

In the High Court of Punjab and Haryana at Chandigarh

CWP No.22463 of 2017

Date of decision: July 13, 2018

M/s Edward Food Research and Analysis Centre Ltd.

..... Petitioner

Versus

State of Haryana and others

..... Respondents

CORAM: HON'BLE MR. JUSTICE RAKESH KUMAR JAIN

Present: Mr. Akshay Bhan, Senior Advocate with
Mr. Sushant Kareer, Advocate for the petitioner.

Ms. Safia Gupta, Assistant Advocate General,
Haryana.

RAKESH KUMAR JAIN, J. (ORAL)

This petition is filed for quashing the order dated 13.09.2017 by which the respondents have tried to encash the bank guarantee i.e. Performance Security Deposit without any notice and even though the contract has been terminated in part.

Notice was issued to the respondent on 29.09.2017. Learned State counsel, who was present in the Court, accepted notice and submitted that no step would be taken for encashing the bank guarantee.

However, in the reply filed by the respondents, it is categorically mentioned that the petitioner has been visited with the penalty of ₹2,20,664/- and ₹23,90,495/- has been deducted on account of work not executed in terms of the conditions mentioned in the agreement dated 23.01.2017. It is further mentioned that the net amount payable to the petitioner is

calculated as ₹4,87,72,581/-+service tax and the payment of the said amount is under process.

Learned counsel for the petitioner, as per his instructions, has informed that out of the aforesaid net amount payable, an amount of above ₹ 04 Crores has been paid but the actual dispute is about the deduction on account of penalties etc.

It is submitted that the petitioner would resolve its dispute by taking the matter to the Arbitrator in terms of the provision of the Arbitration and Conciliation Act, 1996 but the petitioner is afraid that in the meantime the respondents may not encashed the bank guarantee. He has thus submitted that till the petitioner files an application under Section 9 of the Arbitration Act, 1996 (for short 'the Act'), the interim order granted by this Court may be allowed to continue.

After hearing learned counsel for the parties, the present petition is dismissed as withdrawn by the petitioner to initiate arbitration proceedings.

In case, any application under Section 9 of the Act is filed within 15 days, then the order passed by this Court on 29.09.2017, on the basis of the statement made by the counsel for the State that no step would be taken for encashing the bank guarantee i.e. Performance Security Deposit, shall continue.

(RAKESH KUMAR JAIN)

JUDGE

July 13, 2018

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Whether speaking/reasoned	:	Yes / No
Whether reportable	:	Yes / No