

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.20710 of 2021

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M/s Sarlachem India Pvt. Ltd. having its registered office at Flat No.- 603, Nav Renuka Building, Plot No.- 108, Opposite Balaji Temple, Tilak Road, Ghatkopar, Mumbai- 400077 through its authorized signatory namely Sadik Ali, aged about 59 year, Male, Son of Masood, Resident of A-91, 2/2 Ground Floor, Indira Chand Sant Rohidas Marg, Mukund Nagar, Dharavi, Mumbai-400017.

... .. Petitioner/s

Versus

1. The Chairman, N.T.P.C. Limited N.T.P.C. Bhawan, Scope Complex, Core-77, Institutional Area, Lodhi Road, New Delhi- 110003.
2. The Executive Director-cum-Project Head, N.T.P.C. Limited, Kahalgaon Super Thermal Power Station, P.O. and P.S.- Kahalgaon, District- Bhagalpur- 813214.
3. The Additional General Manager (EMG and AUD), N.T.P.C. Limited, Kahalgaon Super Thermal Power Station, P.O. and P.S.- Kahalgaon, District- Bhagalpur- 813214.
4. The Deputy General Manager (AUD), N.T.P.C. Limited, Kahalgaon Super Thermal Power Station, P.O. and P.S.- Kahalgaon, District- Bhagalpur- 813214.

... .. Respondent/s

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Appearance :

For the Petitioner/s : Mr.Manoj Kumar Jha, Advocate
For the Respondent/s : Mr.Amaresh Kumar Sinha, Advocate

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CORAM: HONOURABLE THE CHIEF JUSTICE
and
HONOURABLE MR. JUSTICE S. KUMAR
ORAL ORDER

(Per: HONOURABLE THE CHIEF JUSTICE)

(The proceedings of the Court are being conducted by Hon'ble the Chief Justice/ Hon'ble Judges through Video Conferencing from their residential offices/residences. Also, the Advocates and the Staffs joined the proceedings through Video Conferencing from their residences/offices.)

2 10-02-2022 Petitioner has prayed for following relief (s) : -

“(i) For issuance of writ or writs, order or orders
and direction or directions in the nature of



Certiorari for quashing the Letter No. Khs:092:AUD dated 08/10/2019 (Annexure- 4) issued under the seal and signature of the Deputy General Manager (AUD), N.T.P.C. Limited, Kahalgaon (hereinafter to as "DGM (AUD) N.T.P.C. Kahalgaon", the Respondent No.-4 whereby and whereunder written request of the petitioner dated 28/09/2020 for extension of time for three (3) months for lifting the Cenosphere from Ash Ponds of N.T.P.C., Kahalgaon was rejected and work of Cenosphere lifting by the petitioner was kept in stop gap mode or on hold.

(ii) For issuance of further writ or writs in the nature of Mandamus commanding and directing the respondent authorities specially the Respondent No.- 3 and 4 that petitioner is entitle to lift remaining 86 MTS Cenosphere from Ash Ponds of N.T.P.C., Kahalgaon as due to spread of Corona Virus and due to natural calamity situation became beyond control hence petitioner could not lift remaining Cenosphere from Ash Ponds of N.T.P.C., Kahalgaon.

(iii) For issuance of further writ or writs in the nature of Mandamus commanding and directing the respondent authorities to refund the remaining un-lifted 86 MT Cenosphere amounting to Rs. 1,03,81,673/- with interest @ 18% per annum and penal interest thereon in case lifting of remaining 86 MT Cenosphere is not possible.

(iv) For issuance And/ or pass such other consequences relief or reliefs to which petitioner is found entitled in the facts and circumstances of the case.”

It is brought to our notice, which fact is also not disputed, that the contract inter se the parties also binds them to the conditions contained in the document which is generally termed as “C.C.C.”



Shri Amresh Kumar Singh, learned counsel for the respondents, invites our attention to the fact that the said contract contains an arbitration clause and, in view of the disputed questions of fact, be it with regard to the extension of time or refund of the amount as damages and loss caused to the petitioner, in view of the disputed questions of fact, can be best adjudicated in such proceedings.

We are in agreement with such submission. As such, we dispose of the present petition, reserving liberty to the petitioner to take recourse to such other remedies are provided under the agreement.

We are constrained to pass such an order for we notice that the issues raised, subject-matter of the present petition, are seriously disputed by the respondents, as is so argued by the learned counsel.

We also notice that the contract entered into between the parties on 5th of July, 2019 was to be executed within a time-bound period and the respondent has already granted extension once. Request made on behalf of the petitioner for grant of further extension now stands turned down. Whether such action is legally sustainable or not is a matter which, in view of disputed questions of fact, we are not inclined



to adjudicate in the present petition under Article 226 of the Constitution of India.

As such, we dispose of the petition in the aforesaid terms.

Interlocutory application, if any, shall also stand disposed of.

(Sanjay Karol, CJ)

(S. Kumar, J)

K.C.Jha/chn

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