

IN THE HIGH COURT OF ORISSA AT CUTTACK

W.P.(C) No. 24817 of 2014

S.M. Niryat Pvt. Ltd.

.....

Petitioner

Mr. Tanmay Mishra, Advocate

Vs.

***Odisha Mining Corporation
Ltd.***

.....

Opposite Party

Mr. P.K. Muduli, Advocate

CORAM:

DR. JUSTICE B.R. SARANGI

MR. JUSTICE SANJAY KUMAR MISHRA

ORDER

04.07.2022

Order No.

27.

This matter is taken up through hybrid mode.

2. Heard Mr.T. Mishra, learned Counsel appearing for the Petitioner and Mr. P.K. Muduli, learned Counsel appearing for the Opposite Parties.

3. The Petitioner has filed this Writ Petition seeking to quash the order of forfeiting the commitment amount of the Petitioner amounting to Rs.23,75,000/- under Annexure-2 and to direct the Opposite Parties to refund the commitment amount to the Petitioner within a stipulated period.

4. Mr. T. Mishra, learned Counsel appearing for the Petitioner contended that the Petitioner entered into a contract with the Corporation/Opposite Party, pursuant to which Contract Confirmation was made. As per Clause-10 of the said Contract Confirmation if the buyer (agency) fails to lift 80% of the allotted quantity within the stipulated period i.e. by 28.02.2014, the commitment amount of Rs.23,75,000/- for Rs.25,000/- MT 60-62% Fe fines will be forfeited without any further correspondence. However, if the reason of non-lifting/shortfall in lifting is found to be not attributable to the buyer, then OMC may decide to refund the commitment amount.

It is further contended by Mr. Mishra, that without deciding this question the forfeiture of the amount was made as per the order under Annexure-2 dated 19.04.2014. Therefore, the Petitioner raised a dispute as provided under Clause-12 of the Contract Confirmation by filing a representation on 17.10.2014, but no decision has yet been taken thereof by the Chairman-cum-Managing Director, OMC, who is the competent authority to do as per the said Clause.

5. Mr. P.K. Muduli, learned Counsel appearing for the OMC contended that since the Petitioner has not adhered to the provision contained in Clause-10 of the Contract Confirmation, the order impugned passed on 19.04.2014 in forfeiting the amount, is well justified, and as such, no illegality or irregularity has been committed by the authority by passing the order impugned.

6. Having heard learned Counsel for the parties and after going through the record, it appears that the Contract Confirmation was made between the Petitioner and Opposite Parties. Clause-10 of the Contract Confirmation under the heading Commitment Amount reads thus:-

“10. Commitment Amount: If the buyer (agency) fails to lift 80% of the allotted quantity within the stipulated period i.e. by 28.02.2014, the commitment amount of Rs.23,75,000/- for Rs.25,000/- MT 60-62% Fe fines will be forfeited without any further correspondence. However, if the reason of non-lifting/shortfall in lifting is found to be not attributable to the buyer, then OMC may decide to refund the commitment amount”.

Clause-12 of the said Contract Confirmation speaks about Dispute to the following extent:-

“Dispute: In the event of any dispute, the decision of C.M.D., Odisha Mining Corporation Limited shall be final.

7. Without determining the short fall in lifting is attributable to the Petitioner or not the amount has been forfeited arbitrarily vide the order impugned under Annexure-2. Therefore, the Petitioner raised a

dispute under Clause-12 vide Annexure-3, but the said question has not been resolved.

8. In view of the above, without expressing any opinion on the merits of the case itself, this Court disposes of the Writ Petition directing the C.M.D., Odisha Mining Corporation Limited to resolve the dispute taking into consideration Annexure-3 dated 17.10.2014, as expeditiously as possible, preferably within a period of four months from the date of communication of the order.

9. With the above observation the Writ Petition stands disposed of.

(DR. B.R. SARANGI)
JUDGE

Arun/Banita



(S.K. MISHRA)
JUDGE