

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
CIVIL APPELLATE JURISDICTION**

**WRIT PETITION NO. 13759 OF 2018**

M/s. Fly Ash Movers (India) Pvt. Ltd. **... Petitioner**

**V/s.**

NTPC Limited (A Govt. of India  
Enterprises) and Anr. **... Respondents**

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Mr. Dinesh Kumar Jain for the Petitioner.  
Mr. Mahadeo Chaudhari for the Respondent No.1.  
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**CORAM : B.P.DHARMADHIKARI, &  
REVATI MOHITE DERE, JJ.  
DATE : 06<sup>th</sup> FEBRUARY, 2019**

**P.C.:**

1. Petitioner claims that cancellation of Letter of allotment dated 23.10.2018 in its favour is hasty and also unwarranted. It is pointed out that action could not have been taken at least for period of one month. Our attention is invited to difficulties placed on record vide communication dated 13.11.2018 in arranging CPG (BG).
2. Learned Counsel appearing for Respondents states that Contract Performance Guarantee (CPG) with Bank Guarantee should have been supplied within 10 days and as that was not done, on 12.11.2018, notice was given to Petitioner. It is claimed that amount of CPC with BG is Rs.2,10,76,000/- only. It is further pointed out that accumulation of fly ash cannot be continued indefinitely and hence,

after initiating fresh process on 29.12.2018, work has been assigned to another person.

3. Counsel for Petitioner states that Petitioner has given security deposit of Rs.38,00,000/- which has been high handedly forfeited. In other similar contract, Respondent had extended time reasonably to fulfill requirements of CPG and in view of genuine difficulties pointed out by the Petitioner, time ought to have been also extended in the present matter. He submits that for drawing CPG Agreement, stamp duty in excess of Rs.1,00,000/- was purchased and submitted to respondent for settling the draft. He further states that alternate arrangement to remove fly ash is only for period of two months and not permanent one.

4. During the hearing, we find that the terms and conditions provided for arbitration. No only this, as per Clause 61.2, there is a provision for payment of liquidated damages. Fact shows that though Petitioner claims curtailment of period to furnish CPG, it is only by 5 days and Petitioner has not demonstrated that he had arranged for a CPG which could have been made available had time been extended.

5. Thus, in a matter which is essentially of contractual nature, we find that some disputed questions arise. We are, therefore, not inclined to intervene in writ jurisdiction. Keeping all contentions open

and with liberty to the Petitioner to take such other steps as open in law, we dispose of petition.

**(REVATI MOHITE DERE, J.)**

**(B.P.DHARMADHIKARI, J.)**