

IN THE HIGH COURT OF ORISSA AT CUTTACK

W.P (C) No. 17937 of 2017

*M/s Ambey Mining Private
Limited*

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Petitioner

Mr. A. Pattnaik, Adv.

Vs.

*Mahanadi Coalfields Ltd. and
others*

.....

Opposite Parties

Mr. S.S. Kanungo, Adv.

[O.P.Nos.1,2 &4]

CORAM:

DR. JUSTICE B.R. SARANGI

MR. JUSTICE V. NARASINGH

ORDER

11.07.2022

Order No.

06.

This matter is taken up through hybrid mode.

2. Heard Mr. A. Pattnaik, learned counsel for the petitioner and Mr. S.S. Kanungo, learned counsel for opposite parties no.1, 2 and 4.

3. The Petitioner has filed this Writ Petition seeking to quash the demand letter dated 01.08.2017 under Annexure-1 issued by Opposite Party No.2 and also the approval order dated 05.02.2016 under Annexure-2.

4. Mr. A. Pattnaik, learned counsel for the petitioner contended that Opposite Party No.1 published e-tender Notice, vide NIT No. MCL/SBP/GM (TC)/NIT-684/2013/837, for the work "Hiring of pay loader for mechanical transfer of coal into Railway Wagons at both platforms of Y-Curve siding (Chingriguda) of Lakhanpur Area for a total quantity of 1,36,87,500 Tes". The estimated cost of the work was Rs.9,73,18,125/- and the period of completion was for 730 days, i.e., by two years. Pursuant to such advertisement, the Petitioner placed its e-bid on 01.02.2014 through e-tendering system. On 29.01.2014, the Petitioner received the Letter of Acceptance. On

27.02.2014, the work order was issued in favour of the Petitioner. Thereafter, the Petitioner made correspondences with the Opposite Parties regarding the problems under the loading and the impediments which it was facing while executing the work. In spite of such difficulties, the work was completed on 30.12.2015. Even if the Petitioner completed the work, by order dated 05.02.2016, opposite party no.2 approved for recovery of demurrage charges of Rs.17,75,025.42 from the petitioner, although the opposite parties on 19.09.2016 issued the certificate of closure of contract/revise estimate, along with the check list, as well as work completion certificate and “No Dues Certificate” in favour of the petitioner. On 27.09.2016, the opposite parties issued a certificate for “No Shortfall Quantity” in favour of the petitioner-company and also issued a certificate certifying that the petitioner company was not provided any departmental assistance in form of equipments/materials. On 01.08.2017, opposite party no.2 issued the impugned notice/letter in favour of the petitioner company, wherein opposite party no.2 has demanded an amount of penalty to the tune of Rs.7,57,09,042.06, which the authority wants to recover from the petitioner from the bank guarantee given by the petitioner as security deposit.

5. Mr. S.S. Kanungo, learned counsel for opposite parties no.1, 2 and 4 contended that the work has already been completed and, therefore, if any demand has been raised by the authority the same shall come within the ambit of Clause-12, which provides for Settlement of Disputes of the General Terms and Conditions of the Contract. Instead of invoking Clause-12, the petitioner has filed this writ petition, which is not maintainable.

6. Having heard learned counsel for the parties and after going through the records, this Court finds that the writ petition involves

disputed questions of fact as to whether the petitioner is liable to pay the demand raised or not. Furthermore, if such demand has been made contrary to the provisions of law, then the same can be considered by the competent authority as per the agreement executed between the parties in terms of Clause-12 of the General Terms and Conditions of the Contract. For all the above reasons, this Court is not inclined to entertain this writ petition. However, the petitioner is permitted to pursue its remedy before the appropriate forum in terms of Clause-12 of the General Terms and Conditions of the Contract, if it is so advised. Needless to say, if the petitioner approached the authority within a period of 15 days from today, till that period no coercive action shall be taken against it. If no steps are taken by the petitioner within a period of 15 days, it is open to the authority to proceed against the petitioner in accordance with law.

7. The writ petition is accordingly disposed of.

(DR. B.R. SARANGI)
JUDGE

(V. NARASINGH)
JUDGE

Ashok/Balaram