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

+ W.P.(C) 6197/2020

M/S LAKSHMI INDUSTRIAL CORPORATIONPetitioner

Through: Mr Anubhav Kumar, Advocate.

versus

UNION OF INDIA & ORS.

..... Respondents

Through: Mr Jagjit Singh, Standing Counsel for
UOI/Railways/R-1 to 3.

CORAM:

HON'BLE MR. JUSTICE NAJMI WAZIRI

ORDER

% **10.09.2020**

The hearing was conducted through video conferencing.

CM APPLs. 22204-22205/2020 (Exemption)

1. Allowed subject to all just exceptions. The application stands disposed-off.

W.P.(C) 6197/2020 & CM APPL. 22203/2020 (stay)

2. Issue notice.
3. Notice is accepted by Mr Jagjit Singh, the learned counsel for the UOI/Railways/R-1 to 3.
4. At the request of the learned counsels for the parties, the petition is taken up for disposal.
5. The petitioner impugns letters/orders dated 19.06.2018 and 03.07.2018 issued by R-2, terminating the contract between the parties and has proposed recovery of 10% of the contract value,

against the outstanding bills, of other contracts with the petitioner. A contract for delivery for supply of Off Track Tampers (Engine Mounted Version) as per RDSO Specification No.TM/SM/OTT/321 dated 28.01.2009 was entered into between the parties; three Purchase Orders were issued under which Off Track Tampers (Engine Mounted Version); the said machines/materials were to be supplied to the Consignee by 06.03.2018, as per the Tender schedule. The inspection of the aforesaid machine was to be done by the RDSO, as mentioned in the Purchase Order dated 07.12.2017.

6. On 14.02.2018 the petitioner wrote to the Executive Director (Track Machine) Research Designs & Standards Organization (hereinafter referred to as 'RDSO') requesting him to conduct the inspection of the goods in terms of clause 17 of the purchase order. It wrote another letter dated 22.02.2018 to the Deputy Chief Engineer (Track Machines), stating therein that the material was ready for inspection and dispatch/delivery. The Executive Engineer, Northern Railway wrote letters dated 05.03.2018 and 09.03.2018 forwarding a copy of the letter dated 22.02.2018 sent by the petitioner, since post issue of the Purchase Order all correspondence were being handled by the Nodal Officer at the Headquarters. On 10.03.2018, the petitioner wrote another letter requesting them to inspect the goods. On 15.03.2018, the Executive Engineer, HQ, Northern Railway forwarded petitioner's letter dated 10.03.2018 to the Deputy Chief Engineer, Headquarters.
7. After a lapse of about one and a half months, RDSO sent a letter dated 19.03.2018 to the petitioner informing it, that all inspections during

procurement of the small track machines shall be carried out by the purchaser/consignee of Zonal Railway. It is to be noted that this letter was issued much after 06.03.2018 -- the stipulated date of delivery. On 21.03.2018, the petitioner wrote a letter seeking amendment in the Purchase Order dated 07.12.2017 to the effect, that clause 17 of the Purchase Order be amended wherein RDSO be replaced with the Consignee and further delivery period be also re-fixed. On 06.04.2018, Northern Railways wrote to the petitioner directing it to supply the material after getting the inspection done from RDSO. On 20.04.2018, the petitioner forwarded the copy of the letter dated 06.04.2018 to RDSO. The petitioner again wrote letter dated 30.04.2018 requesting the Northern Railway to extend the time for delivery.

8. What emanates from the above correspondence is that the petitioner was ready with the goods/machines/material in the requisite quantity at least three weeks prior to the scheduled delivery date. The respondents had sufficient time to carry out the inspection. The respondents apparently kept the petitioner buffeting between themselves. Ex facie, the petitioner cannot be held to be in breach of the terms of the contract. It has repeatedly written to both the respondents – one with whom the contract was signed and the other who was the beneficiary of the said delivery order. Clause 17 of the Purchase Order duly states that the inspection had to be conducted by RDSO, therefore it should have so done. If the said Purchase Order itself was not in accordance with the other terms of the contract, it was for the R-2 and R-3 to find a solution. The petitioner surely

cannot be put to any disadvantage for the same. It is in these circumstances that the Court finds that the impugned orders/letters are premature and unjustified, therefore they ought to be kept in abeyance.

9. The petitioner is pursuing its case with the Railways to reconsider the matter because they have been manufactured to specific requirement of the Railways and the same cannot be used by any other agency. The capital expenditure invested by the petitioner is blocked and the impugned proposed action would cause further financial loss to the petitioner.
10. Mr Jagjit Singh, the learned Standing Counsel for the Railways submits that the petitioner has done nothing for the last two years except for making occasional correspondence with the Railways and therefore it should have first made a representation to the Railways. He further submits that there is an arbitration clause, which could be considered by the parties. The petitioner states that it cannot be faulted for being prudent to agitate its rights against, by not merely writing letters to the Railways, to which there is hardly any worthwhile response. Therefore, it was constrained to approach this court.
11. In the circumstances, the respondent's shall treat this petition as the petitioner's representation, on which appropriate decision be taken by the Railways within eight weeks from today, after hearing the petitioner. Till then the impugned orders/notices shall be kept in abeyance.
12. It will be open to the parties to pursue their remedy(ies) as may be

available to them in law.

13. The writ petition, alongwith pending application, stands disposed-off in above terms.

14. The order be uploaded on the website forthwith. Copy of the order be also forwarded to the counsels through email.

NAJMI WAZIRI, J

SEPTEMBER 10, 2020/*rd*