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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **W.P.(C) 5853/2024**

M/S LALL CONSTRUCTION (INDIA) LIMITED Petitioner
Through: Mr. Neeraj Malhotra, Sr. Adv.
alongwith Mr. Jeevesh Mehta, Adv.

versus

NORTHERN RAILWAYS & ORS. Respondents
Through: Mr. Shashank Garg, CGSC alongwith
Ms. Aradhya Chaturvedi and Ms.
Nishtha Jain, Advs.
Ms. Manpreet Kaur Bhasin, Adv. for
UOI.

CORAM:

HON'BLE MR. JUSTICE SACHIN DATTA

ORDER

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29.04.2024

CM APPL.24186/2024 (Exemption from filing certified copies/fair typed
copies)

Allowed, subject to all just exceptions.

The application stands disposed of.

W.P.(C) 5853/2024 & CM APPL. 24185/2024 (Stay)

1. The present petition assails notice No.139-A/Cs/Dy.CE/C/JUC dated
08.04.2024 issued by the Northern Railways. The said notice is reproduced
as under:-

*“NORTHERN RAILWAY
(7 DAYS NOTICE)*

*Regd.AD
(Without Prejudice)*

*Office of the
Dy. Chief Engineer/Const.
N.Rly. Jalandhar City.*

139-A/Cs/Dy.CE/C/JUC

Dated : 08.04.2024

*LALL CONSTRUCTION (INDIA) LTD.
NEW DELHI, Third Floor, Plot No.28 Karuna Kunj,*



*Sector 03 Dwarka,
New Delhi, Delhi-110075 India*

Sub: Construction of br. No 32 at km 11/759.410 across Chakki River on TK-JDNX section (07 days' notice in accordance with Clause 62 of the Standard General Conditions of Contract). Contract agreement No.: NR/NRC/Civil/2023/0024 dated 22.03.2023

Please refer to this office letters 74-W-1-1-230-WA-D-JAT dated 11.09.2023 followed by reminder letters dated 29.12.2023 & 28.02.2024 wherein you were requested to submit your explanation as to why action should not be initiated/taken in terms of para 6,7, 8 & 9 of Annexure-M submitted duly notarized & signed by your firm in connection with above subjected tender for providing incorrect Annexures/certificates regarding eligibility criteria

The replies given by you vide letter nos. Nil dated 14.09.223, Nil dated 21.12.2023, Nil dated Nil (received on 05.02.2024) and reply no. Nil dated 12.03.2024 have been reviewed by this office and not found to be satisfactory.

As you have failed to abide by the instructions to submit a satisfactory explanation as to why action should not be initiated/taken in terms of para 6,7, 8 & 9 of Annexure-M, you are hereby given 7 days' notice in accordance with Clause 62 of the Standard General Conditions of Contract to submit your explanation within 7 (seven) days from the date of receipt of this letter failing which it will be presumed that you have nothing to say on your act of submission of incorrect information and considering the same as accepted by you, further action as provided in Clause 62 of the Standard General Conditions of Contract viz. to terminate your Contract and complete the balance work without your participation along with forfeiture of Bid Security/Security Deposit and Performance guarantee will be taken besides any other action provided in the contract.

*Sd/-
Dy. Chief Engineer/Const.
N.Rly. Jalandhar City."*

2. Learned senior counsel for the petitioner strenuously contends that the said notice is misconceived and has been issued in utter denial of principles of natural justice inasmuch as the reply given by the petitioner to the initial letter dated 11.09.2023 of the Northern Railways has not been considered at all. Instead, only a cryptic observation has been made in the aforesaid notice,



that the reply given by the petitioner has “not been found to be satisfactory”.

3. During the course of hearing, it transpires that in terms of the last paragraph of the aforesaid notice dated 08.04.2024, the petitioner has submitted its detailed explanation to the respondent/ Northern Railways. The said explanation was called for from the petitioner as a pre-cursor to any action under clause 62 of the Standard General Conditions of Contract (‘GCC’), which deals with termination of contract.

4. *Vide* the said explanation (filed as Annexure P-10 in the present petition), while making several submissions, the petitioner has also sought that an opportunity of personal hearing/meeting may be afforded to the petitioner before taking any final decision pursuant to Clause 62 of the GCC.

5. Mr. Shashank Garg, learned Central Government Standing Counsel, who appears on advance notice, fairly submits that prior to taking any action pursuant to Clause 62 notice, not only would the respondents take into consideration the reply dated 16.04.2024 furnished by the petitioner (filed as Annexure P-10 in the present petition), but would also grant an opportunity of personal hearing to the petitioner. Further, if any termination action is proposed to be taken, the same would be taken *vide* a speaking order to be passed by the respondents.

6. In view of the aforesaid statement, learned senior counsel for the petitioner does not wish to press the present petition at this stage; the same is accordingly dismissed as withdrawn.

7. Needless to say, the petitioner shall be at liberty to avail appropriate remedy as available under law, in case the respondents terminate the contract by taking recourse to Clause 62 of the GCC.

APRIL 29, 2024/r

SACHIN DATTA, J