

HIGH COURT OF TRIPURA
_A_G_A_R_T_A_L_A_
ARB P No.06 of 2023

M/S Jaypee Projects

..... *Petitioner(s)*

V E R S U S

The State of Tripura and others

..... *Respondent(s)*

For Petitioner(s) : Mr. Somik Deb, Sr. Advocate.

For Respondent(s) : Mr. K. De, Addl. G.A.

HON'BLE THE CHIEF JUSTICE MR. APARESH KUMAR SINGH

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25/04/2024

Heard Mr. Somik Deb, learned senior counsel appearing for the petitioner and also heard Mr. K. De, learned Additional Government Advocate appearing for the respondent-State.

Petitioner sought reference of the dispute arising under work order dated 27th December, 2010 relating to execution of works contracts namely “up-gradation of Netaji Subhash regional coaching Centre/Construction of Indoor Gymnasium Hall at Agartala, West Tripura” entered into with the Executive Engineer, PWD Division No.III, Netaji Chowmuhani, Agartala, respondent No.5 in terms of Clause 24 of the Arbitration Clause under the agreement.

Petitioner claims to have raised the claim successively before the respondent No.5, Executive Engineer, respondent No.4, Superintending Engineer and respondent No.3, Chief Engineer vide letters dated 30.03.2021 (Annexure-5), 08.05.2021 (Annexure-6) and 27.07.2021 (Annexure-7).

However since no satisfactory reply was received from the respondents, petitioner submitted another letter to the respondent No.5 relating to price escalation bills along with quarter wise escalation bills from 11.01.2011 to 31.12.2017 amounting to Rs.18,98,87,628.74/- vide letter dated 26.04.2022. Thereafter, he has approached this Court. The particulars of his claim as on 30th April, 2022 have been tabulated in a chart under paragraph 2.12.1 which is extracted hereunder:

<u>Claim No.</u>	<u>Particulars of Claims as on 30.04.2022</u>	<u>Amount</u>
1.	Release of balance payment under the Agreement/Works Contract a) Balance payment of 24 th R.A. Bill Rs.43,03,799.00/- b) Payment of 25 th R.A Bill & Final Bill Rs.2,02,82,113.00/-	Rs.2,45,85,912.00/-
2	Interest due to non-payment of Excess Deduction of Interest on Mobilization Advance (Clause-39)	Rs.37,68,000.00/-
3.	Reimbursement of bills for WCT and TDS upto 21 st RA Bill, submitted on 07.11.2017 (Clause-37.2)	Rs.46,38,172.00/-
4.	Reimbursement of GST amount already paid by the petitioner due to delay in execution of the work at the instance of the department (Clause-37.2)	Rs.1,21,63,338.00/-
5.	Entitlement for payment for difference in cost of materials and labourers as per offered/agreement rate and market rate for extended/time over run period of contract. (Clause-47)	Rs.18,98,87,628.74/- -
6.	Release of Balance Security Deposit (Clause-48)	Rs.5,00,000.00/-
7.	Release of balance payment on account of simple interest payable @ 18% P.A with effect from 31.12.2017 to 30.04.2022	Rs.3,91,53,071.81/-

Petitioner has also referred to the judgment and order dated 21.12.2022 passed in WP(C) No.872 of 2022, Annexure-10 whereby the learned Writ Court held the petition to be not maintainable to ascertain the civil rights and liabilities of the parties and that too on the basis of disputed facts. The learned Court also observed that it is not for him to decide when

alternative mechanisms are available to the petitioner. The writ petition was accordingly dismissed. Thereafter, under Clause 24 of the agreement petitioner approached this Court under Section 11(6) read with Section 12 of the Arbitration and Conciliation Act, 1996 for appointment of the sole arbitrator.

Pleadings have been exchanged between the parties. Counter affidavit has been filed earlier. An additional affidavit has also been filed by the respondents. The dispute raised apparently also contains items relating to reimbursement of works contracts, taxes and TDS and reimbursement of GST amount paid by the petitioner due to delay in execution of the work which do not lie in the domain of arbitrable dispute in view of the judgment in case of *Vidya Drolia and others versus Durga Trading Corporation* reported in (2021) 2 SCC 1.

Learned senior counsel for the petitioner Mr. Somik Deb submits that the petitioner is faced with a piquant situation since all the items of dispute are not arbitrable. The claims relating to taxation dues would only be subject matter of proceedings before an appropriate forum or court. As such, he seeks liberty to raise the dispute in a proceeding before the appropriate forum/court of law, in accordance with law. He submits that the rests of the arbitrable disputes may be allowed to be raised in an appropriate forum/court of competent jurisdiction.

Learned counsel for the State Mr. Karnajit De submits that out of number of claims raised by the petitioner payments have been made to the

acceptance of the petitioner at least in two items but claims relating to release of dues relating to taxes are such which cannot be subject matter of arbitration proceedings. As such, he does not object to the prayer of the petitioner to segregate the items of claim for raising it before appropriate forum.

In view of the submissions made by the learned counsel for the parties, the instant petition is disposed of as withdrawn with liberty to the petitioner to raise his claims relating to dispute in an appropriate forum/court of law and the dispute relating to taxation claims in the court of law as permissible in law.

(APARESH KUMAR SINGH) CJ

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LODH

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