

IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
APPELLATE SIDE
(Through Video Conference)

WPA 7643 of 2021

M/s. AMA Industries Private Limited & Anr.
Vs.
Union of India & Ors.

Mr. Aniruddha Chatterjee
Mr. Kushal Chatterjee
Mr. Abir Lal Chakraborty
... For the petitioners

Mr. Pradip Kumar Dutta, Sr. Advocate
Mr. Sudhakar Prasad
Mr. Pradipta Bose
... For Coal India Limited

Affidavit of service filed in Court today is taken on record.

The petitioners say that the petitioner no.1 while holding a running contract bearing no.CIL/C2D/SEC.II/ Cartridge Expls./2005-06/AMA/4479 dated 8th August, 2005 awarded by Coal India Limited (in short "CIL") had to furnish a bank guarantee of Rs.1,26,00,000/- at the initial stage. The bank guarantee amount was subsequently reduced and at present a bank guarantee for Rs.48,60,000/- which is valid till 18th October, 2021 has been furnished as against the said running contract. The petitioners further say that the work under the running contract has been fulfilled and/or completed to the satisfaction of CIL and, as such, the petitioners are entitled

to refund of the bank guarantee of Rs.48,60,000/-. CIL, according to the petitioners, is not refunding the said bank guarantee in view of the fact that a sum of Rs.33,69,325/- is claimed to be receivable by CIL from the petitioner no.1 on different heads which the petitioners, however, dispute. The petitioners say that neither Rs.33,69,325/- nor any part thereof is receivable by CIL from the petitioners on the alleged head which the petitioners can demonstrate from admitted documents.

CIL, on the other hand, says that it has a valid claim of Rs.33,69,325/- and unless the said sum is paid, CIL has no obligation in releasing/returning the bank guarantee of Rs.48,60,000/-.

Considering the submissions made on behalf of the parties and the materials on record, I am of the view that justice will be sub-served if the petitioner no.1 is directed to furnish a bank guarantee of Rs.33,69,325/- without prejudice to its rights within a period of three weeks from date to secure the claim of CIL and agitate against the validity or invalidity of the claim of CIL before an appropriate forum since adjudication as to the validity of CIL's claim requires factual appreciation which cannot be gone into by this Court in exercise of its writ jurisdiction. The bank guarantee shall be in the same format and terms and conditions on which the bank guarantee for Rs.48,60,000/- has been given by the petitioner no.1 to CIL.

The bank guarantee will be initially for a period of six months and shall be renewed from time to time till the claim of Rs.33,69,325/- made as against the petitioner no.1 is resolved.

CIL shall receive the bank guarantee of Rs.33,69,325/- without prejudice to its rights. CIL on being satisfied with the format and conditions of the bank guarantee shall, within seven days from the date of the bank guarantee for Rs.33,69,325/- being furnished, release and/or return the bank guarantee of Rs.48,60,000/- to the petitioner no.1.

So far as the petitioners' contention disputing the claim of CIL for Rs.33,69,325/- is concerned, this Court, in exercise of its jurisdiction under Article 226 of the Constitution of India, is not the appropriate forum to go into the factual intricacies of the matter to adjudicate upon the validity or invalidity of the claim of CIL for Rs.33,69,325/-.

The petitioners are, therefor, given liberty to approach the appropriate forum in accordance with law to challenge the validity of the claim for Rs.33,69,325/- made by CIL in its letter dated 3rd March, 2021 appearing at page 163 of the writ petition. The authority who may be approached shall decide the issue without being influenced by any observation in this order. I also made it clear that I

have not gone into the merits of CIL's claim for Rs.33,69,325/-.

Nothing further remains to be adjudicated in this writ petition. The same is disposed of accordingly without any order as to costs.

Since I have not called for any affidavits, allegations made in the writ petition are deemed to have not been admitted.

Urgent photostat certified copy of this order, if applied for, is to be given to the parties, upon compliance of necessary formalities.

(Arindam Mukherjee, J.)