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

+ W.P.(C) 2647/2015

N C C LIMITED

..... Petitioner

Through: Ms Priya Kumar and Ms Tanya
Tiwari, Advocates.

versus

CENTRAL PUBLIC WORKS DEPARTMENT
& ANR

..... Respondents

Through: Mr Rajan Khosla, Senior Standing
counsel with Ms Saroj Bidawal,
Advocate for R-1.
Ms Eshita Baruah, Advocate for Mr
Gaurang Kanth, Advocate for R-2.

CORAM:

HON'BLE MR. JUSTICE VIBHU BAKHRU

ORDER

% **17.07.2017**

1. The petitioner has filed the present petition, *inter alia*, praying as under:-

- “(a) Issue a writ of certiorari or any other appropriate writ/order/direction calling for the records pertaining to the directions stated to have been issued by Respondent No. 2 regarding non-payment of amounts due under clause 10CA to the Petitioner and to quash the same; and
- (b) Issue a writ of mandamus or any other appropriate writ/order/direction directing Respondent No. 1 to pay the admitted dues of the Petitioner under Clause 10CA amounting to Rs. 2,80,46,402.”

2. The petitioner is aggrieved by non payment of the amounts which

according to the petitioner were due to the petitioner in respect of the work stated to have been executed pursuant to a letter of intent/acceptance dated 21.02.2008. According to the petitioner, the contract for such works included Clause 10CA of the General Conditions of Contract (GCC) in terms of which the petitioner was entitled to escalation on account of variation in the price of material used.

3. The stand of the respondent is that the said amount have been withheld on account of the objections raised by the Controller and Auditor General (CAG).

4. The learned counsel for the petitioner has also drawn the attention of this Court to the observations made by the CAG, which indicate that according to CAG, the amounts on account of escalation were not admissible. This view has not been accepted by respondent no.1.

5. Although, it appears that respondent no.1 is also contesting the said observation made by CAG, it has nonetheless failed to release the amounts to the petitioner pending clearance from CAG.

6. The learned counsel for the CAG states that the observations made by CAG are merely in the nature of recommendations and it would be for respondent no.1 to take a final decision on the same.

7. The learned counsel for respondent no.1 further states that there has been subsequent development and the report of the Public Accounts Committee (which is not on record) also indicates that not only no payment should be made on account of escalation but the payments made earlier pursuant to Clause 10CA of GCC ought to be recovered from the petitioner.

8. As stated above, although respondent no.1 has withheld the amount,

however, there is no unequivocal stand taken by respondent no.1 on the question whether such payments are payable to the petitioner.

9. In the circumstances, it is directed that respondent no.1 will clearly indicate whether it is accepting the petitioner's claim or rejecting it within a period of two weeks from today. In the event, the petitioner's claims are rejected, the petitioner would be at liberty to pursue other proceedings as available in law including for reference of disputes to arbitration in terms of the agreement between the parties.

10. The petition is disposed of with the aforesaid observations.

11. Order *dasti*.

VIBHU BAKHRU, J

JULY 17, 2017
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