

THE HIGH COURT OF DELHI AT NEW DELHI

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Judgment delivered on: 19.05.2014

+ W.P.(C) 2138/2014 and CM No. 4459/2014

M/S ASSOCIATED JUTE INDUSTRIES

... Petitioner

versus

STATE FARMS CORPORATION OF INDIA & ANR ... Respondents

Advocates who appeared in this case:

For the Petitioners : Ms Julien George and Mr Nitin Sharma

For the Respondent : Mr G. Joshi and Mr Umang Jain, for respondent No. 1
Mr Amrit Pal Singh, Ad for UOI

CORAM:-

HON'BLE MR JUSTICE BADAR DURREZ AHMED
HON'BLE MR JUSTICE SIDDHARTH MRIDUL

JUDGMENT

BADAR DURREZ AHMED, J (ORAL)

1. By way of this writ petition, the petitioner (Associated Jute Industries – A Sole Proprietorship concern of Mr Pramod Agarwal) seeks the setting aside of the notice dated 26.03.2014 issued by the respondent (State Farms Corporation of India Ltd.) whereby, the petitioner has been shown as having been disqualified in the appraisal of the Techno Commercial bid submitted by the petitioner. Though no reasons have been indicated in the said notice dated 26.03.2014 for the disqualification of the petitioner, the counter affidavit filed on behalf of the respondent indicates that the disqualification was based on the respondent's

understanding that the petitioner did not satisfy the condition of having a net worth of Rs 1 crore.

2. In January, 2014 the respondent had issued a notice inviting tender whereby it invited sealed tenders *inter alia* for the purchase of 1326859 B.Twill/DWT Jute Bags. The date and time of acceptance to the tender was specified to be 07.02.2014 at 12:30 pm. The opening date of the Technical and Commercial Bids was indicated to be 2:30 pm on 07.02.2014 and the date of opening of the price bid was specified as 28.02.2014 at 2:30 pm. The details of the tender documents were to be downloaded from the website of the respondent. The offers of Technical and Commercial bids and the price bids were to be sealed in two separate envelopes. The Techno-Commercial bid was to be opened in the first stage and thereafter the price bid was to be opened as per the schedule indicated in the NIT. It was also indicated that tenders which did not conform to the terms and conditions laid down in Annexure B would not be considered. In addition, the Techno-Commercial bid was required to conform to various conditions specified in Part A. It was a specific condition that the audited balance sheet of the company for the last three years duly signed by the statutory auditors was to be attached to the Techno-Commercial bids. Furthermore, as per clause X(9) the net worth of the “party concerned” was to be Rs 1 crore duly supported by a certificate of a chartered accountant.

3. It is, therefore, clear that the intending bidder was required, *inter alia*, to submit an audited balance sheet of the last three years duly signed by the statutory auditor as also to have a minimum net worth of Rs 1

crore duly certified by a chartered accountant. Both these documents were to be submitted along with the Techno-Commercial bid.

4. The petitioner submitted its bids within time. It may be noted that the price bid opening date had been extended upto 31.03.2014. After the opening of the Techno-Commercial bid, the respondent took out the impugned notice dated 26.03.2014 whereby the petitioner was shown to be disqualified. No reasons, as mentioned above, had been indicated in the impugned notice but, the reasons are palpable from the counter affidavit filed on behalf of the respondent. The reason indicated in the counter affidavit is that the audited balance sheet indicated a net worth of the proprietorship concern to be Rs 79,32,327.92, whereas, the requirement was of Rs 1 crore. Since this discrepancy was noticed, the respondent sent a communication dated 06.03.2014 and requested the petitioner to clarify that its net worth was Rs 1 crore. The said communication is set out herein below:-

“STATE FARMS CORPOATION OF INDIA LIMITED
(A Government of India Undertaking)
Farm Bhavan 14-15 Nehru Place, New Delhi 10019

No. SFCI/ 7-1/14-MKG

Dated 06.03.2014

TIME BOUND/ URGENT

M/s Associated Jute Industries
9/4 B.D.Dutta Lane, Salkia
Howrah 711106

Fax No. 033026656690
Email ajigrp@gmail.com

Sub: COMPETITIVE BIDDING No. OTTBS/7-1/05/14-
Price Bid to be opened on 07.03.2014

Sir,

With reference to the above, while evaluating the techno commercial bid submitted by you for the supply of B-Twill & Jute bags, it is to inform that following informations/ irregularities / non -conformity are found in your technical bid.

a) M/s Pramod S Gupta and Associates, Kolkatta has certified that Net worth of Mr. Pramod Aggarwal, Proprietor of Associated Jute Industries is Rs 1,50,47,066.37 as on 31.03.2013 whereas the balance sheet of Associates Jute Industries as on 31.03.2013 is showing the proprietor capital is Rs 79 ,32,327.92 submitted by you.

You are therefore requested to clarify the above mentioned point alongwith the documentary support through Fax / e-mail by 10th of March, 2014. That the net worth of M/s Associated Jute Industries Kolkatta Rs 1 crores duly certified by the CA.

"This issue with the approval of the competent authority"

Yours faithfully

Sd/- 6.3.14
(Aseem Gangwar)
Asst. General Manager (Mktg)
For General Manager (Mktg)"

5. From this communication it is evident that the respondent was concerned about the discrepancy between the certified net worth of Mr Pramod Agarwal, the proprietor of Associated Jute Industries, to the extent of Rs 1,50,47,066.37 as on 31.03.2013 as against the net worth derived from the balance sheet of Associated Jute Industries of the same date showing the proprietor's capital to be Rs 79,32,327.92. In response to this, a clarification was furnished by the chartered accountant of the

petitioner. In the said clarification it was certified once again that the net worth of Mr Pramod Agarwal (proprietor of Associated Jute Industries) was Rs 1,50,47,066.37 on 31.03.2013. The chartered accountant further clarified that the net worth is to be calculated as per the current market price of the assets whereas the balance sheet is prepared on “at cost” basis. It is for this reason that there was an apparent discrepancy. But, in reality the net worth was in excess of Rs 1 crore.

6. On receiving this clarification, the respondent referred the matter to its Chartered Accountant (M/s Katpalia and Associates) who sent a letter to the respondent on 24.03.2014. In that letter the said Chartered Accountants stated that they had gone through the terms and conditions of the tender and they were of the opinion that “Net Worth of the business” ought to be strictly calculated on the basis of financial figures appearing in the financial accounts / balance sheets (preferably audited) of the concerned business, that is, Associated Jute Industries (proprietorship firm) in the current context. The Chartered Accountants, further, opined that the personal net worth of the proprietor / partners / directors concerned should be ignored for such purpose. The further opinion given was that the CA Certificate issued on behalf of the petitioner should be ignored / rejected. It is pursuant thereto that the respondent took out the impugned notice dated 26.03.2014 showing the petitioner to be disqualified. Immediately thereafter, the petitioner filed the present writ petition and this court by an order dated 31.03.2014 stayed the process of opening of the price bids.

7. The controversy in the present matter is as to whether the petitioner meets the condition of having a net worth of Rs 1 crore. It would be pertinent to note that the expression used in clause X(9) is that the “party concerned” should have a net worth of Rs 1 crore. The “party concerned” in this case was the sole proprietorship concern doing business under the name of Associated Jute Industries. Mr Pramod Agarwal is the sole proprietor of this concern. It is well settled in law that there is no distinction between the proprietorship concern and the proprietor of such a concern. This is so because the proprietorship concern does not have a separate and distinct legal identity as different from that of its proprietor. The proprietorship concern and the proprietor are one and the same in law.

8. Thus, when the expression “party concerned” is used in clause X(9), it refers clearly to the sole proprietor in the case of a proprietorship concern. It would be a different matter in the case of a bidder which is a company registered under the Indian Companies Act, 1956. In that case the company is a separate and distinct legal entity from its share holders. That distinction between a sole proprietorship concern and a company has to be kept in mind while considering this case.

9. We may also point out that the letter of the respondent’s chartered accountant dated 24.03.2014 has incorrectly used the expression “Net Worth of the business”. That was never the condition of the tender. The condition was specifically the net worth of the “party concerned”. For this reason, the letter of the chartered accountant dated 24.03.2014 is entirely misleading inasmuch as it is based on a wrong premise.

10. Furthermore, the clarification which had been sought by the respondent from the petitioner was on a different aspect and that was the discrepancy between the net worth of Mr Pramod Agarwal shown as Rs 1,50,47,066.37 and that of the proprietor's capital of Rs 79,32,327.92 in the audited balance sheet. This discrepancy had been adequately explained by the petitioner through their chartered accountant's letter dated 10.03.2014 to which we have already referred above. The explanation given was that the figures mentioned in the audited balance sheet were computed on "at cost" basis whereas net worth is to be computed on the basis of current market price. Since the net worth of Mr Pramod Agarwal computed at current market prices was Rs 1,50,47,066.37 and that was the net worth which had to be taken into account, we are of the view that the impugned notice dated 26.03.2014, to the extent it disqualifies the petitioner, is liable to be set aside. It is ordered accordingly.

10. As such, the price bid of the petitioner shall be opened along with the price bids of the other qualified bidders. The writ petition stands allowed to the aforesaid extent. There shall be no order as to costs.

BADAR DURREZ AHMED, J

SIDDHARTH MRIDUL, J

MAY 19, 2014

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