

**HIGH COURT OF JAMMU AND KASHMIR
AT JAMMU**

WP(C) No. 1438/2020
CM Nos. 4746 & 4747/2020

Cav. No. 1445/2020
(Through Video Conferencing)

M/s Max Infra Ltd.

...Petitioner(s)

Through:- Mr. R.K. Gupta, Sr. Advocate with
Mr. Prem N. Sadotra, Advocate

v/s

Konkan Railway Corporation and others

....Respondent(s)

Through:- Mr. P.S. Chandel, Advocate
for Caveator

Coram: HON'BLE MR. JUSTICE RAJESH BINDAL, JUDGE

ORDER

Cav. No. 1445/2020

1. Caveator discharged.

WP(C) No. 1438/2020

2. Learned counsel for the petitioner inter-alia submitted that it was awarded contract for carrying out construction of balance work of Tunnel T-3 on Katra-Daram Section of Udhampur-Srinagar-Baramulla New BG Railway Line Project in the year 2010. The work was completed in the year 2016. Even the Bank guarantee was released on 20.06.2016. Final payment was made on

29.01.2018. After the defect period was over even the earnest money was also refunded on 03.02.2018. Thereafter, the petitioner did not have any liability. During the execution of the project, certain additional works were to be carried for which Subsidiary Agreement was signed on 05.05.2017. The same was after the work had already been executed and correct measurements of the works were available.

3. Without there being any authority or condition in the contract, a communication dated 10.08.2020 was sent to the petitioner informing that there was over payment to the petitioner to the extent of Rs. 1,05,60,713/-. The amount was directed to be deducted out of the payments due to the petitioner for execution another work of Tunnel T-5, in the same project.

4. The submission is that the action of respondents is totally without jurisdiction as there was no right available with the respondents to deduct the payment with reference to the concluded contract from the payment due against some other work being executed by the petitioner. He further submitted that after the filing of the present petition and before the same was listed, as copy the petition had been supplied to the counsel for the respondents, a sum of Rs. 33,99,290/- have been deducted from the earnest money/security lying with the respondents against the work of Tunnel T5, on 10.09.2020. Such security could be adjusted or was required to be refunded only after that work was concluded. No opportunity of hearing was afforded to the petitioner before the aforesaid amount was sought to be recovered.

5. On the other hand, learned counsel for the respondents/caveator submitted that Central Vigilance Commission in routine carries out audit/inspection of various works being executed or concluded, by the

Government or Government companies and in that process, it came out that for item No. 1 and 13 of the additional works allegedly executed by the petitioner, no payment was due. The amount is recoverable from the petitioner. He further submitted that the petitioner is executing the work of Tunnel T-5, which is worth about Rs. 600,00,00,000/- (Rupees Six hundred crores only). 90% of the work has been executed whereas about 10% remains. There is no question of grant of interim relief in favour of the petitioner. Otherwise to defend the petition on merits, he would file objections. This Court does not have the jurisdiction to entertain the present petition.

6. Notice to the respondents for 08.10.2020.

7. Mr. P.S. Chandel, Advocate accepts notice on behalf of respondents.

8. Considering the fact that about Rs. 34.00 lacs have already been recovered from the earnest money/security of the petitioner lying with reference to other work being executed by it, recovery of the balance amount shall remain stayed.

(RAJESH BINDAL)
JUDGE

CHANDIGARH
21.09.2020
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