



HIGH COURT OF CHHATTISGARH AT BILASPUR

Writ Petition (C) No. 362 of 2022

1. M/s S.S. Chhatwal and Company (Contractor) Private Limited Registered Address- E/26, G/f, G.K.-II, New Delhi- 110019. Corporate Address- S.S. Plaza Power House Road Korba 495677 (Chhattisgarh) Through Its Director Sarbjeet Singh Chhatwal, S/o. Lt. Surender Singh Chhatwal Aged About 52 Years, R/o Tulsi Marg, Korba (Chhattisgarh).

---Petitioner(s)

Versus

1. National Thermal Power Corporation Limited (NTPC) Through Its General Manager Talaipali Coal Mining Project Lailunga Road, Gharghoda, District Raigarh Chhattisgarh.
2. HDFC Bank Limited Through Its Branch Manager, Korba Branch, 646/1, Power House Road, Near Deepti Chasma Ghar, Korba Chhattisgarh 495677.

---Respondents

For Petitioner	:	Shri S.C. Verma, Sr. Advocate along with Shri Vikram Sharma and Ms. Juhi Jaiswal, Advocates.
For Respondent No.1	:	Shri Anand Shukla, Advocate.

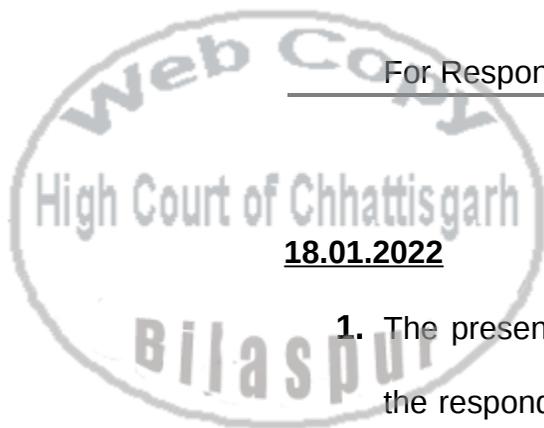
Hon'ble Shri Justice P. Sam Koshy

Order on Board

18.01.2022

1. The present writ petition has been filed against the action on the part of the respondents in issuing Annexure P/17, dated 13.01.2022 whereby the respondent-NTPC had issued a correspondence to the HDFC Bank for invocation of the bank guarantee (No.918GT02193030001, dated 30.10.2019 for Rs.4,35,73,512.00, Contract/PO No.5500033449, dated 21.06.2019).
2. Learned counsel representing the petitioner took the court to the agreement entered into between the parties. Clause 24.4.(c) and 24.4.(d) dealing with the aspect of show cause notice for termination of the contract in the event of a default. For ready reference Clause 24.4.(c) and 24.4.(d) are reproduced hereinunder:

"24.4(c). Upon receipt of notice of termination by the non-terminating party pursuant to Clause 24.4(a) or 24.4(b) as the



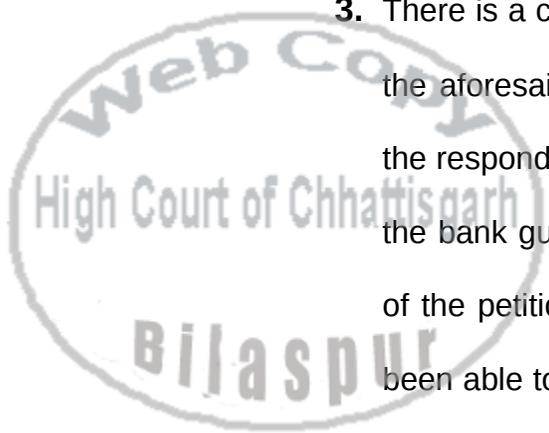


-2-

case may be, the parties shall discuss in good faith for a period of thirty (30) days the options for the cessation of event that led to the issue of the notice. It is clarified that during the period of thirty (30) days the obligations of the parties shall continue to subsist.

24.4(d). At any time after the expiry of such period of thirty (30) days after the terminating party gave notice to the other party pursuant to 24.4(a) or 24.4(b), as the case may be, unless the circumstances constituting the termination event have either been fully remedied to the satisfaction of such terminating party or have ceased to apply, such terminating party may terminate this agreement by giving a forty five (45) days prior written notice of such termination to the non-terminating party.”

3. There is a categorical statement and averment made by the petitioner that the aforesaid requirement of the agreement has not been adhered to by the respondent NTPC before initiating the invocation proceedings invoking the bank guarantee furnished by the petitioner. It is the further contention of the petitioner that the petitioner in the initial phase of the contract has been able to discharge his duties to the satisfaction of the management of NTPC. However, on account of the impact of Covid-19 Pandemic the petitioner could not discharge the duties effectively and as a result there was some shortfalls on the part of the petitioner in completion of the work as per schedule and which the petitioner had been apprising the management of NTPC time and again. It is the further contention of the petitioner that ignoring the aforesaid factual aspect of the matter and without taking a pragmatic approach the respondents unilaterally decided to terminate the contract of the petitioner and initially issued a show cause notice which was responded too by the petitioner and thereafter Annexure P/16 dated 10.01.2022 was issued which is a notice of termination of contract issued by the responded NTPC. Annexure P/16, was a notice of





-3-

termination which would come into force or become effective only after 45 days starting from 10.01.2022. This in other words, according to the petitioner for a period of 45 days starting from 10.01.2022, the agreement would be subsisting and there was a reason why the respondents should have invoked the bank guarantee during the said period itself and that too without even intimating the petitioner and without even raising any claim against the petitioner for any recovery or any default as such.

4. Learned counsel for the petitioner submits that 10.01.2022 is the date on which a notice of termination was issued and 13.01.2022 i.e. just in an around two days time the notice of invocation of bank guarantee have also been issued. The petitioner further submits that since in the agreement itself there is a mechanism carved out for resolving the disputes, if any, by a mutual negotiation and discussion in good faith. The respondent should first have resorted to the said mechanism before initiating any co-ercive action against the petitioner. The petitioner referring to clause 24.4.(c) submitted that under no circumstances could the respondents have initiated any recovery proceedings within 30 days time from the date of issuance of the notice which in the instant case is 10.01.2022. The petitioner prayed that the matter may be disposed of directing the petitioner and the respondents to resort to the mechanism provided under Clause 24.4.(c) and thereafter to take an appropriate decision, meanwhile the present decision of invoking the bank guarantee be deferred to and the letter issued to the HDFC Bank by the management of NTPC be withdrawn for the time being.
5. Learned counsel for the respondent NTPC opposing the petition submits that the writ petition first of all would not be maintainable in the light of there being an alternative remedy carved out in the agreement of resolving





-4-

the dispute by resorting to the arbitration clause. The respondent also raised an issue of jurisdiction of this court, as the parties by way of an agreement have conferred the jurisdiction upon the court situated in Delhi. The third objection raised by the respondent was that the judicial pronouncements in the recent past clearly holds that the courts should be slow in interfering with matters dealing with invocation of bank guarantee.

6. So far as the question of an alternative remedy of resolving the dispute by arbitration and so also the aspect of jurisdiction of this court is concerned, all the judgments referred to and which have been passed on the subject matter issue, nowhere does it preclude the jurisdiction of the court if the court otherwise has jurisdiction other than the agreement entered into between the parties, provided the cause of action has arisen within the territories of the jurisdiction over which the High Court has. Likewise, on the aspect of an alternative remedy also the judicial pronouncement do not take away the right of this court in deciding the matter in an exceptional circumstances. The judicial pronouncements referred to by the counsel for the respondent NTPC clearly deal with this issue wherein it has been emphatically held that in a given case if the party is able to make out an exceptional case at the same time if the court finds that an irretrievable injustice would occur in the event if the writ jurisdiction is not invoked by the court, at a given moment of time, the High Courts do have the power to entertain the writ petition.
7. Coming to the facts of the instant case when we look into the agreement entered into between the parties, it will clearly reflect that it was mutually agreed between the parties to first try to resolve the dispute in good faith by negotiation and discussion across the table in respect of any dispute arising out of the said contract/agreement.





-5-

- 8.** It cannot be lost sight of the fact that for the last almost two years period the whole country was grappling with the impact of Covid-19 Pandemic. Every establishment has been adversely affected by its impact. The respondent NTPC is no exception and the contractors engaged by the NTPC also were faced with similar situation. If that was the reason, it was expected of the management of NTPC to consider the grievances in a pragmatic, practical and in a feasible manner without there being any detriment to the interest of either of the parties.
- 9.** From the documents enclosed along with the writ petition there does not seem to have been any effort made on the part of the NTPC for resolving the dispute between the parties amicably by way of a mutual discussion and negotiation. There also does not seem to be any correspondence made by the management of NTPC to show any loss as such caused to the management of NTPC or there being any loss caused on account of any particular breach of contract agreed upon between the parties. Neither does the pleadings to the writ petition show any particular order of recovery initiated against the petitioner and for the making good of such loss, it necessitated the invocation of the bank guarantee.
- 10.** Coupled with the aforesaid facts, what is also apparently evident is that 10.01.2022 is the notice of termination issued with clear averment that the order of termination would come into effect only on the completion of 45 days time. However, in less than two days time the respondents resorted to the invocation of the bank guarantee much to the detriment of the petitioner more particularly when the validity of the bank guarantee was valid up till 29.05.2022.
- 11.** Considering the entire facts and circumstances of the case and looking to the relief sought for by the petitioner and the submission made by the





-6-

counsel for the respondent, instead of admitting the petition along with an interim protection and keeping it pending for a long, this court is of the opinion that ends of justice would meet if the writ petition at this juncture is disposed of directing the petitioner and the respondent NTPC to resort to the conditions as stipulated in Clause 24.4(c) and 24.4(d) of the agreement entered into between the parties by way of a mutual discussion and negotiation and try to resort the disputes. That, only on failure of the said discussion/conciliation should the management of NTPC avail other remedies available to them in terms of the agreement entered into between the parties which includes the action of invocation of the bank guarantee.

12. Considering the fact that the bank guarantee furnished by the petitioner is valid up till 29.05.2022, the respondents can have a negotiation and try to come out with a solution within a period earlier to that and if required only thereafter to initiate invocation proceedings so far as the bank guarantee is concerned. The respondents accordingly are restrained from encashing the bank guarantee referred to in the preceding paragraph, if not encashed by now.

13. It is made clear that this court has not expressed any opinion so far as the veracity of the order dated 10.01.2022 i.e. the notice of termination issued against the petitioner is concerned. This writ petition is confined only so far as the notice Annexure P/17 dated 13.01.2022 is concerned.

14. The writ petition accordingly stands partly allowed and disposed of.

Sd/-
(P. Sam Koshy)
Judge

inder