

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP NO. 6851 of 2016

Date of decision: 11.04.2016

Chandigarh Medical Corporation	...Petitioner
Versus	
The Director, PGIMER, Chandigarh	...Respondent

Coram: Hon'ble Mr. Justice S.J.Vazifdar, Acting Chief Justice
Hon'ble Mr. Justice Arun Palli.

Present : Mr. Anurag Chopra, Advocate, for the petitioner.

S.J.VAZIFDAR, ACTING CHIEF JUSTICE (ORAL)

The petitioner has sought a writ of mandamus directing the respondent to return the earnest money and to discharge the bank guarantee.

2. The petitioner had entered into an agreement for the supply of 30 Syringe Infusion Pumps. The petitioner was to procure the same in turn from its principal, namely, Jian Yuan Medical Technology Company Ltd., a Company incorporated and based in the Peoples Republic of China. It is apparent that the petitioner had sought certain amendments to the agreement especially regarding the payment and delivery terms which the respondent rejected vide letter dated 30.4.2015. The payment was to be made by a letter of credit established in favour of the foreign supplier. By the impugned communication dated 30.4.2015, the respondents recorded that the petitioner subsequently sought an extension regarding the delivery period by 4 weeks. The letter also further records that the respondent was informed that the

Principals had been purchased by a German Company M/s Fresenius Kabi. It, therefore, requested the payment to be made to the other Company.

3. Fresenius by a letter dated 23.12.2013 stated that it had purchased the principal and that it was not possible to accept the letter of credit on the account of principal and therefore, requested the respondents to make the payment to the petitioner and only thereupon syringes would be supplied. The respondents by its letter dated 29.08.2014 informed the petitioner of the same and requested that the quality assurance certificate be obtained from the new firm, namely, Fresenius. Thereupon it agreed to amend the supply order and agreement bond. The respondents, however, stated that it would not be possible to change the payment terms as requested and advised the petitioner to submit the bank details of the new principal firm so that the letter of credit could be issued in its favour. It is important to note that the petitioner by letter dated 06.09.2014 stated that Fresenius would not issue authority letter for the old tender as they had their own office in India. The petitioner, therefore, requested the respondents to cancel the supply order and to refund the amounts.

4. Whether the application for the change of the Principal was reasonable or not after the agreement had been entered into requires consideration. Prima-facie, the respondent was entitled to insist upon the contract to be performed on its

terms especially as it involved a payment to a foreign supplier albeit on behalf of the petitioner which is registered in India. Whether the respondents are bound to make payment to the petitioner and not to the foreign principal is also an issue which requires consideration. These are issues which cannot be gone into in a writ petition.

5. The Petition is, therefore, dismissed with liberty to the respondent to adopt appropriate proceedings for recovery of money.

(S.J. VAZIFDAR)
ACTING CHIEF JUSTICE

April 11, 2016
Renu/ravinder

(ARUN PALLI)
JUDGE