

\$~55

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

+ W.P.(C) 13776/2018

M/S KNR CONSTRUCTION LTD

..... Petitioner

Through: Mr Hitendra Nath Rath, Advocate.

versus

NATIONAL HIGHWAYS AUTHORITY
OF INDIA

..... Respondent

Through: Ms Gunjan Sinha Jain, Ms Madhu
Sweta and Mr Aneesh Sadhwani,
Advocates.

CORAM:

HON'BLE MR. JUSTICE VIBHU BAKHRU

ORDER

%

19.12.2018

CM APPL. 53815/2018

1. Exemption is allowed, subject to all just exceptions.
2. The application stands disposed of.

W.P.(C) 13776/2018

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

“(a) issue a writ of a mandamus or any other appropriate writ, order or direction to the Respondent to release BG bearing NO.0192117BG0000394 dated 29.06.2017, State Bank of India, Overseas Branch, Jubilee Hills, Hyderabad, Telanagan along with the refund of Rs. 11,57,919/- and interest as well as the expenditure incurred by the petitioner;”

4. The bank guarantee in question was issued by the petitioner pursuant to a contract entered into for works pertaining to the widening to 4/6 lanes

and strengthening of existing 2-Lane Carriageway of National Highway-5 in the State of Orissa. The contract entered into between the parties includes an arbitration clause and therefore the disputes, if any, are required to be adjudicated in terms of the arbitration agreement between the parties. The petitioner has founded the present petition on the assertion that there are no surviving disputes between the parties, which would warrant the petitioner from withholding the bank guarantee or from recovering any amount. This is considering that certain disputes raised by the petitioner were adjudicated by an Arbitral Tribunal and were decided in favour of the petitioner in terms of the arbitral award dated 30.06.2018.

5. Ms Jain, the learned counsel appearing for the respondent submits that there were certain defects in the work performed on account of which recovery has been made. She submits that return of the bank guarantee and the refund of the amounts deducted were not the subject matter of the disputes before the Arbitral Tribunal. And, the respondent is well within its right to withhold the bank guarantee and recover the amounts which, according to it, is due from the petitioner.

6. In view of the above, it is apparent that there are contractual disputes between the parties and no interference in this proceeding is warranted. The petitioner, of course, is at liberty to avail of its alternate remedies.

7. The petition is disposed of.

DECEMBER 19, 2018/RK

VIBHU BAKHRU, J