

IN THE PUNJAB AND HARYANA HIGH COURT AT
CHANDIGARH

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CWP-11629-2023 (O&M).
Date of Decision: 26.05.2023.

M/s Durga Construction Company

.. Petitioner

Versus

State of Haryana and others

... Respondents

CORAM: HON'BLE MR. JUSTICE VINOD S. BHARDWAJ.

Present: Mr. Ivneet Singh Pabla, Advocate,
for the petitioner.

VINOD S. BHARDWAJ, J. (ORAL)

The instant writ petition has been preferred by the petitioner for seeking quashing of letter dated 16.02.2023 (Annexure P-12) and letter dated 08.05.2023 (Annexure P-14) whereby the rates qua items No.6.2 c (i), (ii) and (iii) as approved in DNIT/BOQ/Contract Agreement (Annexure P-4) and released till 11th running bills have been ordered to be changed/revised at the stage of processing 12th and Final Bill.

Learned counsel appearing on behalf of the petitioner, inter alia, contends that the respondents had approved the rates at the time of award of the contract to the petitioner and that thereafter various running account payments were also released in favour of the petitioner, on the basis of the BOQs/Invoices/running bills raised at the rates approved. However, at the stage of 12th running bill, the respondents have unilaterally directed effecting recovery from the petitioner on a purport that certain explanations

were omitted at the stage of floating DNIT resulting in excess payment having been made. Counsel contends that he had submitted the bills on the basis of the DNIT and rates approved by the respondents and any omission made by them in incorporating the explanations/clauses restricting the distances cannot alter the terms of the agreement. He, however, does not dispute that there is an arbitration Clause 25-A which was part and parcel of the agreement amongst the parties.

Respondents have, however, contended that the petitioner cannot take benefit of a mistake or a wrong and claim higher rates, which he would not otherwise be entitled to.

On being confronted with the fact that in view of the arbitration clause and the disputed questions of fact involved, the writ remedy is not an appropriate remedy. The petitioner is at liberty to approach the authorities concerned by invoking the arbitration clause. In so far as the question of any interim relief is concerned, he would have the remedy to move an appropriate application under Section 9 and/or Section 17 of the Arbitration and Conciliation Act, 1996 to the Competent Forum. He thus seeks withdrawal of the present writ petition with liberty to take recourse to the alternative remedies available to the petitioners in accordance with law.

Disposed of as withdrawn with liberties as aforesaid.

May 26, 2023
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(VINOD S. BHARDWAJ)
JUDGE

Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No