

*** IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ WRIT PETITION (CIVIL) 585/2009

Reserved on : 6th February, 2009
Date of Decision : 26th February, 2009

MILESTONE GEARS PVT. LTD. Petitioner

Through : Mr. S. Ganesh, Sr. Adv. with
Mr. Chirag M. Shroff and
Mr. Manish Sharma, Advs.

versus

INDUSTRIAL FINANCE CORPORATION OF INDIA & ANR.
..... Respondents

Through : Mr. Ashwini Matta, Sr. Adv. with
Mr. Suresh Dobhal and
Mr. Tanmaya Sinha, Advs. for
Respondent No.1.
Mr. Neeraj Kumar Jain and Mr. D.
Kohli, Advocates for Respondent
No.2.

% CORAM:
HON'BLE MR. JUSTICE MADAN B. LOKUR
HON'BLE MR. JUSTICE SIDDHARTH MRIDUL

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| 1. | Whether reporters of local papers may be allowed to see the judgment? | Yes. |
| 2. | To be referred to the Reporter or not? | Yes. |
| 3. | Whether the judgment should be reported in the Digest? | Yes. |

J U D G M E N T

SIDDHARTH MRIDUL, J.

1. By way of the present writ petition the Petitioner seeks quashing of the letter dated 19th January, 2009 issued by Industrial Finance Corporation of India (IFCI)-Respondent No.1 to the Petitioner cancelling the contract of sale of land and building with the Petitioner,

as well as the sale of the same to Respondent No.2.

2. IFCI issued advertisement in the 'Economics Times' dated 12th December, 2008 to invite tender bids for the sale of assets of one VHEL Industries Ltd. under the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (in short 'SRFAESI Act'). The sealed tenders were for the sale of assets of said VHEL Industries Ltd., offered as a composite unit on "as is where is and whatever there is basis" at Village Harraipur, Tehsil Nalagarh, District Solan, Himachal Pradesh. The relevant clauses of the terms and conditions of the said tender are as follows:

- "2.4 The assets offered for sale may be inspected at the factory premises of VHEL Industries Ltd at Village Harraipur, Tehsil Nalagarh, District Solan, Himachal Pradesh on 12/01/2009 and 13/01/2009 between 11:00 a.m. to 4:00 p.m.
- 2.6 All the assets offered for sale are on "AS IS WHERE IS AND WHATEVER THERE IS BASIS. The quantity indicated, if any, are purely indicative & without any guarantee" and IFCI Ltd shall not entertain any claim/complaint from the buyer for any deficiency in quantity/size/number etc. for recovery of whole or any part of the bid/purchase money, loss of profit/interest, damages etc.
- 2.7 **The unit may have certain outstanding liabilities which are to be met by the purchaser and which will be over and above the purchase consideration. The prospective purchaser may carry out due-diligence in respect of likely liabilities pertaining to the unit before submitting the tender. It may be noted that the purchaser will be responsible for meeting these liabilities, if arise, and Secured Creditors will not be liable to meet any such liabilities whatsoever.**(emphasis supplied)
- 2.10 **Tenders accompanied by short EMD and/or with their own conditions are liable to be rejected/ignored summarily.**(emphasis supplied)
- 2.14 The contract shall be treated as having been entered into as soon as the letter of acceptance is issued by Authorized Officer, IFCI Ltd, to the successful tenderer and the validity of contract shall be of 30

days from the date of such acceptance.

- 4.2 The tenderer(s) should thoroughly satisfy themselves about the nature, conditions and quality of the assets. IFCI Ltd. gives no guarantee or warranty as to the conditions of the assets/material or/its quality of fitness for any specific purpose or use. It should be clearly understood that no claim/complaint about the quality/conditions/fitness for use will be entertained by IFCI Ltd.
- 5.5 In case the tender is accepted and purchaser refuses/fails to make further payment towards balance purchase consideration on any account the earnest money so deposited shall be forfeited without prejudice to the rights of IFCI Ltd, to claim such further damages in this regard without further reference to the tenderer/purchaser.
- 6.1 All tenders must be submitted in the prescribed form only and in a sealed cover. The tender must be addressed to Shri O.P. Yadav, AGM, Authorized Officer, IFCI Ltd., IFCI Tower (14th Floor), 61, Nehru Place, New Delhi- 110019 and super scribing "OFFER FOR PURCHASE OF ASSETS" of M/s VHEL Industries Ltd, as a Composite Unit. The tender must be submitted by the prescribed date and time at the Registered Office of IFCI Ltd. at New Delhi as indicated at para 2.2.
- 6.5 **Incomplete tender or tenders submitted with qualifying conditions or with conditions variance with the prescribed Terms and Conditions of Tender are liable to be rejected summarily.** (emphasis supplied)
- 7.3 The balance amount i.e. 75% of the sale consideration is to be paid on or before 15th day from the date of "confirmation of sale" in favour of the purchaser.
- 9.1 All taxes/duties etc. as applicable and related to purchase of assets of M/S VHEL Industries Ltd. (VHEL) shall be paid by the purchaser.
- 11.1 In the event of non-fulfillment of the terms and conditions of the tender and matters related thereto, by the tenderer, IFCI Ltd. shall have the liberty to do any or all of the following:-
 - (a) Cancel the contract with immediate effect, in which case, the EMD shall stand forfeited.
- 13.4 **The tenderers shall have no right to issue addends to tender documents to clarify supplement or delete any of the conditions/clauses or items stated therein.** (emphasis supplied)

13.8 The submission of the tender means and implies that the tenderer/bidder has unconditionally agreed to and accepted all the above terms and conditions of the tender.

13.9 Intending tenderer(s) may obtain any clarification required before tendering. Submission of tender implies, the tenderer(s) has obtained all the clarification required and that he has agreed to all Terms and Conditions herein specified."

3. Further the guidelines for tenderers provided as follows:

"The Tenderers prior to submitting their Tender for the assets are expected to visit and examine the plant site and related documents and surroundings at their expenses as the plant is being offered on an "AS IS WHERE IS BASIS AND WHATEVER THERE IS BASIS". They should ascertain on their own responsibility all information, technical data, market study etc. including actual conditions, existing services statutory and other liabilities etc.

2. It shall be presumed that all these factors were accounted for by the Tenderer while quoting their tender. The tendered shall be deemed to have full knowledge of the assets, whether he inspects it or not."

4. The Petitioner submitted its bid in respect of the said tender on 16th January, 2009.

5. According to the Petitioner, as per Clause 2.7 in the tender document regarding the due diligence to be carried out by the bidder, the Petitioner had on 15th January, 2009 got the revenue records searched, which exercise revealed that there were liabilities of the Company, VHEL Industries Ltd. fastened on the land and building in the revenue records with Tehsildar, running into several crores of rupees. According to the Petitioner after clarifications from authorized officer of the IFCI, the Petitioner submitted alongwith their bid a Supplementary Annexure of tender bid forming an integral part of the said bid. The contents of the said Supplementary Annexure are relevant and are reproduced as under:

- "1. Please refer pt. 2.7 of "Terms & Conditions" of the tender document. As per our understanding of the same; liabilities of "Unit" are distinctly & Clearly different than the liabilities of the "Company" i.e. VHEL Industries as a legal entity and our tender bid is only for the purchase of assets specified in the tender on "As is where is and whatever there is basis". It is clarified that our tender bid excludes any direct/indirect liabilities of VHEL Industries as a legal entity.
2. We are attaching the "Jamabandi" of M/s VHEL Industries, N. Delhi dated 15th Jan. 2009; which lists various restraint orders, attachment orders and Court orders/decrees etc. on record against the said company (i.e. Sales Tax and Excise Deptt. Hindustan Development Corpn. Ltd. etc.). **Our tender bid is subject to specific & unambiguous confirmation in writing by IFCI Ltd. that the assets being sold are free from any charges, encumbrances or any claims whatsoever claims the transfer as well as physical possession of assets being sold, with clear title in revenue records; at the time of balance consideration money payment before the Registering Authority.**"(emphasis supplied)

6. Since the Petitioner was the solitary bidder and its bid of 401 lakhs was more than the reserve price of 400 lakhs, IFCI Ltd. vide its letter dated 16th January, 2009 declared the Petitioner as the highest bidder and accepted the said bid in the following terms:

"IFCI LIMITED

Delhi Regional Office: IFCI Tower,
61, Nehru Place, New Delhi-110019.

DRO/Legal/VHEL/2009

16th January, 2009.

M/s Milestone Gears Pvt Ltd
58, Sector-I Industrial Area Parwanoo,
District Solan

Dear Sir,

Sub: VHEL Industries Ltd: Your offer for purchase of Land and building

Please refer to you Tender Document giving your offer you purchase of Land and Building in the Captioned Company situated at Village Harriapur, Tehsil Nalagarh, District Solan, Himanchal Pradesh for Rs 401 Lakh (Rupees Four hundred and one Lakh only)

It is informed to you that you have been declared as the highest bidder and your bid of Rs. 401 Lakh (Rupees Four

hundred and one Lakh only) has been accepted for the purchase of Land and building situated at Village Harraipur, Tehsil Nalagarh, District Solan, Himanchal Pradesh. **We request you to kindly deposit 25 % of the bid amount today and balance amount within 15 days.** (emphasis supplied)

Yours Faithfully

(O P Yadav)
Authorised officer"

7. However, on the very next day i.e. 17th January, 2009 the Petitioner addressed a communication to IFCI Ltd. stating as under:

"Milestone
GEARS PRIVATE LTD.

75, Sector-7
Panchkula- 134109 (Hr.) INDIA
Ph.+91-172-599078-79
Fax: +91-1792-33863
E-mail: milestone@glide.net.in

To: 17.1.2009

THE AUTHORISED OFFICER
IFCI LTD.
IFCI TOWER (14TH FLOOR)
61, NEHRU PLACE
N. DELHI- 110019

Sub: Your Letter DRO/LEGAL/VHEL/2009 OF 16TH JAN. REGARDING OUR OFFER FOR PURCHASE OF LAND & BUILDING.

Dear Sir,

THIS HAS REF. TO OUR DISCUSSIONS REGARDING OUR TENDER-BID AND YOUR ABOVE MENTIONED LETTER. IN VIEW OF THE FRAME NEEDED FOR ADDRESSING THE MENTIONED ENTRIES OF "JAMABANDI" IN REVENUE RECORDS; WE AGREE TO PROVIDE BANK GUARANTEE OF RS. 3 CRORES BALANCE AMOUNT, ENCASHABLE AT THE TIME OF SALE DEED REGISTRATION.

WE CONFIRM HAVING TRANSFERRED 15% OF THE SALE CONSIDERATION AMOUNT THROUGH RTGS YESTERDY.

PLEASE CONFIRM YOUR ACCEPTANCE OF BANK GUARANTEE IN LIEU OF BALANCE CONSIDERATION MONEY.

THANKING YOU,

Sd/-

For Milestone Gears Pvt. Ltd.

(A.K. TANDON)”

8. In response thereto vide the impugned letter dated 19th January, 2009 IFCI wrote to the Petitioner as under:

“IFCI

Delhi Regional Office: IFCI Tower
61, Nehru Place, New Delhi-110019

IFCI/DRO/2008-603A

Dated January 19, 2009

FAX MESSAGE

Milestone Gears Private Ltd.
75, Sector-7
Panchkula-Haryana
Pincode- 134109

Dear Sir,

Sub: M/s. VHEL Industries Ltd. Purchase of Land & Building

Please refer your letter dated 17.1.2009 on the above subject.
In this connection we have to advise that we have examined your proposal and we have to convey you that we are not in a position to accept your conditional offer for purchase of land & Building of M/s VHEL Industries Ltd.
Accordingly the amount of Rs. 12500000.00 deposited by you is being returned to you.
Please acknowledge receipt of the same.

Yours faithfully,

(O.P. Yadav)
Authorized Officer”

9. The Petitioner is aggrieved by the said impugned communication dated 19th January, 2009 and by the sale of the tender property to one M/s Micro Turners, Respondent No.2 herein after tender closing date.

10. On behalf of the Petitioner it was strenuously urged that the action of the Respondent No.1 in cancelling the valid contract dated 16th January, 2009 of the Petitioner, whereby the Respondent No.1 had accepted the offer with the clarifications contained in the Supplementary Annexure to the tender attached by the Petitioner, is

arbitrary and consequently liable to be quashed and set aside. Secondly, it was argued by learned counsel that the sale of the unit of VHEL Industries Ltd. to Respondent No.2 outside the bidding process was actuated by malice and for extraneous considerations. On the other hand it was urged by the Respondents that the supplementary conditions sought to be imposed by the Petitioner were at variance with the prescribed terms and conditions of the tender and were therefore liable to be rejected summarily. It was further urged on behalf of the Respondent No.1 that, under the provisions of Section 7 of the Contract Act, in order to convert a proposal into a promise the acceptance must be absolute and unqualified and in the present case the parties to the contract were not *ad idem* on the terms of the contract and as such the proposal and counter proposal of the Respondent No.1 and the Petitioner respectively did not result in a valid and binding contract of sale of the said assets. It was also urged on behalf of the Respondent No.1 that since the sale of assets was under the SRFAESI Act, the Respondent No.1 after validly cancelling the non-responsive tender of the Petitioner was justified in law to sell the said unit of VHEL Industries Ltd. to Respondent No.2 in terms of the provisions of said Act.

11. Before considering the rival submissions it would be relevant to extract the provision of Section 7 of the Contract Act.

“7. Acceptance must be absolute.- In order to convert a proposal into a promise the acceptance must –
(1) be absolute and unqualified;
(2)

12. In the present case it is seen that under Clause 2.7 of the terms

and conditions of the said tender, it was clearly stipulated that the unit may have certain outstanding liabilities which were to be met by the purchaser and which would be over and above the purchase consideration. In this behalf a prospective purchaser was advised to carry out due diligence in respect of the likely liabilities before submitting the tender. Clauses 2.10, 6.5 and 13.4 collectively provided that tenders accompanied with their own conditions were liable to be rejected summarily. It was further provided that tenders submitted with qualifying conditions or with conditions at variance with the prescribed terms and conditions of the tender were also liable to be rejected summarily. It was also stipulated that the tenderers would have no right to issue addends to tender documents to clarify supplement or delete any of the conditions/clauses or items stated therein. In other words the tenderers were required, in order to bid responsively, to adhere strictly with the stipulated terms and conditions of the tender and any counter conditions or stipulations could not be imposed on behalf of the tenderers. Further, it is seen that vide its letter dated 17th January, 2009 the Petitioner wrote to the Respondent No.1 stating that *"in view of the frame needed for addressing the mentioned entries of "Jamabandi" in revenue records, we agreed to provide bank guarantee of Rs.3 crores balance amount, encashable at the time of sale deed registration"*. This conditional offer made on behalf of the Petitioner to the Respondent No.1 was contrary to the aforementioned Clauses 2.10, 6.5 and 13.4 as well as to Clause 7.3 of the terms and conditions of the said tender which specifically required that the balance amount of 75% of the sale consideration was to be paid on or before the 15th day from the date of confirmation

of sale in favour of Respondent No.1. Thus in our view the conditional offer made on behalf of the Petitioner to the Respondent No.1 did not result in a valid and binding contract of sale between the parties since they were not *ad idem* on the terms thereof, and the Respondent No.1 was perfectly justified in refusing to accept the offer on the terms arising out of such a counter proposal at variance with the terms and conditions of the said tender.

13. With regard to the second submission made on behalf of the Petitioner it is seen that the Respondent No.1 vide its said communication dated 19th January, 2009 not only cancelled the contract and rejected the conditional offer for purchase of land and building of VHEL Industries Ltd. but further refunded the amount of Rs.1,25,00,000/- deposited by the Petitioner towards 25% of the sale consideration. It is observed that the Petitioner received this amount without cavil and did not pay over the balance consideration within the stipulated time. Further, the Petitioner kept insisting upon the transfer of title in its favour in the revenue records as also the date of handing over of the physical possession of the assets aforesaid as a condition for the payment of the sum of Rs.401 lakhs under the contract of sale. On the other hand the Respondent No.1 after cancellation of the contract with the Petitioner sold the said land and building of VHEL Industries Ltd. to Respondent No.2 for a sale consideration of Rs.451 lakhs, a sum of Rs.50 lakhs over and above what had been offered by the Petitioner herein. Furthermore, during the course of the arguments, on a specific query from the Bench, the Petitioner agreed to match the offer made by Respondent No. 2,

however, subject to its condition that the assets would be sold without any encumbrance and without calling upon the Petitioner to discharge the liabilities arising out of the 'Jamabandi' in relation to the unit of the said VHEL Industries Ltd. On the other hand the Respondent No.2 had made an offer in the sum of Rs. 451 lakhs exclusive of all the other liabilities which arose in respect of the sale of the said unit of the said VHEL Industries Ltd. i.e. strictly in terms of the terms and conditions of the subject tender. It is also observed that under the provisions of Section 13 of the SRFAESI Act the Respondent No.1 was entitled to sell the secured assets of the borrower for realizing its outstanding liability by any and every mode. Therefore, the Petitioner has been unable to make out a case of malafides in the present case, which in any event had not been specifically pleaded by it in the petition. Even otherwise in a matter of contract with the State the Court does not interfere with the action taken on behalf of a statutory corporation unless and until it is in the larger public interest so to do. In the present case public interest does not require that the sale of the said assets to Respondent No. 2 be stopped. On the contrary it is in the paramount public interest to secure the ends of the public exchequer by permitting the sale of the said assets to Respondent No.2, for an amount of Rs.50 lakhs more than what was being offered by the Petitioner even without calculating the remaining liabilities which would be to the account of Respondent No.2, the subsequent purchaser.

14. For the foregoing reasons we find that the writ petition is wholly devoid of merits and hereby dismiss the same. However, the

Petitioner is liable to pay costs of the proceedings to the Respondents which are directed to be paid in the sum of Rs.50,000/- (Rupees fifty thousand) by way of deposit before this Court within a period of four weeks from the date of this order.

15. List for compliance on 3rd April, 2009.

SIDDHARTH MRIDUL, J.

MADAN B. LOKUR, J.

February 26, 2009

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