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01.03.2021
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WPA 5345 of 2021

Hindusthan Industries & Mining Corporation & Ors.
Vs.
Union of India & Ors.

Mr. Rachit Lakhmani
Mr. Avishek Das.
... for the petitioners.

Mr. Avinash Kankani.
... for the respondents.

The petitioners prayer is for refund of a sum of Rs.3,67,800/- received from him by the respondent Railways in respect of a tender bearing no. DN-76-19-20. The petitioner submits that the tender has not been finalised and the job was not given to him and even then despite his several requests made to the Railway Authority his earnest money has not been refunded.

Learned advocate for the respondents being the Railway Authorities and the Union of India submits that there is a clause for forfeiture of earnest money being Clause 23.5 (at page 35 of the writ application) and the petitioners action is hit by this clause and that is why his earnest money has been forfeited. The respondents advocate has also drawn my attentions to some letters written by the concerned Railway

Authorities dated 16th August, 2019, 22nd August, 2019, 23rd August, 2019, 26th August, 2019 and 29th August, 2019 (between pages 228 to 232 of the writ application) intimating the petitioner that the closing dates for submission against the subject tender were changed on different occasions and last date was 31st August, 2019 whereas the first date was 22nd August, 2019. In the meantime, the petitioner was given by the above letters five opportunities to come for the negotiations, which he failed.

However, I find there is a settlement of disputes provisions as contained in Clause 63 (at page 139 of the writ application), which inter alia lays down:

"All disputes and differences of any kind whatsoever arising out of or in connection with the contract, whether during the progress of the work or after its completion and whether before or after the determination of the contract shall be referred by the contractor to the GM and the GM shall within 120 days " after receipt of the contractors representation will take steps for sending the dispute for arbitration. Here, the dispute is in connection with the contract and the same may be resolved in arbitration. The writ application is not entertainable as because there is

an arbitration clause.

If the petitioner is so advised, he may take steps for placing the dispute in arbitration for settling the matter.

This writ application is thus dismissed as this Court does not want to exercise its extraordinary writ jurisdiction.

There shall, however, be no order as to costs.

(Abhijit Gangopadhyay, J.)