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IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

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CWP-19128-2022
Date of decision: 15.09.2022

M/s Trimaster Private Limited

.....Petitioner

Versus

*Chandigarh Renewal Energy and Science and Technology Promotion
Society ('CREST') and another*

.....Respondents

Coram: Hon'ble Mr. Justice Rajbir Sehrawat

Present: Mr. Rahul Malhotra, Advocate and
Mr. Shivam Narang, Advocate
for the petitioner

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Rajbir Sehrawat, J. (Oral)

The present writ petition has been filed under Article 226 of the Constitution of India, praying for issuance of a writ in the nature of mandamus, directing respondent No. 1 to process the application of the petitioner for assignment and novation of the contract of respondent No. 2 in favour of the petitioner.

The essence of the arguments raised by counsel for the petitioner is that respondent No. 1 had entered into the contract with respondent No. 2 qua installation of solar plants. Subsequent thereto, respondent No. 2 has transferred the business in favour of the petitioner.

As a result thereof, the petitioner is doing the work, which was accepted by

respondent No. 2. However, the petitioner is not able to raise bills upon respondent No. 1 for the works done, because respondent No. 1 has not novated the contract by replacing the petitioner in place of respondent No. 2. Counsel for the petitioner has further submitted that the petitioner has already submitted several representations for novation of the contract but respondent No. 1 has not novated the contract so far. Hence, the present writ petition.

Supporting his claim, counsel for the petitioner has submitted that as per the stipulation of Clause 10 of the contract between respondents No. 1 and 2, the respondent No. 2 could have assigned the contract further but with prior approval of respondent No. 1. As such, an application before respondent No. 1 seeking permission for transfer of contract in favour of the petitioner was moved by respondent No. 2 on 27.10.2020. However, respondent No. 1 has not passed any order on the said application. Counsel for the petitioner has also submitted that the petitioner is providing services and the respondent No. 1 is accepting the same, therefore, the respondent No. 1 is bound to novate the contract in favour of the petitioner.

Having heard counsel for the petitioner and having gone through the paper book, this Court does not find any substance in the arguments raised by counsel for the petitioner. Needless to say that the contract in question was awarded by the respondent No. 1 to respondent No. 2 after having invited bids and by following the due procedure, as prescribed under the Rules. A valid contract was also entered between respondents No. 1 and 2. The parties to contract are bound by the terms and conditions of the contract unless one of the parties rescinds the contract as

such; with consequences to be followed for the same. Under the law of contract, a third party, who is not privy to the contract cannot be forced to be bound by any of the terms and conditions of the contract; which might have been entered between the strangers. In the present case, the petitioner is a stranger to respondent No. 1 and respondent No. 1 is stranger to contract of the transfer of business between the petitioner and respondent No. 2. *Per se*, respondent No. 1 is not bound to novate the contract as such.

Although counsel for the petitioner has relied upon clause No. 10 of the original contract entered between respondents No. 1 and 2. However, the stipulations as contained in that clause itself go against the petitioner. For ready reference, Clause 10 of the Contract is as reproduced hereunder:-

“Clause 10-Work not to be sublet. Action in case of insolvency-

The contract shall not be assigned or sublet without the written approval of CEO, CREST and if the contractor shall assign or sublet his contract, or attempt to do so, or become insolvent or commence any insolvency proceedings or make any composition with his creditors or attempt to do so, or if any bribe, gratuity, gift, loan, perquisite, reward or advantage pecuniary or otherwise, shall either directly or indirectly, be given, promised or offered by the contractor, or any of his servants or agent to any public officer or person in the employ of government in any way relating to his office of employment, or if any such officer or person shall become in any way directly or indirectly interest in the contract, the CEO CREST on behalf of the Chandigarh Administration shall have power to adopt the course

specified in Clause 3 hereof in the interest of Government and in the event of such course being adopted, the consequence specified in the said clause 3 shall ensue.”

A bare perusal of the stipulations as contained in Clause-10 of the contract shows that the course of action, which has been adopted by the petitioner and respondent No. 2, is strictly prohibited, and if so adopted without written consent of respondent No. 1, then consequence as prescribed in Clause 3 of the contract can be made operational by the respondent No. 1 against the original party to the contract, i.e. Respondent No. 2.

In the present case, it is not even in dispute that the contract qua transfer of business was entered between the petitioner and respondent No. 2 on 18.02.2020, though the same was made effective from 01.02.2021, whereas, the application moved by respondent No. 2 seeking permission to assign or sublet the contract to the petitioner was made on 27.10.2020. Hence, it is obvious that process of assignment of the contract by respondent No. 2 in favour of the petitioner was completed much before the date of making of the application for seeking permission from respondent No. 1. Although counsel for the petitioner has argued that the contract of transfer of business was made effective with effect from 01.02.2021, which is after the date of making of the application, however, even this argument of the petitioner is liable to be rejected for the following two reasons. *Firstly*, Clause 10 of the contract prohibits even an attempt to assign or sublet the contract by respondent No. 2 and not only the final assignment as such; and *Secondly*, even if it is taken to be effective with effect from

01.02.2021, the same has also happened, undisputedly, without any written permission from respondent No. 1. Therefore, the course of action adopted by respondent No. 2 is totally in violation of the terms and conditions of the contract with respondent No. 1. Hence, respondent No. 1 has become entitled to adopt the course as specified in clause 3 of the contract, in terms of the Clause 10 of the same. As such, at this stage, the right; which respondent No. 1 has acquired on account of default of respondent No. 2 cannot be frustrated by asking respondent No. 1 to either novate the contract or to decide the representation/application made either by the petitioner or respondent No. 2.

There is another aspect which prohibits, the novation of contract itself. The tender in question was awarded to respondent No. 2 after inviting bids from the competing eligible contenders, who were bound by certain terms and conditions mentioned in the document inviting bids. Respondent No. 2 was selected only after being found eligible by fulfilling the terms and conditions for the contract. Now the petitioner by getting itself substituted in place of respondent No. 2, cannot make an attempt to get contract dehors the terms of the document inviting bids; which were mandatory to be fulfilled by any person who could have been awarded the contract.

Counsel for the petitioner has also asserted that the petitioner has been providing services to respondent No. 1 and respondent No. 1 has been accepting the services, as such. However, there is nothing on record to substantiate the assertion that respondent No. 1 has acknowledged the services of the petitioner being provided it in its independent capacity. If

otherwise, the petitioner is providing the services on behalf of respondent No. 2, then it would be taken as services provided by the agent of respondent No. 2 and not as services provided by an independent entity. If the petitioner has any grievance qua the bills of expenses incurred by it, the petitioner can lay claim only against respondent No. 2 and not against respondent No. 1.

In view of the foregoing discussions, neither the petitioner has the legal right to get the contract novated nor is the respondent No. 1 bound to novate the same. Accordingly, finding no merits, the present writ petition is dismissed.

(Rajbir Sehrawat)
Judge

September 15, 2022

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Whether speaking/reasoned
Whether reportable

: Yes/No
: Yes/No