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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION**

WRIT PETITION LODG.NO. 680 OF 2017

M/s Neogen Enterprises (JV) & Anr.

..Petitioners

Vs

The Union of India & Ors.

..Respondents

Mr. Harinder Toor i/b Ajay Rao for Petitioners.

Mr. Suresh Kumar for Respondents..

**CORAM: V.M. KANADE AND
A.S. GADKARI, JJ.**

DATE: 14 MARCH 2017.

P.C.:

1] Heard the learned Counsel appearing for the petitioners and the respondent-Railways.

2] The petitioners are aggrieved by the termination of the contract by Notice dated 6th February 2017. By the said notice, the petitioners were informed that the Contract bearing ref. No.M137/19/1Vol-II dated 7.10.2015 has been terminated in terms of Clause No.62 of the Standard General Conditions of the Contract.

3] The petitioners and the respondents entered into the Contract given to the petitioners for “Mechanized cleaning of coaches (totalling 234 coaches per day) including cleaning of coaching depot premises at coaching depot for a period of three years from 4.9.2015 onwards.

4] It is not in dispute that the order of termination of the Contract of the petitioners has been passed under Clause 62 (1) of the Rules. We find that the petitioners have an alternate remedy to make representation to the General Manager to impugn the Notice under Clause 63. The Clause 63 reads thus:

“63] Matters Finally Determined By the Railway: All disputes and differences of any kind whatsoever arising out of or in connection with the contract, whether during the progress of the work or after its completion and whether before or after the determination of the contract, shall be referred by the contractor to the GM and the GM shall, within 120 days after receipt of the contractor's representation, make and notify decisions on all matters referred to by the contractor on writing provided that matters for which provision has been made in Clauses 8, 18, 22(5), 39, 43(2), 45(a), 55, 55-A(5), 57, 57A, 61(1), 61(2) to (xiii) (B) of Standard General

Conditions of Contract or in any Clause of the Special Conditions of the Contract shall be deemed as 'excepted matters' (matters not arbitration) and decisions of the Railway authority, thereon shall be final and binding on the contractor; provided further that 'excepted matters' shall stand specially excluded from the purview of the Arbitration Clause.

5] Perusal of the said Clause No.63, clearly indicates that the petitioners have statutory right to make a representation to the General Manager against the determination of the Contract and such representation has to be decided within 120 days after receipt of the representation. We find that the second part of the Clause 63 mentions that the orders which are passed under certain clauses are deemed to be “excepted matters” and against such orders, arbitration clause shall not be applicable.

6] In our view, since the petitioners have alternate remedy of making a representation to the General Manager, we are not inclined to entertain this petition at this stage.

7] We, therefore, dispose of the present petition by reserving the right of the petitioners to make representation to the General Manager. We, however, clarify that the Railway Authority shall not forfeit the security deposit given by the petitioners. It may invoke the Performance Guarantee and if the Performance Guarantee is invoked and if the petitioners succeed before the General Manager, the Performance Guarantee may be revived for remaining period of the Contract. If such representation is filed by the petitioners within two weeks, the General Manager shall decide the same expeditiously as possible and in any case within 120 days from receipt of such representation on merits and in accordance with law. All contentions of the petitioners and respondent-railways are kept open. It is further clarified that the term 'General Manager' is defined in sub-clause 1.2(b) and the representation shall be made to the General Manager as defined in sub-clause 1.2(b).

8] With aforesaid directions and clarification, the writ petition is disposed of.

(A.S. GADKARI,J.)

(V.M. KANADE, J)