IN THE PUNJAB AND HARYANA HIGH COURT AT CHANDIGARH

246 **CWP-22685-2021 (O&M)**
Date of Decision: 16.03.2023

M/S GARG AND CO.

... Petitioner

VERSUS

STATE OF HARYANA AND OTHERS

... Respondents

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

Present: Mr. Alok Mittal, Advocate
for the petitioner.

Mr. Vivek Chauhan, Addl. AG, Haryana.

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VINOD S. BHARDWAJ, J. (ORAL)

The present petition has been filed for seeking quashing of order dated 02.11.2021 (Annexure P-5) whereby the request of the petitioner for releasing the retention money against bank guarantee was declined by relying on the clause of the agreement, which is claimed as misreading by the petitioner.

Briefly summarized, the facts of the present case are that the petitioner has submitted its bid for construction of Government ITI, Shahabad in Kurukshetra. Agreement was executed between the petitioner and respondent No.2 after finding the bid of the petitioner to be most competitive. Clause 48 of the aforesaid Agreement deals with the retention money. Letter of Acceptance vide Memo No.8904/B dated 11.01.2019 was issued in favour of the petitioner on 11.02.2019. He was thereafter supplied the "Notice to Proceed with the Work" vide letter dated 01.03.2019 (Annexure P-3). Accordingly, the petitioner undertook the commencement of the work and submitted running bills for the work executed, from time to time. The petitioner thereafter submitted a representation on 30th October 2021 (Annexure P-4) for release of the security deducted from the running account bills of the petitioner. However, the aforesaid request submitted by the petitioner was declined by the respondents vide order dated 02.11.2021 (Annexure P-5). Hence, the present petition.

Written statement on behalf of the respondents has been filed, wherein they defended the order dated 02.11.2021 whereby the request of the petitioner was declined. Apart therefrom, an objection was also taken that the agreement contained a Dispute Resolution System under Clause 44 thereof and that in the event of the petitioner feeling aggrieved of such an issue, he may take recourse to the Dispute Resolution System as prescribed thereunder.

Learned counsel for the petitioner argued that the controversy in question revolves around Clause 48/48.1 of the Work Order Agreement. The same reads thus:

> *"48. Retention money.*
> *48.1 6% (Six percent) retention money shall be deducted from running bills subject to a maximum of 5% of the agreement amount and shall be refunded 50% immediately after completion of work to the satisfaction of Engineer-in-Charge & and balance 50% will be released after expiry of the defect liability period. <u>However, retention money can be released against unconditional Bank Guarantee in favour of the department valid for 60 days beyond stipulated period as per schedule.</u>"*

(Emphasis supplied)

While referring to the aforesaid Clause, he contends that the retention money can be deducted from the running bills of the petitioner subject to a maximum of the 5% of the agreement amount and 50% of the aforesaid retained money is to be refunded immediately upon completion of the work to the satisfaction of the Engineer Incharge and the balance 50% of the said amount was to be released after the expiry of defect liability period. However, the retention money can be released against unconditional bank guarantee in favour of the Department, which is valid for a period of 60 days beyond the stipulated period as per schedule. He refers to the impugned order about the reason given for rejection of application. The relevant extract thereof reads thus:

> "*In this connection, it is intimated that the DNIT Clause No.48.1 regarding release of 50% security is applicable only after completion of the work but your agency has not complete3d the work cited as subject till date. In view of the above facts your request cannot be entertained.*"

He submits that the release of 50% security is claimed to be applicable only after the completion of the work and since the work has not been completed, hence, the amount in question is stated that it cannot be released. Learned counsel for the petitioner contends that the aforesaid interpretation given by the counsel for the respondent to Clause 48.1 is based upon misreading. The Clause 48 pertaining to retention money empowers the respondent-Authorities to release the retention money against an unconditional bank guarantee and power of such release is not dependent upon satisfactory execution of the work. The same cannot be exercised on submission of a bank guarantee in favour of the Department, which is valid for a period of 60 days beyond the stipulated period as per schedule despite the work not being complete.

Per contra, learned State Counsel reiterates the objections noticed above and relies upon reasons given in the impugned order dated 02.11.2021 (Annexure P-5).

I have heard the learned counsel for the respective parties and have gone through the documents and record available on case file with their able assistance.

Insofar as the contention of the learned State Counsel that the petitioner has an alternative remedy to seek redressal of any grievance as per the Dispute Settlement System under Clause 44 is concerned, such objection is misconceived. The dispute in question is not a dispute qua any fact, rather the same is based on interpretation of a contractual clause. Hence, the petition on a pure question of law may be entertained.

The respondents have read and interpreted Clause 48 to hold that the release of 50% security in terms of Clause 48.1 of DNIT is applicable only after the completion of the work and that as the work is not yet completed, the security cannot be released. The reading of the Clause, however, does not suggest that the interpretation adopted by the respondents is sustainable, on a meaningful reading of the aforesaid clause. The Clause is comprised in two parts. Whilst the first part deals with the deduction and refund of the security at various stages of the work i.e. upon completion of the to work the satisfaction of the Engineer Incharge and secondly upon expiry of the defect liability period, the second part relates to release of the retention money on submission of unconditional bank guarantee by the Contractor in favour of the department. In case the interpretation adopted by the respondents is accepted, it renders the second part of the aforesaid clause superfluous and nugatory. It is well settled position in law that all terms used in a contract or statutory have to be given meaning. Besides, the plain and literal interpretation, which does not cause ambiguity or contradiction, should be first applied. As per grammatical expression "However" introduces a contrast or opposition between two independent clauses. The synonym of "however" includes "nonetheless; notwithstanding........." Hence, the expression overrides the contract against which it is used.

Consequently, the impugned order dated 02.11.2021 (Annexure P-5) passed by the respondents is set aside. The respondents shall be at liberty to pass the order afresh on the request submitted by the petitioner seeking release of his retention money as per the terms and conditions of the Agreement. A reasoned and speaking order shall be passed by the respondents within a period of six weeks from the receipt of certified copy of this order.

The petition stands allowed accordingly.

(VINOD S. BHARDWAJ)
JUDGE

16.03.2023.
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Whether speaking/reasoned *: Yes/No*
Whether reportable *: Yes/No*