

ORDER SHEET.
ISLAMABAD HIGH COURT, ISLAMABAD.
JUDICIAL DEPARTMENT.

W.P.No.3957/2018
Guarantee-Selex-Thales Joint Venture
Vs.
Federation of Pakistan and others

S. No. of order/ proceedings	Date of order/ Proceedings	Order with signature of Judge and that of parties or counsel where necessary.
	05.07.2021	Ms. Zainab Janjua, advocate for the petitioner. Mr. Manzoor Hussain, advocate for respondent No.2. Barrister Yousaf Khosa and Mr. Omair Saleem Malik, advocates for respondent No.3. Barrister Ehsan Ali Qazi for respondent No.4/applicant.

C.M. No.2885/2021

This is an application for placement of the additional documents on the record. Allowed, subject to all just and legal exceptions.

C.M. No.2886/2021

Exemption sought for is allowed, subject to all just and legal exceptions.

MAIN CASE.

Learned counsel for the petitioner drew the attention of the Court to the Interim Payment Certificate No.04 ("I.P.C.") for the period between June 2016 to August, 2017, entry at Sr. (L) whereof shows that the Project Manager has taken the view that Rs. 73,961,474 is to be recovered from the petitioner as advance income tax on imported materials. It is, in essence, this recovery which the petitioner has assailed in the instant petition.

Learned counsel for the Project Manager (respondent No.4) has drawn the attention of the Court to clause 47.2 of the Conditions of Contract for Electrical and Mechanical Works, (Part-I General Conditions), which provides *inter-alia* the contract price shall be adjusted to take account of any increase or decrease in cost resulting from changes in legislation of the country where the site is located or in its generally accepted interpretation. The site is indisputably located in Pakistan, and respondent No.4's stance is that the said recovery in IPC-04 and similar entries in subsequent I.P.Cs are relatable to this clause. He further submits that the said recovery would give a cause to the petitioner to seek a corresponding adjustment in the contract price under clause 47.2 of the Conditions of Contract for Electrical and Mechanical Works, (Part-I General Conditions) between the petitioner and respondent No.3 for the determination of claim of disputed amount.

Learned counsel for respondent No.3 submitted that the recoveries affected from the petitioner on account of the operation of fiscal laws would not *ipso facto* give a right to the petitioner to seek the adjustment in the contract price since the recoveries were made by respondent No.3 acting as a withholding

agent under section 148 of the Income Tax Ordinance, 2001.

The parties are in dispute on the question whether said recoveries would entitle the petitioner to an adjustment in the contract price under clause 47.2 of the Conditions of Contract for Electrical and Mechanical Works, (Part-I General Conditions). Be that as it may, this dispute between the petitioner and respondent No.3 arising from the above-mentioned entries in the I.P.Cs is a contractual dispute which ought to be resolved in accordance with the dispute resolution mechanism enshrined in the contract i.e. clauses 50.1 to 50.4 of the said contract. Since the dispute is to be resolved in accordance with such mechanism, further proceedings in this petition are not necessary. Consequently, this petition is disposed of.

This issues with the consent of the learned counsel for the contesting parties.

(MIANGUL HASSAN AURANGZEB)
JUDGE

**Sanaullah*