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

+ W.P.(C) 13957/2024

BKB TRANSPORT PRIVATE LIMITED

.....Petitioner

Through: Mr. Arvind Nayar, Senior Advocate
with Mr. Vivek Raja, Mr. Kaushik
Poddar, Advocates

versus

NTPC LTD & ANR.

.....Respondents

Through: Mr. Puneet Taneja, Mr. Anil Kumar,
Mr. Amit Yadav, Advocates

+ W.P.(C) 13992/2024

BKB TRANSPORT PRIVATE LIMITED

.....Petitioner

Through: Mr. Arvind Nayar, Senior Advocate
with Mr. Vivek Raja, Mr. Kaushik
Poddar, Advocates

versus

NTPC LTD & ANR.

.....Respondents

Through: Mr. Puneet Taneja, Mr. Anil Kumar,
Mr. Amit Yadav, Advocates

+ W.P.(C) 13994/2024

BKB TRANSPORT PRIVATE LIMITED

.....Petitioner

Through: Mr. Arvind Nayar, Senior Advocate
with Mr. Vivek Raja, Mr. Kaushik
Poddar, Advocates

versus



NTPC LTD & ANR.

.....Respondents

Through: Mr. Puneet Taneja, Mr. Anil Kumar,
Mr. Amit Yadav, Advocates

CORAM:

HON'BLE MR. JUSTICE SANJEEV NARULA

O R D E R

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07.10.2024

CM APPL. 58404/2024 (Exemption) in W.P.(C) 13957/2024

CM APPL. 58515/2024 (Exemption) in W.P.(C) 13992/2024

CM APPL. 58517/2024 (Exemption) in W.P.(C) 13994/2024

1. Exemption is granted, subject to all just exceptions.
2. The Applicant shall file legible and clearer copies of exempted documents, compliant with practice rules, before the next date of hearing.
3. Accordingly, the applications stand disposed of.

W.P.(C) 13957/2024, W.P.(C) 13992/2024 & W.P.(C) 13994/2024

4. The common Petitioner in the aforementioned writ petitions – BKB Trasport Private Limited, acknowledge that they have invoked arbitration in respect of their disputes with the Respondents arising from Purchase Orders being P.O. 4000278831-064-1041 dated 13th May, 2022 and P.O. 4000281096-064-1041 dated 17th June, 2022.
5. Nonetheless, Mr. Arvind Nayar, Senior Counsel for the Petitioner urges that the instant writ petitions pertain to different Purchase Orders wherein the amounts are not disputed. Therefore, he argues that such amounts should be released by the Respondents and in this regard, the writ jurisdiction of this Court under Article 226 of the Constitution of India can be invoked.
6. On the other hand, Mr. Puneet Taneja, counsel for the Respondents



states that notwithstanding the fact that the amounts are due to the Petitioner, the Respondents are entitled to adjustment and retention of the said amounts under Clause 27 of the General Conditions of Contract under the Purchase Orders, which stipulates as under:

“27. Overpayments and Underpayments

27.1 Wherever any claim for the payment of a sum of money to the Employer arises out of or under this Contract against the Contractor, the Contractor upon demand by the Employer or by the Engineer-in-Charge on behalf of the Employer, with explanation of the reasons for such a sum/ claim becoming due, shall forthwith pay the same to the Employer. If the Contractor fails to do so within twenty-one (21) days of such a claim, then the same may be deducted by the Employer from any sum then due or which at any time thereafter may become due to the Contractor under this Contract or from any other sum due to the Contractor from the Employer which may be available with the Employer or from his security deposit.

27.2 The Employer reserves the right to carry out post payment audit and technical examination of the final bill including all supporting vouchers, abstracts, etc. The Employer further reserves the right to enforce and recover any overpayment when detected, notwithstanding the fact that the amount of the final bill may include any item which is under dispute between the parties and referred to for settlement under GCC Clause entitled ‘Settlement of Disputes’ and notwithstanding the fact that the amount of the final bill figures in the arbitration decision/award.

27.3 If as a result of such audit and technical examination, any overpayment is discovered in respect of any Work done by the Contractor or alleged to have been done by him under the Contract, it shall be recovered by the Employer from the Contractor by any or all of the methods prescribed above. Similarly, if any underpayment is discovered by the Employer, the amount shall be duly paid to the Contractor by the Employer forthwith.

27.4 Provided that the aforesaid right of the Employer to adjust overpayments against amounts due to the Contractor under any other Contract with the Employer shall not extend beyond the period of two years from the date of payment of the final bill or in case the final bill is a minus bill, from the date communicate to the Contractor.

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27.5 Any amount due to the Contractor under this Contract for underpayment may also be adjusted against any amount then due or which may at any time thereafter become due from the Employer to the Contractor under any other Contract or account whatsoever.”

7. In light of the above, Mr. Nayar states that he will examine this issue and cite appropriate case laws wherein this Court has entertained a writ petition under Article 226 of the Constitution of India, notwithstanding such contractual stipulations.

8. Re-notify on 14th October, 2024.

SANJEEV NARULA, J

OCTOBER 7, 2024/ab