

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.18697 of 2016

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Hindustan Steelworks Construction Limited

.... Petitioner/s

Versus

The Union of India & Ors

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. P.N. Shahi, Sr. Adv.
: Mr. Mrigank Mauli, Adv.
: Mr. Prince Kr. Mishra, Adv.
: Mr. Samir Kr. Adv.
For the Respondent/s : Mr. Anil Kumar Sinha, Adv.

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CORAM: HONOURABLE MR. JUSTICE KISHORE KUMAR
MANDAL
ORAL ORDER

2 28-11-2016 Heard learned counsel Mr. P.N. Shahi, Sr. Advocate

for the petitioner and Mr. Anil Kr. Sinha, learned counsel for the

respondent.

The petitioner is registered under the Companies Act and is stated to be a state within the meaning of Article 12 of the Constitution of India. It is aggrieved by the communication dated 15.11.2016(Annexure-9) issued by Deputy Chief Engineer Construction, East Central Railway (ECR) whereby contract awarded to the petitioner by the respondent ECR was rescinded. It further indicates that upon expiry of a 48 hours notice the said communication was issued. Consequently, in terms of clause 62 of the Standard Conditions of contract the order has been passed whereby the security deposit furnished by the petitioner company was also forfeited. The performance security submitted by the



petitioner was directed to be encashed.

Mr. Shahi after making submissions at some length states that the agreement itself provided an arbitral process of any party aggrieved by the action of the other side relating to the rights and liabilities of the parties under the agreement. It is stated that the petitioner propose to invoke the said clause of the agreement and approach the learned Arbitrator for resolution of the dispute. He points out that the 48 hours notice was not issued and served on the petitioner. He also states that although the communication was issued on 15.11.2016 but up till date the respondents have not encashed the performance guarantee.

Mr. Sinha appearing for ECR/respondent on the other hand submits that the rights and liabilities arising out of contract should not be gone into by this court. However, he does not dispute the contention of the petitioner that the any party aggrieved by any action of the another party can invoke the arbitration clause for resolution of the dispute arising under the agreement.

Considering the facts and circumstances of the case and after hearing the parties, in my opinion, the application be disposed of permitting the petitioner to invoke the relevant clause of the agreement and approach the Arbitrator for resolution of the dispute. The court has not purposely noticed all submissions made



by the petitioner in support of the application and the counter submissions made by respondent/ECR leaving it to the learned arbitrator to consider them if raised, in accordance with law.

Learned counsel for the petitioner states that a reasonable opportunity be granted to the petitioner to approach the Arbitrator for resolution of the dispute and for getting any interim relief in the matter. He reiterates that till date the respondent-ECR has not encashed the performance guarantee furnished by the petitioner pursuant to the impugned communication.

Considering the above and also keeping in view the fact that the petitioner is also an instrumentality of the state directs the respondents not to encash the performance guarantee submitted by the petitioner pursuant to the impugned communication dated 15.11.2016, if not till date encashed, for a period of three weeks enabling the petitioner to approach the learned Arbitrator and seek appropriate relief in accordance with law.

Needless to observe that the interim relief granted to the petitioner shall not prejudice the case of either party.

(Kishore Kumar Mandal, J)

siddharth/-

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