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

Date of Order: June 26, 2019

+ **O.M.P.(I) (COMM.) 205/2019**

ECI-NAYAK (JV) Petitioner

Through: Mr. Ravi Kant Chadha, Senior
Advocate with Mr. Sanjeev Kumar
Sharma and Mr. Jitendra Kumar
Jha, Advocates

versus

IRCON INTERNATIONAL LIMITED & ANR. Respondents

Through: Mr. Abir Phukan, Advocate for
respondent No.1

CORAM:

HON'BLE MS. JUSTICE JYOTI SINGH

JYOTI SINGH, J. (ORAL)

I.As.8608-09/2019 (Exemption)

Allowed subject to all just exceptions.

O.M.P.(I) (COMM.) 205/2019

1. With the consent of learned counsel for the parties, the present petition is taken up for final hearing today itself.
2. Learned senior counsel for the petitioner contends that twice the extension was granted to the petitioner to complete the project work i.e. Earthwork in filling in embankment provision of blanketing material construction of viaduct minor bridge and RUB in the stretch from KM 0.00 (Agartala to Km 5.1 Indian Bangladesh Border) and construction of

service road from trans-shipment yard to NH-44 in connection with new BG railway line from Agartala Akhaura.

3. Learned senior counsel further submits that even as recent as on 12th June, 2019, second extension was granted by the respondent No.1 till 23rd June, 2020 under Clause 17 B of the GCC with liquidated damages. He submits that the respondent had also asked the petitioner to extend the Bank Guarantee upto 22nd August, 2020. The argument is that having done so, there was no reason for the respondent to have issued a show-cause notice on 18th June, 2019 giving the petitioner seven days to complete the work, failing which the contract was to be terminated. He further submits that even as late as on 17th June, 2019, which was just the few hours before the show-cause notice, a letter was issued by the respondent pointing out the slow progress of the work and asking the petitioner to complete the project by 23rd June, 2020. He points out that response to the show-cause notice has been filed by the petitioner on 20th June, 2019.

4. Learned counsel for the respondent No.1 *per contra* submits that the petitioner has been guilty of slow progress of the work. The contract in question is an important contract involving bilateral relationship between India and Bangladesh. He submits that on number of occasions, it was pointed out to the petitioner that his work was not proceeding as per required time-lines. He further submits that even while issuing the letter of 17th June, 2019, it was informed to the petitioner in the earlier part of the letter that the work progress was unsatisfactory. He also submits that in fact there are serious lapses in the work of the petitioner,

like non-availability and frequent breakdown of the machinery, etc.. He further submits that under Clause 61.1 of the GCC, the Railways have the right to determine the contract in case the conditions mentioned in the said Clause are not fulfilled. He also relies upon Clause 62.1 that relates to determination of the Contract owing to the default committed by the Contractor.

5. Learned senior counsel for the petitioner in rejoinder submits that the reply has been given to the show-cause notice, but so far, there has been no consideration and instead a letter has been issued on 25th June, 2019 by the respondent No.1 in which a 48 hours notice has been given to the petitioner in terms of Clause 62 of the Standard GCC to make good the progress of the work, failing which, on expiry of this period, the Contract will stand rescinded and the work will be carried out independently, without the petitioner's participation. It is further stated in the letter that the security deposit shall be forfeited and performance guarantee shall also be encashed and consequences may follow. The said letter of 25th June, 2019 has not been filed and has been handed over in the Court. The aforesaid letter has been taken on record and copy thereof has been handed over to learned counsel for the respondent No.1.

6. Learned counsel for the respondent No.1 faced with this submits that he has instructions to state that since the reply has been received to the show-cause notice dated 18th June, 2019, respondent No.1 will pass a speaking order on the show-cause notice after considering the reply.

7. In view of the aforesaid stand of the respondent No.1, let the respondent No.1 decide the show-cause notice after looking into the reply

and pass a speaking order thereon within a period of two weeks from today. Till the decision is taken by respondent No.1, they will not rescind the Contract or invoke the Bank Guarantee. The security deposit will also not be forfeited till then. In case the speaking order passed by the respondent No.1 is against the petitioner, it will not be given effect to for a period of seven days thereafter, to enable the petitioner to have recourse to remedies as available to the petitioner in law.

8. In the above terms, the petition is disposed of.

Dasti.

**JYOTI SINGH
(VACATION JUDGE)**

JUNE 26, 2019

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