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

Date of Decision: 12th May, 2021

+ **W.P.(C) 5278/2021 & CM APPLs. 16240-42/2021**

AUTOMETERS ALLIANCE LIMITED

..... Petitioner

Through: Mr. Anirudh Wadhwa, Mr. Aaditya
Gambhir and Mr. Sumer Dev Seth,
Advocates.

versus

RAIL VIKAS NIGAM LIMITED & ANR.

..... Respondents

Through: Mr. Udit Seth and Mr. Vivek
Guruprasad, Advocates for R-1 (M:
9899495968).

Ms. Nidhi Raman, CGSC with Mr.
Syed Husain Adil Taqvi, GP for R-2.

CORAM:

JUSTICE PRATHIBA M. SINGH

Prathiba M. Singh, J.(Oral)

1. This hearing has been done through video conferencing.
2. The Petitioner has filed the present petition challenging the termination notice issued by the Respondent No. 1- Rail Vikas Nigam Ltd. dated 29th April, 2021. The Petitioner also prays for a direction that the Office Memorandum dated 12th November 2020, issued by the Procurement Policy Division, Ministry of Finance, Union of India, bearing no. No. F.9/4/2020-PPD (*hereinafter*, "OM"), is binding upon the Respondent No. 1.
3. The brief background is that the Petitioner was, on 27th October 2020, awarded a contract for supply, installation, testing and commissioning of telecommunication systems for the Kolkata Metro Railways (*hereinafter*,

“Kolkata Metro”), pursuant to the bid submitted by him it on 11th August 2020. The total contractual value of the said award was Rs. 10,75,87,765.91/- (Rupees Ten Crores Seventy Five Lakhs Eighty Seven Thousand Seven Hundred Sixty Five and Ninety One Paise). The Petitioner was, in terms of the tender documents required to submit a performance security amounting to 10% of the bid amount, as the Primary Performance security. The said tender also included a provision of an additional security amount to be given in case the overall bid of the lowest bidder was substantially on the lower side or unbalanced compared to the engineer’s estimate. The Petitioner is stated to have furnished the entire Primary Performance security in the form of a bank guarantee on 4th December 2020, on a without prejudice interim basis. Thereafter, vide communication dated 6th January 2021, the Petitioner was awarded further work, upon submission of an offer. The said work is stated to not be a part of the original notice of award dated 27th October 2020. However, disputes arose in respect of the performance security which was to be submitted by the Petitioner, as the Respondent demanded the Additional Performance Security amounting to Rs.1,40,56,126/-

4. The case of the Petitioner is that the Petitioner had already submitted adequate performance security at 10% of the original bid to the Respondent No. 1, *via* a bank guarantee dated 4th December 2020. Although the Petitioner was also required, in terms of the tender documents, to give the Additional Performance Security, however, the case of the Petitioner was that the payment of the Additional Performance Security could be waived in view of the OM dated 12th November, 2020, issued by the Ministry of Finance, which reduced the Performance Security from 10% to 3%. This,

however, was not acceded to by the Respondent No. 1, which finally resulted in the termination of the contract. Accordingly, the prayer of the Petitioner in this petition is for quashing of the said notice of termination, and for a declaration that the said OM would be applicable and binding upon Respondent No.1.

5. During the course of arguments, Mr. Anirudh Wadhwa, Id. counsel for the Petitioner, submits that the Petitioner is willing to furnish the Additional Performance Security of Rs.1,40,56,126/- provided that the termination notice dated 29th April 2021, is withdrawn and the Petitioner is permitted to perform the contract.

6. Id. counsel for the Respondent, takes a preliminary objection as to the jurisdiction of this court, in terms of the jurisdiction clause contained both in the bid data sheet, as also the GCC and the contract data, which exclusively vests jurisdiction in the Courts in Kolkata.

7. Initially the matter was passed over in order to enable the Respondents to seek instructions as to whether the Respondent No. 1 would be willing to consider the Petitioner's offer, inasmuch as if the termination is not withdrawn, the metro project could be further delayed due to fresh tenders, opening of new bids etc.,

8. Accordingly, Mr. Ramakrishna, General Manager of Respondent No. 1 has joined the proceedings, and has informed the Court that due to the performance of the Petitioner, Respondent No. 1 would not, at this stage, want to withdraw the termination or award the contract to the Petitioner. However, when the Petitioner's counsel requested for a meeting with Respondent No. 1, the same has been acceded to, and the Id. Counsel for Respondent No. 1 has submitted that the meeting can be held with the

Petitioner.

9. This Court, therefore, is of the opinion that since this petition involves an issue in respect of termination of a contract, the Petitioner would have to avail of the remedies in accordance with the dispute resolution mechanism, that has been specified in the contract itself.

10. However, considering the fact that there could be a chance of an amicable resolution of the dispute, the Respondent may hold a meeting with the Petitioner's representatives on 24th May, 2021 in its Kolkata office. If there is no amicable resolution, the remedies of the Petitioner are left open to be availed of, in accordance with law, in the forum as per the clauses in the contract. Needless to add, this court has not opined on the merits of the dispute.

11. With these observations, the present petition with all pending applications is disposed of.

12. The digitally signed copy of this order, duly uploaded on the official website of the Delhi High Court, www.delhihighcourt.nic.in, shall be treated as the certified copy of the order for the purpose of ensuring compliance. No physical copy of orders shall be insisted by any authority/entity or litigant.

**PRATHIBA M. SINGH
JUDGE**

**MAY 12, 2021
MR/AK**