

\$~

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **W.P.(C) 3619/2015 & CM APPL. 1984/2016**

M/S J.K. ENTERPRISE	 Petitioner
Through	Mr. R. Singh with Ms. Roopa Paula and Mr. Mintu, Advocates

versus

UNION OF INDIA & ORS	 Respondents
Through	Mr. Vivek Goyal, CGSC with Mr. Prabhakar Srivastava, Advocate for R-1. Ms. Vernika Tomar, Advocate for R-3.

CORAM:
HON'BLE MR. JUSTICE MANMOHAN

ORDER
18.03.2016

%

Present writ petition has been filed seeking a direction to respondents to extend the period of contract on the alleged ground that respondents failed to supply the requisite quantity of the material within the contractual period.

In the counter-affidavit it has been averred that the quantity of fly ash was to be supplied on as is available basis. Clause 9.0 of Letter of Award, i.e., Annexure P-2 reads as under:-

“9.0 Quality and Quantity of Fly Ash:

NVVN would deliver Dry Fly Ash from designated delivery point on “as available basis” Fly Ash shall be issued based on actual weighing. Weight so recorded shall be considered final. No dispute or complaint for quality or quantity shall be entertained at a later stage.”

The same Letter of Award also contemplates a situation of shortfall in supply of fly ash by supplier under Clause 63. The relevant portion of Clause 63 is reproduced hereinbelow:-

“63. SHORTFALL IN SUPPLY BY SUPPLIER AND ADJUSTED QUANTITY:

a. Fly Ash is a product of coal combustion, which again is subject to the demand of electricity in the areas allocated by the regulatory authorities. Schedules and unscheduled shutdowns also affect generation of electricity and thus generation of Fly Ash. Though all efforts will be made to maintain contracted quantity of Fly Ash available, Supplier does not guarantee availability of Fly Ash as per contracted quantity regularly and supplier will not be liable for any compensation or damages for non-delivery of required quantity of the Fly Ash.”

Keeping in view the aforesaid provisions, this Court is of the opinion that the relief sought for by the petitioner can only be granted upon the interpretation of the terms contained in Letter of Award which cannot be done in writ proceedings as there is a dispute resolution mechanism in the Letter of Award itself.

Consequently, present writ petition is dismissed. However, petitioner is given liberty to invoke the dispute resolution mechanism and seek appropriate remedy in accordance with law. It is clarified that this Court has not expressed any opinion on the merits of the controversy and rights as well as contentions of all the parties are left open.

MANMOHAN, J

MARCH 18, 2016

rn