the 10th Respondent.
Supported on	:	26.09.2025
Ordered on	:	12.11.2025

Dhammika Ganepola, J.

In the instant application, the Petitioner seeks *inter alia* a Writs of Mandamus compelling the 1st, 6th and 8th Respondents to complete the payments which are due to the Petitioner as stipulated in paragraph 46 of the Petition, determine the validity of the Tri Party Contract and the Main Contract between the Petitioner, the 5th Respondent and the 1st Respondent University under Article 140 of the Constitution, a Writ of Prohibition preventing the 1st Respondent from utilizing the claimed Performance Guarantee in issue, a Writ of Mandamus compelling 1st Respondent to return the said claimed Performance Guarantee and Writ of Certiorari to quash the decision of the 1st Respondent nullifying the Tri Party Agreement in issue.

When this matter was taken up for support, all parties made their respective submissions. This order pertains to the issuance of formal notices on the Respondents. The case of the Petitioner is as follows.

The 1st and the 5th Respondents entered into the agreement marked P2 (hereinafter sometimes referred to as the "Main Contract") for the construction of a new building complex for the 1st Respondent University Library. After the commencement of the works, initially, the 5th Respondent had been paid a Mobilisation Advance which amounted to 20% of the entire contract value and thereafter, several interim payments had also been paid for the work completed by the 5th Respondent.

However, the 5th Respondent has failed to fulfil the obligations outlined in the main contract as agreed. As a result, the Petitioner assumed the role of sub-contractor for the completion of the project following the execution of a Tri-Party Contract, marked P6, by the Petitioner, the 1st Respondent, and the 5th Respondent (hereinafter referred to as "the Tri-Party Contract/Agreement"). As per the said Tri-Party Agreement, the Contractor and Sub-contractor shall be bound by the terms and conditions of the Main Contract. Further, the Petitioner has furnished a Performance Bond as required by the said Tri-Party Contract.

During the course of the works, the Petitioner had continuously made several requests for the outstanding payment for the work executed by the Petitioner from the 1st Respondent and its employees. However, only a partial payment had been made. Amidst the financial difficulties suffered by the Petitioner Company, the Petitioner has finally decided to suspend the construction work temporarily. Based on the request made and the assurance given by the 1st Respondent to remove the current compensation ceiling of 20% and to allow the actual price escalation, the Petitioner had recommenced the works. Despite the several reminders forwarded by the Petitioner, no significant response had been received by the Petitioner regarding the completion of the payment due from the 1st Respondent.

Meanwhile, the Petitioner had come to know of the fact that the 5th Respondent is undergoing liquidation and had informed the same to the

1st Respondent, expressing his willingness to continue the construction under a new contract, with the understanding that the Petitioner would serve as the main contractor of the project. However, the 2nd Respondent, by his letter dated 13th November 2023, marked as P35, had informed the Petitioner that, as a result of the liquidation of the 5th Respondent, the Tri-Party agreement is no longer enforceable.

The Petitioner asserts that the 1st Respondent unilaterally declared the Tri-Party Contract void, as stated in letter P35, and such a decision contradicts Clause 18 of the Tri-Party Contract, amounting to an act of ultra vires.

Thereafter, on several occasions, the Petitioner had renewed the Performance Guarantees in order to secure such Guarantees from being withdrawn by the 1st Respondent. However, the Petitioner submits that due payments pending to the Petitioner by the 1st Respondent were not settled. Nevertheless, the 2nd Respondent, by letter dated 15.05.2024, P41(a), had granted the Petitioner an extension to complete the project by a further six months up to 01.12.2024 without the 2nd Respondent formally withdrawing the above-mentioned letter marked P35. Consequently, the Petitioner, by its letter dated 24.06.2024 marked P44, agreed to continue with the project subject to the prevailing issues and thereby resolving them. The 2nd Respondent refused to accept such a conditional acceptance and insisted that the Performance Guarantees would only be extended if the Petitioner could issue a fresh letter requesting an extension of time. Accordingly, the Petitioner had submitted a request for an extension of time by letter dated 25.06.2024 marked P47, on which the 4th Respondent had issued a no objection letter dated 25.06.2024 to renew the Performance Guarantees. However, the 1st Respondent has failed to complete the due payments to the Petitioner up to date.

The Petition submits that the 2nd Respondent, by letter dated 19.09.2024 marked as P51(a) to the 10th Respondent Bank, attempted to encash the Performance Guarantees of the Petitioner on the premise that the Petitioner has failed to comply with the conditions under the Main Contract. The Petitioner states that the encashment of the Performance

Guarantees by the 1st Respondent is an illegal, arbitrary and wrongful action done in breach of the Main Contract and the Tri-Party Contract. Based on the above, the Petitioner seeks the reliefs prayed for in the prayer of the Petition.

However, the learned State Counsel for the Respondents, except the 10th Respondent, opposed the issuance of formal notices, as the application of the Petitioner cannot be maintained in law on several grounds. The Respondents submit that the reliefs sought by the Petitioner are contractual in nature. It is observed that in paragraph 100 of the Petition that the Petitioner acknowledges that the encashment of the performance guarantees as executed by the 1st Respondent, which is impugned in the instant application, is an illegal, arbitrary, and wrongful action done in breach of both the Main Contract and the Tri-Party Contract. Hence, it is evident that the decision to encash the performance guarantees, which the Petitioner challenges, is a contractual outcome.

Further, the Petitioner seeks to quash the decision to nullify the Tyi-Party Contract reflected in the letter dated 13.11.2023 marked P35 which states that, "*as a result of the action taken by the Colombo Commercial High Court to liquidate the Main Contractor, CML-MTD Constructions Limited, the Tri-Party agreement signed by the University with the Main Contractor, CMLL-MTD Constructions Limited and you as the sub-Contractor of the above projects is no longer enforceable.*" The Petitioner contends that such an independent termination of the Tri-Party Agreement by the 1st Respondent is contrary to its Clause 18(i), which says any winding up orders shall not have any bearing on the Tri-Party Agreement. Said Clause 18(i) is as follows:

> *"18. (i)In case of any winding up orders or any other form, any court in and outside the Democratic Socialist Republic of Sri Lanka against the Contractor (CML-MTD Constructions Ltd), it shall not have any bearing to this agreement, and this agreement shall be absolved of such winding up orders. The Tri-Partied agreement shall stand supreme to any such orders."*

Hence, it is apparent that whether the liquidation could prevent continuation of the Contract should also be decided in accordance with the terms and conditions of the Tri-Party Agreement. Thus, the aforesaid matter is yet again a matter of a contractual nature.

In the above context, it is clear that the agreements (Contracts) define the parties' relationship, establish their rights and obligations, and that the grievances of the Petitioner arise entirely from an alleged breach of such contracts. When a relationship that existed between the parties reveals that it was purely a contractual one in nature, neither Certiorari nor Mandamus will lie to remedy the dispute over the rights of the parties. Contractual duties are enforceable as matters of private law by ordinary contractual remedies.

In *S.K.Osman Pathamasiri v Lanka Rest House Limited and Others, CA (Writ Application) No. 425/2017, Decided on 24th May 2018,* it was held that *the relationship of the parties vis-à-vis arises from the agreement, and therefore, the rights and obligations of the parties are governed by the agreement. The Petitioners' complaint arises out of the agreement. The jurisdiction of this Court to issue writs of Certiorari, conferred under Article 140 of the Constitution, is limited, inter alia to an examination of the legality of a decision of a public body exercising a public or statutory function. This jurisdiction cannot be extended to examine rights and obligations arising from a private contract, even though one party may be a public authority.*

In *Wickramasinghe v. Ceylon Electricity Board and Another [1997] 2 SLR 377*, the Court held that, "*A distinction which needs to be clarified is that between public duties enforceable by mandamus, which are usually statutory, and duties arising merely from contract. Contractual duties are enforceable as a matter of private law by the ordinary contractual remedies, such as damages, injunction, specific performance and declaration. They are not enforceable by mandamus, which in the first place is confined to public duties.*"

Further, it is observed that the Petitioner seeks a determination as to the validity of the above-mentioned Tri-Party Contract and the Main Contract.

Issuance of such a determination as to the validity of a contract does not arise due to the reasons given above. The questions of validity of the Contract must be canvassed in an appropriate forum by way of a suit where the parties would have ample opportunity to lead evidence and determine the facts in dispute, but not in a Writ application. Such a remedy is specified in Clause 18(ii) of the Tri-Party Contract marked P6.

Having considered the above, I view that the Petitioner has failed to satisfy this Court of any ground to issue formal notices on the threshold stage. Accordingly, I proceed to dismiss the application.

Application is dismiss.

Judge of the Court of Appeal

Adithya Patabendige, J.

I agree.

Judge of the Court of Appeal