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**(2021) 10 CHH CK 0040**

**In the Chhattisgarh High Court**

**Case No : Writ Petition (Civil) No. 4013 Of 2021**

AVI India International L.L.P.

APPELLANT

Vs

State Of Chhattisgarh

RESPONDENT

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**Date of Decision : 18-10-2021**

**Acts Referred:**

**Citation : (2021) 10 CHH CK 0040**

**Hon'ble Judges : Rajendra Chandra Singh Samant, J**

**Bench : Single Bench**

**Advocate : YC Sharma, Shaileja Shukla, Anmol Sharma, Vivek Ranjan Tiwari, Anish Tiwari**

**Final Decision : Disposed Of**

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## **Judgement**

1. Heard.

2. This petition has been brought challenging the impugned order dated 6.9.2021-Annexure P/1 passed by respondent No.2.

3. It is submitted by learned counsel for the petitioner that the petitioner and respondent No.2 entered into an agreement on 1.4.2021, by which, the petitioner was required to make purchase of 10,000 MT of rice from respondent No.2 within a period starting from 1.7.2021 to 23.7.2021. The petitioner-firm lifted 3500 MT of rice by making payment of Rs.7,74,20,000/-. During this time, the partner of the firm Vijay Kumar Khandelwal got infected with Corona Virus and he expired on 8.4.2021 The petitioner-firm suffered badly because of the loss of one of the partners and also suffered financially. The petitioner-firm was then issued a notice vide Annexure P/5 by respondent No.2 directing to lift the remainder rice within a stipulated period.

4. Learned counsel for the petitioner submits that the petitioner made a representation on 31.7.2021 requesting to permit lifting of the rice equivalent to the value of the security deposit and give exemption of lifting of the remainder rice. The request of the petitioner was not considered and the impugned order

was passed on 6.9.2021, by which, the penalty of Rs.60,76,237/- has been imposed upon the petitioner. The petitioner then moved a second representation on 20.9.2021 mentioning that the petitioner-firm is unable to perform the remaining part of the contract because of the financial reasons and a prayer was made for cancellation of the contract and also granting relief from the penalty imposed upon the petitioner. It is further submitted that respondent No.2 has not considered the representation of the petitioner so far, therefore, a direction may be issued to respondent No.2 to consider his representation at the earliest.

5. Learned counsel for the State raises formal objection.

6. Learned Senior Counsel for respondents 2 & 3 opposes the submissions and submits that respondent No.2 has acted in accordance with clause 12 of the agreement as respondent No.2 has entitlement to recover costs and damages from the petitioner on account of non-compliance of the contract. It is further submitted that according to clause 13 of the agreement, the petitioner has option to make representation to the Managing Director of respondent No.2 and consequent to which, he has option to approach the Arbitration Tribunal, therefore, the present writ petition is not maintainable.

7. Considering that clause 13 of the agreement provides for dispute resolution mechanism, the petition is disposed of at the motion stage. The petitioner is granted liberty to file fresh representation raising a dispute before the Managing Director of respondent No.2 and the petitioner shall also have liberty to avail the remedy as provided under Clause 13 of the agreement.

8. In case any such representation is filed by the petitioner within a period of 7 days from today, the Managing Director of respondent No.2 is directed to consider and decide the same within the stipulated time as provided under clause 13 of the agreement.

9. The writ petition is disposed of.