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HIGH COURT OF CHHATTISGARH, BILASPUR

WP227 No. 647 of 2019

Order Reserved on 4.12.2019

Order Delivered on 18.02.2020

Hindalco Industries Limited, a Company incorporated under the Companies Act, 1956, and having its registered office at Ahura Centre, 1st Floor, B Wing, Mahakali, Caves Road, Andheri (East), Mumbai - 400 093 through its authorized representative Harshvardhan, Senior Officer Legal.

---- Petitioner

Versus

1. Union Of India Through Secretary, Ministry Of Coal Government Of India, Central Secretariat, New Delhi-110001
2. The Nominated Authority Ministry Of Coal Government Of India World Trade Tower, Ground Floor, Barakhamba, Lane, New Delhi-110001
3. State Of Chhattisgarh through The Resident Commissioner 3rd Floor, Chanakya Bhawan, New Yashwant Place, Chanakyapuri,

   or

   Through the Chief Secretary, Indrawati Bhawan, Nawa Raipur, Atal Nagar, Chhattisgarh.

   (Note: Initially as the petition was filed before the Delhi High Court therefore the State Of Chhattisgarh, was impleaded through the Resident Commissioner. Hence, for convenience the State of Chhattisgarh is also impleaded through its Chief Secretary).

---- Respondents

For Petitioner	:	Dr. Abhishek Manu Singhvi, Senior Advocate, Shri Amit Sibal, Senior Advocate with Shri Ashish Prasad, Shri Mukta Dutta, Shri Amit Bhandari, Shri Rohit Sharma and Shri B.D. Guru, Advocates.
For Respondents No.1 & 2	:	Shri B. Gopa Kumar, Assistant Solicitor General.
For Respondent No.3/State	:	Shri Mateen Siddiqui, Dy. A.G.

Hon'ble Shri Justice Rajendra Chandra Singh Samant

CAV ORDER

Heard.

1. By this petition the judgment and order dated 31.7.2019 passed by the Tribunal under the Coal Mines (Special Provisions) Act, 2015 (in short

'CMSP Act) in PTT Civil Suit No. 59 of 2018 has been challenged whereby the petition filed under Section 27 of CMSP Act has been dismissed.

2. The facts of the case are these that the petitioner is a Public Limited Company engaged in the business of production and sale of aluminum in India and abroad. The subject matter of the present petition is Gare Palma-IV/ 5 Coal Mines situated at Milupara, Raigarh in the State of Chhattisgarh. In the auction, regarding the same, the petitioner was the successful bidder. The agreement was executed between the petitioner and the respondents on 2.3.2015. Subsequently, the Mines of Gare Palma IV/ 5 Coal Mines were vested with the petitioner on 23.3.2015.

3. Earlier the Supreme Court had cancelled the allocation of 200 coal blocks which were allocated to public and private entities by the Central Government between the year 1993 and 2011 by the judgment in the case of **Manohar Lal Sharma vs. Principal Secretary and Others** in **Writ Petition (Criminal) No. 120 of 2012** dated 25.8.2014. The mine at Gare Palma was one of such mines which was deallocated and was in operational condition. The Central Government then framed Rules, 2014 and the auction was conducted under the same rules in which the petitioner was benefited.

4. After completion of all the formalities, the petitioner furnished a performance security in the form of an irrevocable and unconditional bank guarantees of Rs.3,68,54,00,000/- dated 18.3.2015 in favour of respondent No.2 - The Nominated Authority in the security, is Ministry of Coal, Government of India which has been renewed time to time. Subsequent to which, the vesting order was issued on 23.3.2015 vide Annexure-P/5 which was made effective from 1.4.2015. As per paragraph 8D of the vesting order read with Section 8 of CMSP Act, all

the statutory clearances, proposals and permissions which were in favour of the prior allottee stood fully transferred to the petitioner on the same terms and conditions, therefore, the petitioner applied for the formal transfer of the said statutory clearances, proposals, permissions etc by way of an administrative formality. It is submitted that under CMSP Act, the CMDPA, vesting order obligations were imposed upon the Central Government, nominated authority as well as the State Government to ensure that all necessary statutory proposals and licenses are transferred to the petitioner which were earlier applicable to the prior allottee. The respondents failed to discharge their obligations and they have appropriated 20% of the performance bank guarantee penalising the petitioner for their own failure. The appropriation notice dated 25/ 26.4.2018 was challenged before the Tribunal in which respondents No.1 and 2 alleged that the petitioner has failed in compliance of clause 6.1.5 of CMDPA to achieve with the efficiencies parameters in clause 10 of the CMDPA. It was alleged that the petitioner could not achieve scheduled production for the financial year of 2015-2016.

5. It is submitted by Learned Senior counsel for the petitioner that, it is not denied that there had been a short fall in the production for the financial year 2015-2016, but this short fall has been resulted because of the failure on the part of the respondents who failed to transfer requests, permissions etc. before 1.4.2015 which was the date when the vesting was made effective. The fact position is that the petitioner was able to commence mining operations from 4.4.2016. The causes of delay had been, that the mining lease was granted to the petitioner on 20.10.2015; Forest clearance which was granted to the prior allottee was transferred to the petitioner on 18.5.2015 by the Central Government in a piecemeal

manner, because of which, the mining operations could not be commenced and the same was finally transferred to the petitioner on 3.3.2016. Subsequent to that, another Bhu Pravesh permission was granted to the petitioner on 21.3.2016. Therefore, without obtaining these permissions the petitioner was not in a position to commence the mining operations, which could be commenced only on April, 2016. Learned Tribunal has held the petitioner responsible for the delay in execution of the mining lease deed whereas, respondents No.1 and 2 had admitted that delay was not attributable to the petitioner and the zero date was calculated from 20.10.2015 in their appropriation notice dated 25/ 26.4.2018. It has been totally ignored by the learned Tribunal that without the necessary permissions, the petitioner was not in a position to commence the mining operations, therefore, the petitioner is not responsible for the delay. On the contrary, it were the respondents who have caused the delay. It is submitted that according to clause 6.1.5 of CMDPA the performance security was to remain valid until such time the coal mine achieved peak rated capacity (for short 'PRC'), which is still continuing after the achievement of PRL in 2016-17.

6. The performance bank guarantee had been link with the mile stones for the development of coal mine till it reaches peak rated capacity as it is approved by the Central Government, which is provided in Rule 13(4)(ii) of the Coal Mines (Special Provisions) Rules, 2014. Therefore, once the PRC was achieved, the performance bank guarantee should have been returned. Apart from that, there is a clear admission of respondents No.1 and 2 in their reply before the Tribunal that the validity of the performance security was to continue only till 100% peak rated capacity. The petitioner had achieved the peak rated capacity in the financial year of 2016-2017. Witness - Manish for respondents No.1 and 2 had made

a statement on affidavit before the learned Tribunal that for the year 2016-2017, the petitioner had to make production of one MT coal which was achieved and therefore, no deduction was made by the scrutiny committee and it has been held by the Tribunal that the petitioner/ Company had achieved the peak rated capacity for the financial year 2016-2017. It is submitted that in a similar case regarding the achievement of 100% peak rated capacity by the mining lease holder of Gare Palma IV/ 4 Coal Mines, the performance security was released by the same authorities, therefore, a discrimination has been made with the petitioner in this case. The learned Tribunal has given the finding, that the petitioner had achieved the PRC for the year 2016-2017. Hence, there is no question of topping up the performance security and the petitioner is entitled for the whole refund.

7. It is submitted that the act of the respondents is contrary to the statement of objects of the Coal Mines (Special Provisions) Act, 2015. The petitioner has made a payment of about Rs.900 crores in royalty for the years 2016-2017 and 2018-2019. It is submitted that although in the vesting order made the petitioner entitled for statutory licences, permissions and approvals issued in favour of prior allottee, but the respondents have committed delays in transferring the said statutory licenses etc in favour of the petitioner and prior to the transfer of same, he was restrained from doing mining operations, whereas, Section 8(7) of Coal Mines (Special Provisions) Act, 2015 very specifically provides that successful bidder shall be entitled to take possession of coal mine without delay or hindrance. The respondents have failed in placing the petitioner in charge of the mine allotted as per Section 8(7) of the Act, 2015, in time.

8. According to Schedule E, efficiency parameters time limit has been prescribed for transfer of statutory permissions etc which has not been complied with by the respondents although the petitioner has filed the applications for transfer of permissions etc within time. The respondents have already admitted that delay had occurred in issuance of mining lease on their part for which the petitioner could not be held responsible and this is clearly mentioned in the notice for appropriation of bank guarantee dated 26.4.2018.

9. It is also submitted that all the conditions that were imposed upon the petitioner for grant of mining lease were new and the same were not the conditions for the predecessor allottee. New condition was imposed upon the petitioner by the Forest Department vide Ex.-P/17 for constructing a stone boundary around the mine area under lease. The petitioner was burdened with additional charges as fee for transfer of lease in an exorbitant manner vide Ex. P/19, with a condition that subsequent to payment of same, the diversion of forest land shall be proceeded with, whereas, the lease was transferred to the petitioner already on 8.7.2015 vide Annexure-P/5 by the Central Forest Department. However, there was a specific condition that the petitioner is not permitted to operate the mine. The imposition of new condition vide Ex.P/19 was responded by the petitioner on 26.11.2015 vide Annexure-P/20 and then the petitioner paid the charges under protest on 2.12.2015, subsequent to which, the Forest Department gave clearance to the petitioner vide letter dated 3.3.2016 which is Annexure-P/27, stating that the petitioner is permitted to take Bhu Pravesh after complying with the conditions of the Central Government/ State Government and after entering the agreement with the Collector of District Raigarh and also after complying the demarcation proceeding.

Therefore, it is submitted that the whole financial year 2015-2016 has passed in obtaining sanctions and permissions which were necessary before starting operations in the mine allotted. The petitioner has been penalized for not achieving PRC in the year 2015-2016, which was an impossible act on account of hindrances, delay and laches on the part of the respondents. The petitioner had apprised the nominated authority regarding the causes for delay.

10. Relying on the judgment of Supreme Court in **Delhi Development Authority vs. Kenneth Builders and Developers Private Limited and Others** reported in **(2016) 13 SCC 561**, it is submitted that an agreement for doing an impossible act is itself a void agreement, therefore, it was not impossible for the petitioner to make any production for the financial year 2015-2016, for which he has been penalized. The petitioner has also placed reliance on the judgments of the Supreme Court in the cases of **Uberoi Mohinder Singh vs. State of Haryana**, reported in **(1991)2 SCC 362**, **Jai Durga Finvest (P) Ltd. vs. State of Haryana**, reported in **(2004) 3 SCC 381**, **DDA vs. Kenneth Builders & Developers (P) Ltd.** reported in **(2016) 13 SCC 561**, **Hon'ble Andhra Pradesh High Court in Pallava Granite Industries India (P) Ltd. vs. A.P. Mineral Development Corporation Ltd.**, reported in **(2005) 4 ALD 230, para 28, 31 and 37** and **Arosan Enterprises Limited vs. Union of India** reported in **(1999) 9 SCC 449 (para 24)**. Hence, it is prayed that the petition be allowed and the relief be granted to the petitioner.

11. Learned Assistant Solicitor General opposes the submissions made by the petitioner's counsel and submits that the Supreme Court cancelled the allocation of mines in the judgment of **Manohar Lal Sharma's case (supra)**. Subsequent to which, the Coal Mines (Special Provisions) Act, 2015 was enacted for the purposes of allocation of coal mines and

vesting of right, title etc in a transparent manner. It is submitted that the petitioner had agreed to the terms of CMDPA vide Annexure-P/3 and now he cannot make excuses for not complying with the conditions as agreed by him. The appropriation of bank guarantee has been made after the matter was taken up by the scrutiny committee, before which the petitioner had appeared and he was given all the opportunities to present his case. Achieving the efficiency parameters was one of the conditions in agreement in Clause 10 and the petitioner was bound to perform accordingly. Schedule E of the agreement provides with the efficiency parameters, which was to be complied with by the petitioner. The delay in achieving the parameters have been considered and acted upon by respondent No.2. It is further submitted by learned Assistant Solicitor General that respondent No.2 issued four show-cause notices to the petitioner for showing cause and deliberate in the matter of efficiency parameters. The delay on the part of the respondents has been considered and the appropriation of performance bank guarantee was put off for sometime. It is submitted that there was clearly an efficiency parameter fixed for mining of one million metric tonne of coal for the year 2015-2016 which could not be achieved by the petitioner which was considered and the target was reduced. A clear term was agreed between the parties in clause 24.3.1 of the agreement in clause (f) that if there is non compliance of the successful bidder with the efficiency parameters for more than five instances, agreement may be terminated and that has been the case here.

12. Relying on the judgment of the Supreme Court in the case of **Delhi Development Authority vs. Kenneth Builders and Developers Private Limited and Others** (supra), it is submitted that the performance that was accepted on the part of the petitioner was not an

impossible act. It is submitted that the matter was firstly examined by the scrutiny committee. The petitioner has appeared before the scrutiny committee and raised objections and after examining the same, the scrutiny committee has given recommendations for appropriation of performance bank guarantee. There is a clear term agreed between the petitioner and respondents in clause 6.2.1 of the agreement which is mentioned in sub-clause (d) that failure of the successful bidder to comply with the efficiency parameters as required under clause 10 shall be a reason for in event of appropriation performance security. The efficiency parameters are mentioned in clause 10.1, according to which, the conduct of mining operations at the coal mine, shall be subject to the milestones listed in schedule E and schedule E provides in point No. 7 that schedule of production/ reaching peak rated capacity shall be as per the approved mining plan. Therefore, the mining plan was agreed between the parties and the same could not be achieved by the petitioner. It is submitted that the matter is still pending before the scrutiny committee, therefore, this petition filed is premature which may be remanded back to the scrutiny committee. It is further submitted that the petition is without any merit which may be dismissed.

13. Learned State counsel appearing for respondent No.3 submits that the State Government supports the submissions made on behalf of respondents No.1 and 2 and submits that the petitioner has to face the consequences for the reason that he has not achieved the efficiency parameters agreed between the parties that the petitioner had to achieve within the time frame. Therefore, there is no error in appropriating the performance bank guarantee by respondents No.1 and 2. Learned Tribunal held in the impugned order that according to the evidence, the petitioner/ Company itself is responsible for the delay.

This finding is based on the evidence present before the Tribunal which needs no interference. It is also submitted by the State counsel that this petition has been brought premature which should be dismissed.

14. In reply, it is submitted by counsel for the petitioner that the mine alloted to the petitioner/ Company is a captive coal mine. There are very clear lapses present on the part of the respondents because of which, the petitioner could not start operation of coal mines within time. The delay that has occurred is attributable only on the part of the respondents, therefore, the decision of respondents No.1 and 2 for appropriating the performance bank guarantee is totally erroneous and needs to be set aside. The petitioner/ Company claims that, it is not responsible for the delay in performance and for not achieving the efficiency parameters in time. Reasons have been elaborately mentioned in the arguments submitted on behalf of the petitioner and rebutted by the respondents' side.

15. On examining the chronology of the events, it is seen that the Coal Mine Development And Production Agreement was executed between the petitioner and the respondents on 2.3.2015 vide Annexure-P/3. Respondent No.2 passed the vesting order vide Annexure-P/5 on 23.3.2015. On the very next day, on 24.3.2015, the petitioner applied for transfer of forest clearance vide Annexure-P/7. The petitioner then applied for mining lease on 4.4.2015. Although it is clear that the lease transferred to the petitioner was already in favour of the previous allottee. The forest clearance was given in favour of the petitioner by respondents No.1 and 2 on 18.5.2015 vide Annexure-P/14. The vesting order was amended by respondent No.2 vide Annexure-P/5 on 29.6.2015 by a letter dated 8.7.2015 (Annexure-P/15). Respondent No.3/ State, the State Government imposed additional conditions for

transfer of lease in favour of the petitioner and three months' time was granted for performing the same and there had been a clear note appended by the State Government directing the Chief Conservator of Forest that no mining operation was to be permitted till the conditions are fulfilled. As submitted, the petitioner performed according to the new conditions imposed upon him and then he was given forest clearance by a memo dated 3.3.2016 addressed to Additional Forest Officer, Raigarh vide Ex. P/27 granting permission to the petitioner to enter in the mining area. Subsequent to which, the Collector (Mining Branch), Raigarh by memo dated 21.3.2016 vide Annexure-P/3 gave authorization to the petitioner company for entering in the mining area which was styled as Bhu Pravesh permission, just a couple of days before the financial year of 2015-2016 was going to be completed. As submitted by the petitioner's side, that the mining operations could be started by the petitioner/ Company only from 4.4.2016, regarding which, a communication was sent by the petitioner to the nominated authority, Ministry of Coal, New Delhi on 5.4.2016 vide Annexure-P/37.

16. It can be observed that the petitioner has performed his part by seeking for sanctions, permissions, lease etc as soon as it was possible for itself to do. The performance bank guarantee was executed on 16.10.2015. It is clearly demonstrated from the averments in the petition, the submissions made by counsel for the parties and the documents present on record. There had been formalities to be completed before the mine allotted to the petitioner could be operated. Respondents No.1 and 2 did their part by vesting the mine with the petitioner with effect from 1.4.2015 vide Annexure-P/5, by execution of lease deed on 16.10.2015 and also by giving forest clearance vide Annexure P/14. Subsequent to which, the formalities with respect to respondent No.3

had to be completed before the mine could be operated. It is clearly demonstrated that respondent No.3 imposed additional conditions to be performed by the petitioner vide Annexure-P/15 and after the performance of the same, the last letter of permission was granted to the petitioner on 21.3.2016. In the correspondence made by respondent No.3 there had been a clear restriction for mining by the petitioner in the mining area, therefore, there had been no physical possibility for the petitioner to have mine exploited until the last permission was granted to it on 21.3.2016.

17. According to the appropriation notice given by the respondents to the petitioner vide Annexure-P/6, it is mentioned that the scrutiny committee observed that delay in execution of mining lease on account of amendment in Stamp Duty Act by the State of Chhattisgarh, which was taken into consideration and the zero date for production in the mine allotted to the petitioner was rescheduled as 20.10.2015 and on that basis, the adjusted prorated schedule of production from 21.10.2015 to 31.3.2016 was fixed at 0.447 MT. It is further mentioned that the committee has taken note for the production of coal from the mine for the financial year 2016 had been less than adjusted prorated scheduled production, therefore, no exemption was granted to the petitioner and the recommendation was made to appropriate the performance security. On that basis, 20% of the performance security i.e. Rs.73,70,80,00,000/- was appropriated.

18. On perusal of the reply filed by the petitioner to the show-cause notices on 25.7.2017, the copy of the same is presented with the petition, shows that the causes of delay which have been mentioned in this petition and argued on behalf of the petitioner were similarly mentioned in the reply to the show-cause notices. The appropriation notice Ex. P/6 does not

mention that all the causes of delay which were mentioned by the petitioner were considered by the scrutiny committee. There is mention of only one cause that the amendment in Stamp Duty Act in the State of Chhattisgarh caused some delay, therefore, it cannot be said that the scrutiny committee has considered all the reasons for causes of delay to show that why the petitioner could not do any mining work in the financial year 2015-2016 and the mining operation could be started only on 4.4.2016 i.e. for the financial year 2016-2017. Therefore, there being no such consideration and the result of such consideration shown to be present in the notice Ex. P/6, is a fact to be noticed and given serious consideration.

19. As there had been clear restrictions laid down by respondent No.3 on the petitioner for operating the mines as allotted to it, it was only after the sanction/ permission granted on 21.3.2016, the petitioner could get the clearances complete for operating the coal mine in question. Hence, on this basis, it can further be said that the adjusted prorated schedule of production from 21.10.2015 to 31.3.2016 by the scrutiny committee was unreasonable without taking into consideration, the facts which were present with regard to the delay in performance of the petitioner, respondents No.1 and 2 had proposed for a task to be performed by the petitioner which was impossible.

20. In **Delhi Development Authority vs. Kenneth Builders and Developers Private Limited and Others** (supra), it was held by the Supreme Court in paragraphs 28, 29 and 30 are as follows:

> '**28**. Be that as it may, it appears to us that Kenneth Builders did take all necessary steps to commence the construction activity on the project land but due to the impasse created by the governmental agencies, it could not proceed in the development activity. We agree with the learned counsel for

Kenneth Builders that under these circumstances, the provisions of Section 56 of the Indian Contract Act, 1872 (the Contract Act) would be attracted to the facts of the case.

29. Section 56 of the Contract Act reads as follows:

> "56. **Agreement to do impossible act** - An agreement to do an act impossible in itself is void.
>
> **Contract to do act afterwards becoming impossible or unlawful** - A contract to do an act which, after the contract is made, becomes impossible, or, by reason of some event which the promisor could not prevent, unlawful, becomes void when the act becomes impossible or unlawful.
>
> **Compensation for loss through non-performance of act known to be impossible or unlawful** - Where one person has promised to do something which he knew, or, with reasonable diligence, might have known, and which the promisee did not know, to be impossible or unlawful, such promisor must make compensation to such promisee for any loss which such promisee sustains through the non-performance of the promise."

30. The interpretation of Section 56 of the Contract Act came up for consideration in *Satyabrata Ghose v. Mugneeram Bangur & Co.* reported in *AIR 1954 SC 44.* It was held by this Court that the word "impossible" used in Section 56 of the Contract Act has not been used in the sense of physical or literal impossibility. It ought to be interpreted as impracticable and useless from the point of view of the object and purpose that the parties had in view when they entered into the contract. This impracticability or uselessness could arise due to some intervening or supervening circumstance which the parties had not contemplated. However, if the intervening circumstance was contemplated by the parties, then the contract would stand despite the occurrence of such circumstance. In such an event, "there can be no case of frustration because the basis of the contract being to demand performance despite the happening of a particular event, it cannot disappear when that event happens." This is what this Court had to say:

"The first paragraph of the section lays down the law in the same way as in England. It speaks of something which is impossible inherently or by its very nature, and no one can obviously be directed to perform such an act. The second paragraph enunciates the law relating to discharge of contract by reason of supervening impossibility or illegality of the act agreed to be done. The wording of this paragraph is quite general, and though the illustrations attached to it are not at all happy, they cannot derogate from the general words used in the enactment.

This much is clear that the word "impossible" has not been used here in the sense of physical or literal impossibility. The performance of an act may not be literally impossible but it may be impracticable and useless from the point of view of the object and purpose which the parties had in view; and if an untoward event or change of circumstances totally upsets the very foundation upon which the parties rested their bargain, it can very well be said that the promisor finds it impossible to do the act which he promised to do.

Although various theories have been propounded by the Judges and jurists in England regarding the juridical basis of the doctrine of frustration, yet the essential idea upon which the doctrine is based is that of impossibility of performance of the contract; in fact impossibility and frustration are often used as interchangeable expressions. The changed circumstances, it is said, make the performance of the contract impossible and the parties are absolved from the further performance of it as they did not promise to perform an impossibility.

The parties shall be excused, as Lord Loreburn says "If substantially the whole contract becomes impossible of performance or in other words *impracticable* by some cause for which neither was responsible."

It must be pointed out here that if the parties do contemplate

> the possibility of an intervening circumstance which might affect the performance of the contract, but expressly stipulate that the contract would stand despite such circumstance, there can be no case of frustration because the basis of the contract being to demand performance despite the happening of a particular event, it cannot disappear when that event happens. As Lord Atkinson said in Matthey v. Curling
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> "a person who expressly contracts absolutely to do a thing not naturally impossible is not excused for non-performance because of being prevented by the act of God or the King's enemies … or vis major".
>
> This being the legal position, a contention in the extreme form that the doctrine of frustration as recognised in English law does not come at all within the purview of Section 56 of the Indian Contract Act cannot be accepted."

21. Therefore, in view of the above propositions laid down by the Supreme Court, it can be very clearly made out that the respondents have set an impossible task for the petitioner to be performed and the calculation of the time for the same was also not made on the basis of the fact situations that were present. Hence, the notice Ex.P/6 that has been issued to the petitioner regarding the appropriation made and further, the direction/ advice to the petitioner to top-up of the bank guarantee appears to be unreasonable and against the spirit of contract between the parties and also the rules and regulations in that respect. The rules and regulations and terms of contract permit deviation in case the circumstances allow to do the same. It is the office of authority which is manned by human beings, which has to consider and take decision justly. I am of this view that no such decision was taken by the respondents in this case before appropriating 20% of the performance bank guarantee and also directing the petitioner/ Company to make the top-up of the same.

22. As a result, this petition deserves to be and is hereby allowed and the following reliefs are granted to the petitioner/ Company:

1. The impugned judgment dated 31.7.2019 passed by the learned Tribunal is set aside.

2. The appropriation notice dated 26.4.2018 issued by respondents No.1 and 2 regarding information of appropriation of amount in performance bank guarantee of Rs.73,70,80,00,000/- is quashed and respondents No.1 and 2 are directed to make refund of the same to the petitioner.

3. The petitioner is at liberty to make a prayer to respondents No.1 and 2 to release the performance bank guarantee in accordance with the terms agreed under clause 6.1.5 of the agreement between the parties and the respondents No.1 and 2 are directed to consider the same and take appropriate decision.

23. No order as to costs.

Sd/-
(Rajendra Chandra Singh Samant)
Judge

Nimmi