

\$~20

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

Date of Decision : 16.01.2020

+ W.P.(C) 10846/2019

M/S BEDI AND BEDI ASSOCIATES Petitioner
Through Mr.Amit Anand Tiwari and
Mr.Shashwat Singh, Advs.

versus

DELHI METRO RAIL CORPORATION LTD. AND ANR.
..... Respondents
Through Ms.Vibha Mahajan Seth and
Ms.Niharika Beri, Advs. for R-
1.
Mr.Keshav Mohan, Mr.Rishi
K.Awasthi, Mr.Piyush
Chaudhary and Mr.Sumeet Raj,
Advs. for R-2.

CORAM:
HON'BLE MR. JUSTICE NAVIN CHAWLA
NAVIN CHAWLA, J. (Oral)

1. This petition has been filed *inter-alia* praying for the release of the balance payment outstanding from the respondent no.1 to the petitioner under the Tender Bearing No.TVS-01/2009 and CFS-02/2010.
2. For both these contracts, the respondent no.1 has encashed the Performance Bank Guarantee(s) of the petitioner on account of dues owed by the petitioner to the respondent no.2.

3. As far as the Tender TVS-01/2009, issue of encashment of the Bank Guarantee became a subject matter of the arbitration proceedings between the petitioner and the respondent no.1, resulting in Arbitral Award dated 12.06.2017.

4. In the Arbitral Award, as far as the encashment of the Performance Bank Guarantee was concerned, the learned Sole Arbitrator directed that the amount recovered by the respondent no.1 on encashment of the Bank Guarantee should have been immediately deposited by the respondent no.1 with the respondent no.2. The respondent no.1 was directed to deposit the said amount alongwith simple interest at the rate of 15% p.a., from the date of the receipt of the amount from the encashment of the Bank Guarantee till the date of deposit, with the respondent no.2.

5. The learned counsel for the respondent no.2 submits that the said Award has been complied with and the amount has been duly deposited with the respondent no.2. On the other hand, the learned counsel for the petitioner submits that this deposit is being considered by the respondent no.2 against the account of the respondent no.1 and not of the petitioner.

6. It is hereby clarified that in terms of the Arbitral Award, the amount deposited by the respondent no.1 with the respondent no.2 has to be considered against the account of the petitioner.

7. As far as the Tender bearing No.CFS-02/2010 is concerned, the respondent no.1 admits that it has received an amount of Rs.56,02,159/- on encashment of the Performance Bank Guarantee of the petitioner and it has further withheld an amount of Rs.42,91,556/-

due and payable to the petitioner, on account of alleged dues owed by the petitioner to the respondent no.2.

8. In my opinion, the said amount having been withheld by respondent no. 1 only on account of alleged due of the petitioner to the respondent no. 2, the respondent no.1 should have deposited the same with the respondent no.2 immediately on encashment of the Bank Guarantee/withholding the said amount.

9. As these amounts were not deposited with the respondent no.2 by the respondent no.1, the respondent no.1 shall also be liable to pay an interest at the rate of 12% p.a. on these amounts from the date of receiving such amount from the encashment of the Bank Guarantee/withholding of the amount due, till the same is paid to the respondent no. 2/the petitioner in terms of this order.

10. The respondent no.2 in its counter affidavit has stated that an amount of Rs.1.25 crores is due and payable by the petitioner to the respondent no.2. The petitioner, in its rejoinder has, however, contented that it has deposited certain amounts pursuant to the interim order passed by the Central Government Industrial Tribunal-cum-Labour Courts (CGIT)/ this Court in WP(C) 8576/2015 filed by the petitioner/other proceedings, details whereof have been given by the petitioner in paragraph 37 of its rejoinder.

11. The learned counsel for the petitioner further submits that as far as the earlier demand in terms of the order dated 28.09.2018, passed by the respondent no.2 under Section 7A of the Employees Provident Act, 1952 (hereinafter referred to as the 'Act') is concerned, the petitioner had also separately deposited an amount of Rs.74,85,753/-.

12. The learned counsel for the petitioner, however, without prejudice to the rights and contentions of the petitioner, submits that out of total amount owed by the respondent no.1 to the petitioner, the amount as may be claimed by the respondent no. 2 as due from the petitioner, be deposited by the respondent no.1 with the respondent no.2 on account of the petitioner and the balance amount be released by the respondent no. 1 to the petitioner.

13. I find merit in the submission made. The respondent no.2 shall, within a period of four weeks from the date of the communication of this order calculate the exact dues and outstanding amount payable by the petitioner under Section 7A, 7Q and 14B of the Employee Provident Funds and Miscellaneous Provisions Act, 1952 and after giving due credit of the amount already paid by the petitioner and communicate the same to the respondent no.1. If any amount is due and payable, the respondent no.1 will deposit the same with the respondent no.2 within two weeks of receipt of such communication. The balance available with the respondent no.1 shall be released in favour of the petitioner within a period of four weeks of communication of the demand from the respondent no2.

14 In case no further amount is found due and payable from the petitioner by the respondent no. 2, the respondent no. 2 shall inform the respondent no. 1 accordingly, within four weeks of receipt of copy of this order. In such event, the entire amount payable by the respondent no. 1 to the petitioner, shall be so paid to the petitioner within four weeks of receipt of such communication.

15. Needless to say, once the entire demand of the respondent no.2 has been paid by the respondent no.1, there will be no occasion for the respondent no.2 to proceed further against the respondent no.1 on account of any alleged dues of the petitioner.

16. The above order is being passed without prejudice to the rights and contentions of the petitioner and the respondent no.2 in the *interse* proceedings which are pending before other forums. The payment of the amount by the respondent no. 1 to the respondent no. 2 shall be subject to outcome of such proceedings or such other proceedings as the petitioner may avail of to challenge the demand of respondent no. 2, in accordance with law.

17. The petition is disposed of with the above direction. There shall be no order as to costs.

JANUARY 16, 2020/Arya

NAVIN CHAWLA, J