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**(2024) 12 RAJ CK 1224**

**In the Rajasthan High Court, Jodhpur Bench**

**Case No :** Civil Writ Petition No. 18912 Of 2024, Connected with Civil Writ Petition No. 18913 Of 2024

M/S. Galaxy Mining Pvt. Ltd., APPELLANT

Vs

State Of Rajasthan RESPONDENT

**Date of Decision :** 18-12-2024

**Acts Referred:**

**Citation :** (2024) 12 RAJ CK 1224

**Hon'ble Judges :** Arun Monga, J

**Bench :** Single Bench

**Advocate :** Suniel Purohit, A.S. Shekhawat, Rajendra Prasad

**Final Decision :** Disposed of

# Judgement

Avneesh Jhingan, J

1. These two writ petitions are decided by this order as the issue involved is common. For convenience, the facts are being taken from S.B. Civil Writ Petition No.18912/2024.

2. The issue involved is whether petitioner is entitled to exemption of part of contract money and extension of contract period on account of closure of mining activity for twenty days, consequent to implementation of Graded Response Action Plan (for short 'GRAP') in National Capital Region ('NCR').

3. The brief facts are that the petitioner was awarded contract for collection of excess royalty, amount for District Mineral Foundation Trust and Rajasthan State Mineral Exploration Trust for Mineral Masonary Stone excavated in Tehsil Alwar and Ramgarh, District Alwar. The contract is for the period 05.08.2024 to 31.03.2026. The petitioner had to pay yearly amount of Rs.44,00,71,000/-. From 15.11.2024 to 05.12.2024 in the NCR the revised schedule of Stage-III of GRAP was implemented and the mining activities were closed. Vide letter dated 12.11.2024 the Mining Engineer, Department of Mines and Geology, Alwar directed the petitioner to deposit the monthly installment of the contract amount

within fifteen days. The petitioner submitted representation dated 22.11.2024 that due to implementation of GRAP-III, monthly installment be exempted and contract period for the equivalent period affected by imposition of GRAP-III be extended.

4. Relying upon the Rule 44 (16) and (17) of the Rajasthan Minor Mineral Concession Rules, 2017 (hereinafter 'the Rules of 2017'), the request of the petitioner was declined vide communication dated 04.12.2024. Representation of the petitioner in Writ Petition No.18913/2024 is still pending.

Hence, the present writ petition.

5. Learned counsel for the petitioner argues that due to implementation of GRAP-III there was no collection of royalty as mining activities were closed in NCR. The contention is that as per last proviso to Rule 36 of the Rules of 2017 the collection of monthly contract money ought to have been exempted and period of lease is to be extended equivalent to the period of implementation of GRAP-III. Submission is that Rule 44 (16) of the Rules of 2017 does not deal with complete shut down of the mining activity and is not applicable to the facts of the case.

6. It would be relevant to reproduce Rule 36 (5), Rule 44(16) and (17) of the Rules of 2017:-

"Rule 36. Grant of royalty collection contract or excess royalty collection contract:-

(1) to (4) XX XX XX

(5) Royalty collection contract or excess royalty collection contract may be granted by the competent authority for a maximum period of two financial years or part thereof ending on 31st March:

Provided that where the new contract could not be allotted, the period of existing contract may be extended by the Director, with reasons to be recorded in writing for a period upto ninety days or till new contract comes into force, whichever earlier and a rider agreement shall be executed before expiry of the original contract by the Mining Engineer or Assistant Mining Engineer concerned.

Provided further that where it is necessary to do so, the period of contract may be further extended by the Government and a rider agreement shall be executed before expiry of the contract.

Provided also that period shall be extended subject to the condition that the contractor shall pay ten percent of increased amount to existing annual contract amount. The security deposit and performance security for extended period shall remain the same as deposited by the contractor during the original contract period and shall not be refunded or adjusted in the dues or installments of the contract till next contract comes into the force.

Provided also that in the event of any pandemic or natural calamity, the period of

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existing contract may be extended by the government for a period upto one year subject to condition that the contractor shall pay ten per cent of the increased amount to the existing contract amount and a rider agreement shall be executed within a period of fifteen days from the date of receipt of order of extension or before expiry of the original contract period whichever is earlier. In such cases, the difference amount of security deposit and performance security to proportion to the enhancement of contract amount shall be deposited before execution of the rider agreement. In this regard, the State Government may issue separate guidelines."

Rule 44:- Conditions of royalty collection contract and excess royalty collection contract:-

(1) to (15) XX XX XX

(16) Cancellation and surrender of lease or licence, sanctioning of new lease or licence, revision of dead rent of existing lease, temporary or permanent closure of lease or licence by the Government or Court or due to any other reason in the area concerned, shall not have any impact on the yearly contract amount.

(17) The Contractor shall pay the installment of contract amount in advance on due date and if any amount is not paid on due date, it shall be collected as an arrears of land revenue and an interest at the rate of eighteen percent shall be charged from due date irrespective of any other action being taken for cancellation of contract or imposition of penalty."

XX XX XX

7. Rule 36 stipulates the procedure for grant of royalty contract or excess royalty collection contract. Sub-rule (5) provides that competent authority shall grant contract for a maximum period of two financial years or part thereof ending on 31st March.

7.1 In case of non allotment of new contract, first proviso to sub-rule (5) of Rule 36 empowers the Director to extend current contract upto ninety days or till the new contract comes into force, whichever is earlier. For extension reasons have to be recorded in writing. For extending the period rider agreement has to be executed before expiry of the original contract.

7.2 In case it is necessary to do so, the Government under second proviso can further extended the contract period subject to execution of rider agreement before expiry of the contract can do so.

7.3 Proviso third stipulates the extension shall be subject to increase of ten per cent of the existing amount of annual contract. Further that security deposit and performance security for the original contract shall suffice for the extended period but the securities shall not be refunded or adjusted against the installments till the next contract comes into force.

7.4 Fourth proviso was inserted with effect from 03.01.2022. The Government in

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the event of pandemic or natural calamity may extend the period of existing contract subject to:- (i) ten per cent increase of existing contract amount; (ii) execution of the rider agreement within fifteen days from the date of receipt of extension order or before expiry of the existing contract whichever is earlier; and (iii) before execution of the rider agreement the amount of security and performance security in proportion to the enhancement of contract has to be deposited. The State Government may issue separate guidelines in this regard.

8. Rule 44 lays down the conditions for royalty collection contract and excess royalty collection contract.

8.1 Sub-rule 16 stipulates the yearly contract amount shall not be impacted by temporary or permanent closure of lease or a license in the area concerned, by the Government or Court or due to any other reason. Cancellation and surrender of lease or licence, sanctioning of new lease or license, revision of dead rent of existing lease shall also not effect the yearly contract amount.

9. It is not the case set that as per statutory provisions or the terms and condition agreed between the parties there was a clause for extension of time and exemption of part of the contract amount in the case of a temporary closure of the mining activity. The sole reliance is upon fourth proviso to sub-rule (5) of Rule 36 of the Rules of 2017. In other words, the extension of contract period cannot be made in the cases not covered under the fourth proviso to Rule 36(5).

10. It would be relevant to note that Rule 36 (5) of the Rules of 2017 does not deal with the exemption of part of contract amount. Proviso first to Rule 36 (5) of the Rules of 2017 comes into force for extension of time by director only in cases where new contract could not be allotted. Extension of time by Government under fourth proviso can be made in case of pandemic or natural calamity which is not the situation in the case in hand. The GRAP-III was implemented in view of prevailing pollution in the NCR.

11. The relief sought by the petitioner for extending the contract period does not fall within the ambit of Rule 36(5) of the Rules of 2017. In absence of a statutory provision or clause in the agreement, the terms & conditions of contract cannot be altered.

12. The contention that Rule 44 (16) of the Rules of 2017 has been wrongly relied upon by the respondents to reject the representation is noted to be rejected. The language of sub Rule (5) is unambiguous and is widely worded that yearly contract amount shall not be effected by cancellation, surrendering, sanctioning of lease or license sanctioning of new lease, revision of dead rent of existing lease and also temporary or permanent closure of lease or a license in the area concerned by Government, court or any other reason. To widen the scope apart from closure by the Government or Court the phrase ‘any other reasons’ has been used in sub-rule 16 of Rule 44. In this case there was temporary closure by the Commission for Air Quality Management which is covered under ‘any other reason’.

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13. Another angle is that the petitioner has to stand on its own legs to make up a case that there existed clause in the agreement or a statutory provision under which the exemption of part of the contract amount for temporary closure of mining activity can be sought. No such clause or statutory provision has been relied upon in the pleadings or during the course of arguments.

14. In view of above discussion, the writ petitions are dismissed.

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