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W.P.Nos.14210, 14212 & 14213 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 11.06.2024

CORAM:

THE HONOURABLE MR. JUSTICE **G.K.ILANTHIRAIYAN**

W.P.Nos.14210, 14212 & 14213 of 2021 and
WMP.Nos.15095, 15106 & 15108 of 2021

WP.No.14210 of 2021

M/s.Yuga and Jana Construction,
Rep. By its Managing Partner,
K.Narayanamoorthy,
No.172, Sakthi Nagar,
Near Neyveli Arch Gate,
Gandhi Nagar Post, Kurinjipadi Taluk,
Cuddalore District 607 308

...Petitioner

Vs.

1.The Chairman cum Managing Director,
Neyveli Lignite Corporation Ltd.,
Corporation Office, Block No.1,
Neyveli 607 801
2.NLC India Limited,
Rep. By its General Manager,
Contracts / Thermal, TPS-II Expansion Campus,
Neyveli 607 807

... Respondents

PRAYER: Writ Petition is filed under Article 226 of Constitution of India praying to issue a Writ of Certiorarified Mandamus calling for the records of the 2nd Respondent Termination Lr.No.GM/ Cont/ TH/ TPS II/ Expn/ Civil/ PTE/ T.No.396/ 2020 dated 15.06.2021 and quash the same



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consequently either direct the 2nd Respondent to revise the price as per the prevailing market rate and to enable the petitioner to complete the work or direct the 2nd respondent to foreclose the contract without Risk and cost by refunding the E.M.D. and materials in the site

For Petitioner : Mr.M.Vijay Anand

For Respondents : Mr.N.Nithianandam

WP.No.14212 of 2021

M/s.Yuga and Jana Construction,
Rep. By its Managing Partner,
K.Narayanamoorthy,
No.172, Sakthi Nagar,
Near Neyveli Arch Gate,
Gandhi Nagar Post, Kurinjipadi Taluk,
Cuddalore District 607 308

...Petitioner

Vs.

1.The Chairman cum Managing Director,
Neyveli Lignite Corporation Ltd.,
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Rep. By its General Manager,
Contracts / Thermal, TPS-II Expansion Campus,
Neyveli 607 807

... Respondents

PRAYER: Writ Petition is filed under Article 226 of Constitution of India praying to issue a Writ of Mandamus directing the 2nd Respondent either to foreclose or to revise the price as per the prevailing market rate and to enable the petitioner to complete the work pursuant to the



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Agreement No.Conts/ Thermal/ TPSII/ CM/ PTE/ T.No.3433/
LOA.No.3433/ AGT. No. 11270/ 2020 Dt. 12.05.2020 based on the
representation dated 02.01.2021.

For Petitioner : Mr.M.Vijay Anand

For Respondents : Mr.N.Nithianandam

WP.No.14213 of 2021

M/s.Yuga and Jana Construction,
Rep. By its Managing Partner,
K.Narayanamoorthy,
No.172, Sakthi Nagar,
Near Neyveli Arch Gate,
Gandhi Nagar Post, Kurinjipadi Taluk,
Cuddalore District 607 308

...Petitioner

Vs.

1.The Chairman cum Managing Director,
Neyveli Lignite Corporation Ltd.,
Corporation Office, Block No.1,
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PRAYER: Writ Petition is filed under Article 226 of Constitution of India praying to issue a Writ of Mandamus directing the 2nd Respondent either to foreclose or to revise the price as per the prevailing market rate and to enable the petitioner to complete the work pursuant to the



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Agreement No.C-01/CONTRACTS/Thermal/ TPS-I EXPN/ CIVIL/ TN-42/(19-20) 2020 Dt. 13.05.2020 based on the petitioner's representations.

For Petitioner : Mr.M.Vijay Anand

For Respondents : Mr.N.Nithianandam

COMMON ORDER

The writ petition in WP.No.14210 of 2021 has been filed challenging the termination of contract issued by the second respondent dated 15.06.2021. The other two writ petitions have been filed challenging the show cause notice issued by the second respondent for termination of the contract between the petitioner and the second respondent.

2. On perusal of the agreement entered between the petitioner and the second respondent, there is a specific clause i.e. clause 31.0, 31.2 & 31.3, which is extracted hereunder:

“31.0 Dispute Resolution

31.1 INFORMAL DISPUTE RESOLUTION



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If any dispute between the Contractor and the Purchaser arises, it shall in the first instance be referred in writing to the Purchaser, who shall endeavour to resolve the dispute amicably and render a decision within 30 days. The period of 30 days shall be reckoned from the date of receipt of intimation of the dispute by the Purchaser. Save as hereinafter provided, in respect of a dispute so referred, the decision of the Purchaser shall be final and binding upon the parties until, the completion of the Contract and shall forthwith be given effect to by the Contractor who shall proceed with the contract within all due diligence, whether or not either Party has sought conciliation/arbitration of the dispute as hereinafter provided. The Parties agree to use reasonable efforts to resolve all disputes equitably and in good faith:

31.2 CONCILIATION

31.2.1 If the party is dissatisfied with the decision rendered by the Purchaser, or if the Purchaser omits or declines to render a decision within the said period of 30 days, then within a further period of 30 days, the dissatisfied party shall require by a notification that the dispute the referred to conciliation in the manner as per the 'NLC Conciliation Rules', copy of which is available with the NLC offices and the Bidders/Contractors shall abide by the 'NLC



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Conciliation Rules' for resolving any dispute arising out of this contract. Such a notification shall be in writing and it shall be duly served on the other party. Failure to invoke the conciliation within the time stipulated shall debar the party from seeking reference to conciliation.

31.2.2 Except as otherwise provided in this clause, any dispute arising out of or relating to this agreement, or the breach, termination or validity thereof, shall be settled by conciliation in accordance with 'NLC Conciliation Rules'. The Conciliation shall be held at Neyveli/Chennai/Tuticorin/Barsingsar or in a place within India mutually agreed by the parties. The Conciliation proceedings shall be conducted, and the award shall be rendered in English. The award shall state the reasons upon which it is based.

31.2.3 There shall be Conciliators, who will be appointed as per Section-5 of the "NLC Conciliation Rules as below

(a) Number of Conciliator(s):

(i) The Settlement Advisory Committee will consist of conciliator(s) from the approved panel maintained by NLC as follows:

* Upto Rs.3.0 Crores: One Conciliator



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More than Rs 3.0 Crores: Three Conciliators

(ii) The Provisional claim/Counter claim amount shall be indicated by the respective parties while initiating/concurring for conciliation

(iii) However, number of conciliators in the Settlement Advisory Committee will not be modified, even if the sum of Actual Claim and Actual Counter Claim amount vary from the sum of Provisional Claim and Counter Claim amounts.

(b) Conciliator(s) will be appointed by CMD of NLC India Limited.

31.2.4 The Contract agreement/purchase Order conditions and the rights and obligations of the parties, shall remain in full force and effect during the Conciliation proceedings. Supplies and/or services under the Contract shall, if reasonably possible, continue during the Conciliation Proceedings.

31.2.5 For the purpose of the clause, the term 'dispute' shall include a demand or difference of any kind whatsoever, arising out of the Contract and respecting the performance of the Contract, whether during the Contract period including extensions if any, and whether before or after termination, abandonment or breach of the contract (except as to any matter, the decision of which is specifically otherwise provided for in any of these conditions).



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31.2.6 Only in case of failure to resolve the dispute through Conciliation, Arbitration can be resorted to.

31.2.7 Once the settlement agreement is signed with respect to a dispute the same dispute is not subject to further appeal through Arbitration or Judicial Proceedings.

31.2.8 Anything not found included in the 'NLCIL Conciliation Rules', but necessary to conduct the conciliation proceedings will be dealt with as per the provisions of the 'Arbitration and Conciliation Act 1996-Part-III' or as per the statutory provisions modified from time to time.

31.3 DISPUTE SOLVING AND ARBITRATION:

31.3.1 Dispute if any, arising out of the terms and conditions of the contract shall be settled amicably between the parties concerned.

31.3.2 In the unlikely event of any solution reached not satisfactory to any one of the parties or no solution could be reached, the matter may be referred to and settled through arbitration.

31.3.3 The arbitration procedure shall be as per Arbitration and Conciliation Act, 1996. The arbitrator/arbitrators shall publish a speaking award

31.3.4 The award of the arbitrator/arbitrators shall be final and binding on both the parties.



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31.3.5 During the settlement of and arbitration proceeding, both parties shall be obliged to carry out their respective obligations under the contract

31.3.6 The party in whose favour the award is passed shall be entitled to recover the entire costs of arbitration from the other party. The arbitrators shall indicate the above in the award clearly.

31.3.7 For "Other Contractors" (i.e other than CPSES)

(a) Arbitration shall be applicable only for the dispute(s) involving claims from Rs.25 lakhs to Rs 20 crores.

(b) For the dispute(s) involving claims below Rs 25 lakhs and above Rs.20 crores:

The parties mutually agree that dispute(s)/ issue(S) involving claims below Rs.25 lakhs and above Rs. 20 crores shall not be subject matter of Arbitration.

The claim below Rs.25 lakhs are subject to the jurisdiction of the respective Civil court having jurisdiction over the place of works /supply/service.

The claims above Rs.20 crores are subject to the exclusive jurisdiction of the court situated at Chennai

The above provisions shall supersede provisions relating to the Arbitration, Government Law and Jurisdiction



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mentioned elsewhere in the tender documents”

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3. Therefore, there is a specific clause that dispute, if any, arising out of the terms and conditions of the contract, shall be settled amicably between the parties concerned before the arbitrator. As such, these writ petitions cannot be entertained when there is a specific remedy before the arbitrator.

4. In view of the above, these writ petitions are not maintainable and the same are liable to be dismissed. However, the petitioner is at liberty to approach the arbitrator within a period of four weeks from the date of receipt of copy of this order for settling the dispute between the petitioner and the second respondent in the manner known to law. Till then, the respondents are directed not to take any action as against the security deposit made by the petitioner.

5. With the above direction, all the writ petitions are dismissed. Consequently, connected miscellaneous petitions are closed. There shall



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be no order as to costs.

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Neutral citation: Yes/No

Index: Yes/No

Speaking/Non-speaking order

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To

- 1.The Chairman cum Managing Director,
Neyveli Lignite Corporation Ltd.,
Corporation Office, Block No.1,
Neyveli 607 801
- 2.General Manager,
NLC India Limited,
Contracts / Thermal, TPS-II Expansion Campus,
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G.K.ILANTHIRAIYAN, J.

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