



CWP-10033-2019

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**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

CWP-10033 of 2019**Date of Decision : 04.11.2024**

M/s Arvindera Electricals

..... Petitioner

Versus

Uttar Haryana Bijli Vitaran Nigam Limited and others

..... Respondents

**CORAM : HON'BLE MR. JUSTICE ARUN PALLI
HON'BLE MR. JUSTICE VIKRAM AGGARWAL**

Present : Mr. Chetan Mittal, Senior Advocate
with Mr. Himanshu Gupta, Advocate
for the petitioner.

Mr. Deepak Balyan, Advocate
for the respondents.

VIKRAM AGGARWAL, J

1. The petitioner prays for the issuance of a writ of *certiorari* for quashing the letters of demand dated 12.03.2019, 19.03.2019, 22.03.2019 and 01.04.2019 (**Annexure P-11 colly**), vide which penalty of ₹31,73,569/- has been imposed upon the petitioner.

2. The petitioner is a proprietorship firm. In pursuance of a tender having been issued by the respondents-Uttar Haryana Bijli Vitaran Nigam Limited (for short 'UHBVN'), the petitioner submitted its bid. On acceptance of the bid of the petitioner, letter of intent dated 29.01.2016 (**Annexure P-2 Colly**) was issued in its favour. In the said letter, it was mentioned that if the petitioner carries out the work in time and process for permission of railway



crossing in time, the completion schedule would be extended by the delay caused at the end of the railway authorities and penalty would not be deducted on account of this delay.

3. On 09.02.2016, contract agreements were executed between the petitioner and the respondents and the said agreements were supplied to the petitioner on 25.04.2016 (**Annexure P-3 colly**).

4. The petitioner as well as one other firm i.e. M/s Century Infrapower Pvt. Ltd., Jaipur moved representations and on the said representations, an issue arose whether the penalty should be charged on the entire work or the leftover work. On the said representations, a memorandum (**Annexure P-4**) was prepared. Clauses 3 and 4 of the said memorandum had a proposal that the penalty, if any, should be charged on the leftover work and not on the entire work. The said proposal was placed before the Whole Time Directors (WTDs) and the same was approved.

5. The petitioner had completed work in respect of 6 numbers of feeders on 17.01.2018 and accordingly completion certificate (**Annexure P-6**) was issued in its favour on 04.06.2018. Even the defect liability/Warranty period also stood completed in all respects and a copy of 'No Defect Certificates' (**Annexure P-7 colly**) was also issued. It has been averred that on account of the alleged delay, Rs.9 lacs were deducted from the payment of the petitioner.

6. Against the said act of the respondents, the petitioner moved a representation dated 21.05.2018 (**Annexure P-8 colly**). In pursuance thereto, the respondents admitted that approximately 80% work allotted to the petitioner had been completed upto the scheduled date and the remaining



work was pending because of hindrance and obstructions caused due to various reasons. Respondent No.4-Superintendeing Engineer/P&D UHBVN, Panchkula issued letter dated 15.10.2018 (**Annexure P-9**) for releasing the bank guarantee in respect of the 5 numbers of feeders and the Chief Engineer had approved the release of the said bank guarantee vide letter dated 28.03.2019 (**Annexure P-10**).

7. After one year of the completion of work, the respondent(s)- Executive Engineer vide impugned letters dated 12.03.2019, 19.03.2019, 22.03.2019 and 01.04.2019 (**Annexure P-11 colly**) called upon the petitioner to deposit a sum of Rs.31 lacs as penalty calculated on the entire contract work on the alleged observations made by the AG (Audit), Haryana. The petitioner submitted reply through e-mail on 19.03.2019 as well as letters dated 25.03.2019 and 04.04.2019 (**Annexure P-12 Colly**).

8. Aggrieved by the action of the respondents of imposing penalty upon the petitioner, the present writ petition has been preferred.

9. We have heard learned counsel for the parties and have gone through the record.

10. Clause 56.5 of the DNIT/NIT (Annexure P-1) reads as under:-

“56.5 In the event of the Empowered Officer failing to notify his decision as aforesaid within thirty (30) days after being requested aforesaid, or in the event of either the Owner or the Contractor being dissatisfied with any such decision, or within thirty (30) days after the expiry of the first mentioned period of thirty (30) days, as the case may be either party may require that the matters in



dispute be referred to arbitration as hereinafter provided.”

11. Since both parties seek expeditious resolution of the issue in hand, therefore, to avert any delay in the same, learned counsel have, during the course of arguments, reached a consensus. It has mutually been agreed by learned counsel for the parties (on instructions) that for effective and conclusive resolution of the dispute, the matter be referred to Arbitration and that for the said purpose, a Single Member Arbitral Tribunal be appointed. With their mutual consent, learned counsel for the parties have also proposed the name of Sh. B.M.Bedi, District & Sessions Judge (Retired).

12. In view of the aforesaid, Sh. B.M.Bedi, District & Sessions Judge (Retired) is appointed as a Single Member Arbitral Tribunal to adjudicate upon the disputes/issues arising in the instant matter for which, the parties shall appear before the said Arbitrator on 02.12.2024 at 10:00 a.m.

The petition is disposed of in the above terms.

(ARUN PALLI)
JUDGE

(VIKRAM AGGARWAL)
JUDGE

04.11.2024
mamta

Whether speaking/reasoned
Whether Reportable

Yes/No
Yes/No