

HON'BLE SRI JUSTICE S.V.BHATT

W.P.No.24422 OF 2014

ORDER:

Alfa Security and Allied Services, Domalguda, Hyderabad is the petitioner.

The petitioner invoked the jurisdiction of this Court under Article 226 of the Constitution of India and prays for

Mandamus declaring the letter dated 31.07.2014 communicated by the 1st respondent to petitioner at the instance of

2nd respondent, through which the petitioner is called upon to make available sufficient funds for honouring Bank Guarantee No.0505513BG0001331, as illegal and unconstitutional.

The communication dated 31.07.2014 reads as follows:

“Dear Sir (s),

Guarantee Reference number : 0505513BG0001331

Guarantee amount : NIR 8,69,000.00

Date of Issue : 18/06/2013

Date of claim : 31/07/2014

Claim amount : INR 8,69,000.00

This has reference to the above mentioned guarantee. We have received a claim form the beneficiary and registered the same. The details of the same are given above. Kindly arrange to provide sufficient funds in your account for setting the claim

Narrative:

Yours faithfully.

It is contextual to refer to the genesis for issuance of the letter dated 31.07.2014.

On 30.07.2014, the 2nd respondent requested the

1st respondent not to allow the petitioner firm to encash the subject bank guarantee and withhold the same till further orders. Immediately after the said communication, on 31.07.2014, from the material available on record, it is evident that the 2nd respondent invoked the subject bank guarantee. Under these circumstances, the

present writ petition is filed.

I am not proposing to consider the merits of the case, but proposing to consider and dispose of the writ petition on the primary objection of maintainability taken by the respondents.

The admitted circumstances for the said purpose are adverted to. On 01.06.2013, the 2nd respondent issued letter of intent for supply of manpower for performing odd jobs in the

2nd respondent unit. The petitioner accepted the letter of intent, provided the subject guarantee and the contract period is one year from 01.06.2013. On 29.05.2014, the contract for providing manpower is extended up to 31.08.2014. The dispute between the parties had arisen with the alleged discontinuation of services by the petitioner w.e.f., 01.07.2014. On account of such discontinuation of services, the respondent invoked the bank guarantee. Thereafter, the impugned claim is received from the 1st respondent.

The learned counsel for the petitioner tried to persuade this Court that the bank guarantee was given for the first one year term and the extension for three months is not viable and encashing bank guarantee for failure to discharge the obligation during the extended period is illegal and arbitrary.

The petitioner relies upon exemption granted by the Union of India for submitting the bank guarantee.

On the other hand, the learned counsel appearing for the 2nd respondent contends that the writ petition is not maintainable. The agreement between the parties in Clause 33 provides for arbitration which reads as follows:

33.1 If dispute or difference of any kind shall arise between India Government Mint, Noida and the supplier in connection with or relating to the contract, the parties shall make every effort to resolve the same amicably by mutual consultations. If the parties fail to resolve their dispute or differences by such mutual consultation within twenty one days of its occurrence, then, unless otherwise provided in the SCC, either Indian Government Mind, Noida or the supplier may seek recourse to settlement of disputes through arbitration as per the Arbitration and Conciliation Act, 1996 as per the following case.

33.2 Arbitration Clause: If both parties fail to reach such amicable

settlement, then either party (the purchaser or seller) may within 21 days of such failure give a written notice to the other party requiring that all the matters in dispute or difference be arbitrated upon. Such written notice shall specify the matters which are in difference or of difference of which such written notice has been given and no other matter shall be referred to the arbitration in accordance with the conciliation and arbitration rules of International Chamber of Commerce (ICC)/United National Commission on International Trade Law (UNCITRAL) by three arbitrators appointed in accordance with the procedure set out in clause below. The arbitration proceeding shall be held in New Delhi and shall be conducted in English language. All documentation to be reviewed by the arbitrators and/or submitted by the parties shall be written or translated into English. Venue of arbitration shall be New Delhi. The arbitrator or arbitrators appointed under this article shall have the power of extend time to make the award with the consent of the parties. Pending reference to arbitration, the parties shall make all endeavours to complete the contract/work in all respects and all disputes, if any, will finally be settled in the arbitration.”

The availability of writ remedy where the parties have agreed for resolution of disputes through arbitration is no more *res integra*.

The Apex Court in **RAJASTHAN STATE INDUSTRIAL DEVELOPMENT & INVESTMENT CORPORATION v. DIAMOND & GEM DEVELOPMENT CORPORATION LIMITED** held as follows:

“There can be no dispute to the settled legal proposition that matters/disputes relating to contract cannot be agitated nor terms of the contract can be enforced through writ jurisdiction under Article 226 of the Constitution. Thus, writ court cannot be a forum to seek any relief based on terms and conditions incorporated in the agreement by the parties.”

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.....It is evident from the above, that generally the court should not exercise its writ jurisdiction to enforce the contractual obligation.

For the above two reasons, I hold that the writ petition is not maintainable and is, accordingly, dismissed. There shall be no order as to costs.

Miscellaneous petitions, if any, pending in this writ petition shall stand closed.

S.V.BHATT, J

17th March, 2015

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