

GAHC010135582022



**THE GAUHATI HIGH COURT**  
**(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)**

**Case No. : WP(C)/4549/2022**

**BHARAT HEAVY ELECTRICALS LTD.**

A COMPANY INCORPORATED UNDER THE INDIAN COMPANIES ACT,  
HAVING ITS REGISTERED OFFICE AT BHEL HOUSE, SIRI FORT, NEW  
DELHI, PIN- 1100449 ALSO AT INDUSTRY SECTOR, INTEGRATED OFFICE  
COMPLEX, LODHI ROAD, NEW DELHI-100003 THROUGH ITS AUTHORIZED  
REPRESENTATIVE MR. S.K. GROVER, EXECUTIVE DIRECTOR (ESSG, NEW  
BUSINESS AREA AND IPM).

**VERSUS**

**OIL INDIA LTD. AND 2 ORS.**

A COMPANY INCORPORATED UNDER THE INDIAN COMPANIES ACT, 1956  
HAVING ITS REGISTERED OFFICE AT P.O. DULIAJAN, DIST. DIBRUGARH,  
ASSAM, PIN- 786602.

**2:MEGHA ENGINEERING AND INFRASTRUCTURES LIMITED**

A COMPANY INCORPORATED UNDER THE INDIAN COMPANIES ACT  
1956 HAVING ITS REGISTERED OFFICE AT S-2  
TECHNOCRAT INDUSTRIAL ESTATE BALANAGAR  
HYDERABAD  
TELANGANA  
PIN- 500037.

**3:DRILLMEC S.P.A.**

A COMPANY INCORPORATED UNDER THE LAWS OF ITALY HAVING ITS  
REGISTERED OFFICE AT VIA 1  
MAGGIO  
12 PODENZANO  
PIACENZA  
29027

ITALY

**Advocate for the Petitioner** : MR. P K GOSWAMI

**Advocate for the Respondent** : SC, OIL

**BEFORE**

**HON'BLE MR. JUSTICE KALYAN RAI SURANA**

|                           |                                                                                                             |
|---------------------------|-------------------------------------------------------------------------------------------------------------|
| For the petitioner        | : Mr. K.N. Choudhury, Senior Advocate.<br>: Mr. S.K. Raheja, Ms. S. Chakravarty,<br>Ms. P. Sarma Advocates. |
| For respondent No.1       | : Mr. P.C. Sen, Senior Advocate.<br>: Mr. K. Kalita, Advocate.                                              |
| For respondent No.2 and 3 | : Dr. A. Saraf, Senior Advocate.<br>: Mr. P. Baruah, Advocate.                                              |
| Date of hearing           | : 18.01.2023, 10.03.2023, 17.03.2023,<br>21.03.2023.                                                        |
| Date of judgment          | : 21.04.2023.                                                                                               |

**JUDGMENT AND ORDER**

**(CAV)**

Heard Mr. K.N. Choudhury, learned senior counsel, assisted by Mr. S.K. Raheja, learned counsel for the petitioner. Also heard Mr. P.C. Sen, learned senior counsel, assisted by Mr. K. Kalita, learned counsel for respondent no. 1 and Dr. A. Saraf, learned senior counsel, assisted by Mr. P. Baruah, learned counsel for the respondent nos. 2 and 3.

**Case of the petitioner and prayer made in the writ petition:**

2. In brief, and bereft of detailed particulars, the case of the petitioner i.e. Bharat Heavy Electricals Ltd. is that the respondent no. 1 had invited International Competitive Bids bearing Tender No. SDG8439P22/09 for

procuring 5 (five) nos. of 2000 HP VFD Drilling Rigs with Top-Drive and accessories. The petitioner had participated in the said bidding process. In due course of tender evaluation, the bid submitted by the respondent no. 2, i.e. Megha Engineering & Infrastructures Ltd. was accepted and consequently, the Letter of Acceptance (LOA for short) was issued on 28.06.2022 in favour of the respondent no. 2. It is projected that the tender was awarded to the respondent no. 2 by giving a total disregard to the "*Guidelines on debarment of firms from bidding dated 02.11.2021*", issued by the Department of Expenditure, Ministry of Finance, which according to the petitioner, applies to the respondents as the respondent no. 3 firm was debarred for a period of 3 (three) years w.e.f. 09.11.2021, which was subsequently reduced to 1 (one) year, i.e. upto 08.11.2022. It is projected that a complaint was made to the officials of the respondent no. 1, to the Chief Vigilance Officer and the Independent External Monitors (IEMs) against the illegal, improper arbitrary and discriminatory evaluation of the bid submitted by the respondent no. 2, which was in contravention of the said debarment guidelines, but no action was taken. It is also projected that although after several requests, the IEM took up the hearing on the matter, but till the date of filing of the writ petition, the final report of the IEMs, if any, has not been made available to the petitioner. Later on, interim report dated 29.06.2022 was released by the IEMs. However, on 30.06.2022, the petitioner was informed by e-mail that on 28.06.2022, LoA, i.e. Letter of Acceptance was issued to the respondent no. 2. Accordingly, by filing this writ petition under Article 226 of the Constitution of India, the petitioner has, inter alia, prayed for setting aside the letter of award dated 28.06.2022.

Submissions on behalf of the petitioner:

3. The learned senior counsel for petitioner has meticulously referred to the pleadings and voluminous documents on record. It was submitted that the respondent no. 2, i.e. Megha Engineering & Infrastructures Ltd. (hereinafter referred to as ME&IL for short) was the holding company of respondent no. 3, i.e. Drillmec S.P.A., Italy. On 09.11.2021, the competent authority of respondent no. 1, i.e. Oil India Ltd. had passed an order to debar the respondent no. 3 from entering into any contract and doing any business with the respondent no. 1 for a period of 3 (three) years, which was effective till 08.11.2024. However, vide order dated 21.02.2022, the appellate authority of the respondent no. 1 had reduced the period of debarment to 1 (one) year, thus, making the debarment effective till 08.11.2022. It was submitted that the information regarding the debarment of respondent no. 3 was uploaded in public domain in the Central Public Procurement Portal. It was submitted that as per the relevant clauses tender document as well as debarment guidelines, the respondent no. 3 is an "allied firm" of the respondent no. 2. The respondent no. 1 had opened the techno-commercial bid on 15.12.2021. The petitioner had submitted its representation dated 25.02.2022 to the Director (Operations) of respondent no. 1 and informed the said authority about the reasons why as per the "bid rejection criteria" and "bid evaluation criteria", the respondent no. 2 did not qualify to bid in the tender process by taking help of the experience and credentials of respondent no. 3, its subsidiary. It is submitted that despite complaint letters having been issued to the officials of the respondent no.1, IEMs and the Chief Vigilance Officer of respondent no. 1, and despite pendency of proceeding before the IEMs, the respondent no.1 had hurriedly issued LoA in

favour of the respondent no. 2 on 28.06.2022.

4. It was submitted that if the bidder is a subsidiary company, but does not meet financial criteria by itself, under clause A.2.5, it was permissible for such subsidiary company to submit its bid based on strength of experience and credentials of the parent/ holding company, but there was no clause in the tender document which permitted the parent/holding Company to submit its bid on the strength of financial criteria/credentials of the subsidiary Company. In this regard, it is submitted that in the bid submitted by the respondent no.2, it had relied on the financial credentials of the respondent no.3 Company.

5. It was also submitted that Drillmec S.P.A., Italy i.e. the respondent no.3 had committed breach of integrity pact against purchase order no. 7950934/SDG/P8 dated 05.09.2015 and accordingly, the respondent no. 1 had debarred the respondent no. 3 Company for a period of three years by its speaking order no. MM/25/F/257/2021-22 dated 09.11.2021. In this regard, it was submitted that the appellate authority of respondent no.1, vide its order no. DO:OIL:03:04(B)-379 dated 21.02.2022, reduced the period of debarment up to one year, i.e. up to 08.11.2022, and in the said regard, it was submitted that the debarment period was apparently reduced to help the respondent nos. 2 and 3 in the tender process under challenge. It was submitted that on the date when the tenders was submitted and on 02.05.2022, the date when financial bids were open, the name of Drillmec S.P.A., Italy (respondent no.3) was in the banning list. Hence, it was submitted that Oil India Ltd. (respondent no.1) could not have accepted the bid of the respondent no. 2 Company, as its bid was on the strength of the experience and credentials of the respondent no.3 Company.

By referring to clause 4.3 of the banning policy of Oil India Limited dated 06.01.2017, it was submitted that the prescribed period for banning was three years from the date of issuance of banning order.

6. It was also submitted that under clause 4.9 of the banning policy, although it is provided that if an agency is put on banning list, its subsidiary, sister Company, joint venture and holding Company of the erring agency is not to be considered as banned, but under the peculiar facts of this case, he would be submitting that by virtue of banning order against respondent no.3, even the holding Company, i.e. the respondent no.2 company would also be a banned entity. It is submitted that under clause 4.12(i) it is provided that if an agency is put on banning list, it should not be considered for any ongoing/future projects during the banning period. Hence, it was submitted that the respondent no.3 Company was suffering a banning order and was not put on holiday as envisaged under the clause 5.0 of the Banning Policy. It was submitted that nonetheless, under clause 5.4, the effect of holiday would be same as prescribed under paragraph 4.12 of the Banning Policy.

7. It was also submitted that the earlier General Financial Rules (GFR for short) was substituted by the General Financial Rules, 2017, and Rule 151 thereof related to the policy regarding debarment from bidding. It was submitted that the Govt. of India, Department of Expenditure, Ministry of Finance, Procurement Policy Division had issued an Office Memorandum bearing no. F.1/20/ 2018-PPD dated 02.11.2021, by which attention of all concerned including all Central Public Sector Undertakings was drawn towards Rule 151 of the GFR, 2017 regarding debarment from bidding and under paragraph 3 of the

said OM, it was provided that the debarment guidelines was in supersession to all earlier instructions to the subject. Accordingly, it was submitted that as per clause-3 of the guidelines on debarment of firms from bidding, the respondent no.2 was covered by the definition of “*allied firm*” and therefore, as per clause 16 to 19 of the said guidelines, the respondent no. 1 ought not to have entertained the bid submitted by the respondent nos. 2 and 3. The said clauses 16 to 19 and 25 are extracted below:

*“16. No contract of any kind whatsoever shall be placed to debarred firm including its allied firms after the issue of a debarment order by the Ministry/ Department. Bids from only such firms shall be considered for placement of contract, which are neither debarred on the date of opening of tender (first bid, normally called as technical bid, in case of two packet/two stage bidding) nor debarred on the date of contract. Even in the cases of risk purchase, no contract should be placed on such debarred firms.*

*17. If case, any debar firms has submitted the bid, the same will be ignored. In case such firm is lowest (L-1), next lowest firm shall be considered as L-1. Bid security submitted by such debarred firms shall be returned to them.*

*18. Contracts concluded before the issue of the debarment order shall, not be affected by the debarment orders.*

*19. The debarment shall be automatically extended to all its allied firms. In case of joint venture/ consortium is debarred all partners will also stand debarred for the period specified in Debarment Order. The names of partners should be clearly specified in the “Debarment Order”.*

\* \* \*

*25. All Ministries/ Departments must align their existing Debarment Guidelines in conformity with these Guidelines within two months of issue of these Guidelines. Further, bidding documents must also be suitably amended, if*

*required.”*

8. It was also submitted that vide clause 25 of the herein before referred OM dated 02.11.2021, direction was issued to all the Ministries/ Departments to align their existing debarment guidelines in conformity with the said guideline within two months and moreover, it was further directed that bidding documents must also be suitably amended, if required.

9. In reply to the cases cited by the learned senior counsel for the respondent no.1 and respondent no.2, it was submitted that the decision is an authority on which it actually decides and not what it may logically flow from it. It was submitted that in none of the cases cited by the learned senior counsel for the respondent nos. 1 and 2, the facts were closely similar because in this case, the respondent no.1 did not disqualify the respondent no. 2, in spite of the admitted fact that it took help of the documents and credentials of the respondent no.3 to submit its bid. Accordingly, it was submitted that by justifying illegality, the respondent no. 2, who was ineligible, was made eligible and was treated as equal to the petitioner, which is violative of Article 14 of the Constitution of India and accordingly, it has been submitted that the cases cited by the learned senior counsel for the respondent nos. 1 and 2 was distinguishable.

10. It was urged that the clauses of the tender were clear and unambiguous and therefore, the learned senior counsel for the petitioner had submitted that the purpose of obtaining three successive legal opinion by the respondent no. 1 was a feeble excuse to justify the award of contract to the

respondent no.2, which was illegal and displayed favouritism in favour of the respondent no.2, who was disqualified from bidding by virtue of the GFR, 2017 and “*debarment guidelines*” issued on 02.11.2021.

11. In support of his submissions, reliance was placed on the following cases, viz., (1) *State of Orissa v. Sudhansu Sekhar Misra & Ors.*, AIR 1968 SC 647, (2) *W.B. Electricity Board v. Patel Engineering Co. Ltd. & Ors.*, (2001) 2 SCC 451, (3) *Asia Foundation & Construction Ltd. v. Trafalgar House Construction India Ltd.*, (1997) 1 SCC 738. A written note of submission has also been filed, which is made a part of record.

*Submissions on behalf of the respondent no.1:*

12. The learned senior counsel for the respondent no.1 had also elaborately referred to the affidavit-in- opposition filed by the respondent no. 1 and had also extensively referred to the various clauses of the tender documents. It was submitted that for submitting a valid bid, two alternative criteria were provided, and it was submitted as follows:-

- a. As per Clause A.1.2, the bidder must be the “original equipment manufacturer” (OEM for short) of mast, substructure and crown block assembly for rig of tendered or higher capacity and should be rig package integrator having experience of supplying complete drilling rig package(s), and they should comply with clause A.1.2.1. It was submitted that the said clause A.1.2.1 required that the bidder i.e. manufacturer of mast, substructure and crown block assembly shall have an experience of minimum ten years in manufacturing and supplying the said components.

b. It was also submitted that the alternative criteria was that the bidder should be the manufacturer of three major rig components namely, Draw-works, Top-drive and Drilling Control System and should be rig package integrator having experience of supplying complete drilling rig package(s), complying with clause A.1.2.2. It was submitted that under the said clause A.1.2.2, the bidder i.e. the manufacturer of Draw-works, Top-drive and Drilling Control System should have the experience of supplying at least three numbers of complete drilling rigs of tendered or higher capacity after manufacturing the draw-works, top drive and drilling control system etc. and integrating with mast, substructure and crown block assembly and other rig equipment during the last ten years preceding the original bid closing date.

13. In respect of the aforementioned two alternative qualifying criteria, it was submitted that for the purpose of clause A.1.2.1, the respondent no.2 i.e. ME&IL had relied on technical experience of its subsidiary, namely, Drillmec Inc., USA and that for the qualifying criteria of A.1.2.2, the respondent no.2 had relied on the past experience of respondent no.3, namely, Drillmec S.P.A., Italy. It was also submitted that merely because in addition to satisfying conditions of Clause A.1.2 and A.1.2.1, the respondent no. 2 had also projected that it had satisfied Clause A.1.2.2, the bid submitted by the respondent no. 2 cannot be held to be technically not-qualified.

14. In the said context, it was submitted that the respondent no.2 had participated in the tender process and had demonstrated that it fulfilled the first of the two alternative criteria by taking help of the credentials/ experience

of Drillmec Inc., USA, which requires that the bidder has to be either the manufacturer (OEM) of Mast, Substructure and Crown-block assembly for rig of tendered or higher capacity and should be rig package integrator having experience of supplying complete drilling rig package(s), complying with clause A.1.2.1. Thus, it was submitted that this was not a case where the respondent no.2, had submitted its bid exclusively under the alternative criteria of being a manufacturer of three major rig components, namely, Draw-works, Top-drive and Drilling Control System, for which the respondent no.2 had taken support of the credentials/ experience of the respondent no.3, which at the time of submitting of the bid was a banned entity.

15. It was submitted that in respect of a previous purchase order issued in the year 2015, the respondent no. 3 had committed breach of the "integrity pact" and accordingly, the banning order was passed against respondent no. 3 in the year 2015. It was also submitted that during the said relevant time, i.e. in the year 2015, for committing breach of "integrity pact", the range of holiday period was between 6 (six) months to 3 (three) years. Therefore, merely because the appellate authority of the respondent no. 1 had reduced the holiday period of the respondent no.3 to 1 (one) year cannot be a ground to allege that the order by the appellate authority was designed to help the respondent no. 2 in the present tender in question.

16. It was submitted that in Clause 37.0 of the General Note to Bidders, which forms a part of Annexure-A to the bid document, it was specifically mentioned that the banning policy dated 06.01.2017, as uploaded in the website of respondent no.1, will be applicable against the tender. It was

submitted that the present tender in question was issued on 30.09.2021, and the debarment guidelines was issued on 02.11.2021. Accordingly, it was submitted that the new debarment guidelines could not have been made applicable to this tender. Hence, it was submitted that even if the respondent no.3 entity was put in a banning list/holiday list, as per clause 4.9 of the banning policy dated 06.01.2017 of the respondent no.1, the respondent no.2 would not have been adversely affected. In clause 4.9 of the banning policy it is provided that *"If an agency is put on banning list, the subsidiary sister companies/joint venture and holding company of the erring agency shall not be considered as banned."*

17. It was submitted that clause A.2.5 of the bid document has been wrongly interpreted by the petitioner to mean as if the holding Company cannot rely on the credentials of a subsidiary Company. In the said context, it was submitted that Clause A.2.5 merely requires that if a subsidiary relies on the credentials of holding Company, then documentary evidence was required to be submitted with the techno-commercial bid.

18. It was submitted that the petitioner had submitted a complaint dated 19.05.2022 addressed to the IEMs of respondent no.1, the respondent no.1 had replied to all the points raised by the petitioner in the complaint, wherein it was stated that against the technical qualifying criteria, the respondent no.2 had submitted their offer by relying on the technical experience of their sub-sub-subsidiary Company i.e. Drillmec Inc., USA, which was not debarred by the respondent no.1.

19. It was submitted that before awarding the contract, the respondent no.1 had taken opinion from (i) their own legal team, (ii) from the learned senior counsel for the respondent no.1, and (iii) from the Solicitor General of India. Thereafter, on being satisfied with their interpretation of the tender clauses, the respondent no. 1 had taken a conscious decision that there was no impediment for the respondent no.2 to participate in the bidding process. Accordingly, it was submitted that the instant challenge by the petitioner was not maintainable. In support of his submissions, the learned counsel for the respondent no.1 has relied on the following cases: (1) *Agmatel India Pvt. Ltd. v. Resoursys Telecom*, (2022) 5 SCC 362, (2) *N.G. Projects Ltd. v. Vinod Kumar Jain*, (2022) 6 SCC 127, (3) *Bharat Sanchar Nigam Ltd. & Ors. v. Tata Communications Ltd.*, 2022 SCC OnLine SC 1280, (4) *CRRC Corporation Ltd. v. Metro Link Express for Gandhinagar and Ahmadabad (Mega) Co. Ltd.*, (2017) 8 SCC 282, (5) *Consortium of Titagarh Firema Adler S.P.A. v. Nagpur Metro Rail Corpn. Ltd.*, (2017) 7 SCC 486, (6) *Afcons Infrastructure Ltd. v. Nagpur Metro Rail Corpn. Ltd.*, (2016) 16 SCC 818, (7) *Monte Carlo Ltd. v. National Thermal Power Corpn. Ltd.*, (2016) 15 SCC 272, (8) *Jagdish Mandal v. State of Orissa*, (2007) 14 SCC 517.

Submissions on behalf of the respondent nos.2 and 3:

20. The learned senior counsel for the respondent nos. 2 and 3 has extensively referred to the affidavit-in-opposition filed by the respondent no. 2. It was submitted that the scope of judicial review, by virtue of law developed by the Supreme Court of India in respect of tender matters is that the Court may interfere only if the decision making process of the tendering authority is *prima*

*facie* perverse. In this regard, it is submitted that the learned senior counsel for the petitioner had made his submissions for two days to demonstrate alleged illegality, which was a sufficient indication that this was not a case where the decision was *ex facie* perverse. It was further submitted that the respondent no. 1 was the author of the bidding documents and therefore, the respondent no. 1 was the best authority to interpret the tender clauses. It was submitted that from the submissions made by the learned senior counsel for the petitioner as well as the respondent no.1, it was clear that the respondent no.1 had taken legal opinion on three occasions. Therefore, if after taking three legal opinions, the respondent no. 1 came to a particular conclusion with regard to any tender clause, the view of the respondent no.1 was required to be respected even if the decision appears to the Court to be incorrect. It is submitted that even if there are some minor aberrations on part of the respondent no.1 in adherence to the tender clauses, it was not sufficient to set aside the tender process, which would harm public interest.

21. It was submitted that the Court ought not to examine the tender process with magnifying glass to find out fault with the tendering authority and interfere with the tender. It is submitted that the petitioner has not alleged any mala fide against the tendering authority, i.e. respondent no.1.

22. It was also submitted that the tender process relates to exploration of crude oil and therefore, the tender is for infrastructure project, where time bound completion of contract is in public interest. It was submitted that the LoA has been issued to the respondent no.2 on 28.06.2022 and the tendered work is likely to be completed in the month of October, 2023.

Therefore, instead of interfering with the tender process, it was submitted that the petitioner be relegated to approach the civil court to seek damages, if so advised. It was also submitted that it was open to the Court to examine the decision making process, but this Court may not like to sit in appeal over the decision of the tendering authority.

23. In support of his submissions the learned senior counsel for the respondent nos. 2 and 3 had cited the following cases: (1) *Silppi Construction Contractors v. Union of India*, (2020) 16 SCC 489, (2) *Afcons Infrastructure Ltd. v. Nagpur Metro Rail Corpn. Ltd.*, (2016) 16 SCC 818, (3) *Jagdish Mandal v. State of Orissa & Ors.*, (2007) 14 SCC 517, (4) *Michigan Rubber (India) Ltd. v. State of Karnataka*, (2012) 8 SCC 216, (5) *Meerut Development Authority v. Association of Management Studies*, (2009) 6 SCC 171, (6) *Raunaq International Ltd. v. I.V.R. Construction Ltd.*, (1999) 1 SCC 492, (7) *G.J. Fernandez v. State of Karnataka*, (1990) 2 SCC 488, (8) *Tata Cellular Vs. Union of India*, (1994) 6 SCC 651.

Discussion, reasons and decision:

24. Considered the materials in the (i) writ petition including grounds contained therein, (ii) affidavit-in- opposition by respondent no.1, (ii) affidavit-in- opposition by respondent no.2, (iii) affidavit-in- reply by petitioner against affidavit-in- opposition of respondent no.1, (iv) affidavit-in- reply by petitioner against affidavit-in- opposition of respondent no.2, (v) additional affidavit by respondent no.2.

25. The respondent no. 1 had invited bids for procurement of 5

(five) nos. of 2000 HP VFD Drilling Rigs with top drive and accessories. It would be relevant to quote the relevant part of Causes 37.0 under Clause CC "General notes to bidders: of Annexure-A to the Tender Document; Clauses A.1.2; A.1.2.1; A.1.2.1(A); A.1.2.1(B); A.1.2.2; A.1.2.2(A); A.1.2.3; A.2.5; under Annexure-B of the tender document under caption "Bid rejection criteria and bid evaluation criteria". The relevant part of the said clauses are extracted below:-

***"37.0 APPLICABILITY OF BANNING POLICY OF OIL INDIA LIMITED:***

*Banning Policy dated 6th January, 2017 as uploaded in OIL's website will be applicable against the tender (and order in case of award) to deal with any agency (bidder/contractor/supplier/vendor/service provider) who commits deception, default, fraud or indulged in other misconduct of whatsoever nature in the tendering process and/or order execution processes. Applicability of the policy shall include but not limited to the following in addition to other actions like invoking bid security/ performance security/cancellation of order etc. as deemed fit and as mentioned elsewhere in the tender:*

- a) BACKING OUT BY BIDDER WITHIN BID VALIDITY*
- b) BACKING OUT BY SUCCESSFUL BIDDER AFTER ISSUE OF LOA/ORDER/CONTRACT*
- c) NON/POOR PERFORMANCE AND ORDER/CONTRACT EXECUTION DEFAULT*

*The bidders who are on Holiday/Banning/Suspension list of OIL on due date of submission of bid/ during the process of evaluation of the bids, the offers of such bidders shall not be considered for bid opening/evaluation/award. If the bidding documents were issued inadvertently/downloaded from website, the offers submitted by such bidders shall also not be considered for bid opening/evaluation/Award of Work."*

\* \* \*

*"A.1.2 The bidder should be manufacturer (OEM) of mast, substructure and crown block assembly for rig of tendered or higher capacity with valid API-4F, PSL-*

*2 certification and should be rig package integrator, having experience of supplying complete drilling rig package(s) complying with clause A.1.2.2.*

*Or*

*The bidder should be manufacturer of the three major components namely Draw-Works, Top Drive and Drilling Control System and should be rig package integrator, having experience of supplying complete drilling rig package(s), complying with clause A.1.2.2.*

*For past experiences, the bidder of the offered rigs should satisfy the following (A.1.2.1 or A.1.2.2., whichever is applicable and A.1.2.3) along with documentary evidence, which should be enclosed along with the techno-commercial bid.*

*A.1.2.1 MANUFACTURING AND SUPPLY EXPERIENCE IN CASE THE BIDDER IS MAST, SUBSTRUCTURE AND CROWN BLOCK ASSEMBLY MANUFACTURER:*

*A.1.2.1 (A) The bidder (Manufacturer of Mast, Substructure and Crown block assembly) shall have an experience of minimum ten (10) years in manufacturing and supplying of Mast, Substructure and Crown block assembly under API Specification 4F, PSL-2 Certification.*

*Bidder in support of manufacturing under API specification for minimum ten (10) years, should submit copies of their API-4F, PSL-2 Certification with scope of licenses including Mast, Substructure and Crown Block Assembly covering a period of at least ten (10) years, in the last fifteen (15) years, preceding the original bid closing date, of this tender, along with the technical bid. The copies of API-4F certificates shall be for the facility from which the supplies are intended to be made.*

*For the facility from where supplies are intended, the bidder shall have valid API Spec 4F, PSL-2 certificate on the Bid Closing Date and submit the same along with the bid. The bidder shall also submit an undertaking that the Mast, Substructure and Crown block assembly shall be API-4F, PSL-2 monogrammed and the API-4F Certification shall remain valid continuously during the entire period of supply of rigs.*

*A.1.2.1(B) The bidder (Manufacturer of Mast, Substructure and Crown block assembly) should also have the experience of supplying at least three (03) numbers of complete Drilling Rigs of tendered or higher capacity after manufacturing mast, substructure & crown block assembly and integrating the Draw Works, Top Drive, Drilling Control System and other rig equipment during the last ten (10) years preceding the original bid closing date, of this tender, to E&P*

*companies/Drilling Contractors/ Drilling Rig Package Integrators/ Drilling service providers to the Oil and Gas industry.*

*The bidder shall submit copies of relevant contract(s)/ Purchase Order(s) for supply of Drilling Rigs of tendered or higher capacity placed on them along with supporting documents clearly indicating the details of the rig mast and other rig components as above.*

*The bidder should also submit copies of the following documents in respect of satisfactory execution of each of those Contract(s)/ Purchase Order(s) failing which the bids will be rejected:*

- (i) Copies of sealed & signed Rig commissioning certificate from end users in respect of all the three (03) drilling rigs delivered (OR)*
- (ii) Bill of Lading (OR)*
- (iii) Consignee delivery receipt/challan (OR)*
- (iv) Central Excise Gate Pass/ Tax Invoice issued under relevant rules of Central Excise/Vat/GST (OR)*
- (v) Commercial Invoice/Payment Invoice.*

**A.1.2.2 MANUFACTURING AND SUPPLY EXPERIENCE IN CASE THE BIDDER IS RIG EQUIPMENT (DRAW-WORKS, TOP DRIVE AND DRILLING CONTROL SYSTEM) MANUFACTURER:**

*A.1.2.2(A) The bidder (Manufacturer of Draw-Works, Top Drive & Drilling Control System) should have the experience of supplying at least three (03) numbers of complete Drilling Rigs of tendered or higher capacity after manufacturing the Draw-Works, Top Drive, Drilling Control System etc. and integrating with mast, substructure, crown block assembly and other rig equipment during the last ten (10) years preceding the original bid closing date, of this tender to E&P companies/Drilling Contractors/ Drilling Rig Package Integrators/ Drilling service providers to Oil and Gas industry.*

*Documentary evidence in respect of the above should be submitted in the form of copies of relevant Contract(s)/ Purchase Order(s) along with copies of any of the following documents in respect of satisfactory execution of each of those Contract(s)/Purchase Order(s) failing which the bids will be rejected:*

- (1) Copies of sealed & signed Rig commissioning certificate from end users in respect of all the three (03) drilling rigs delivered (OR)*
- (ii) Bill of Lading (OR)*

*(iii) Consignee delivery receipt/ challan (OR)*

*(iv) Central Excise Gate Pass/Tax Invoice issued under relevant rules of Central Excise/Vat/GST (OR)*

*(v) Commercial Invoice/ Payment Invoice.*

*A.1.2.3. In addition to A.1.2.1 or A.1.2.2 (whichever is applicable), bidder's offer must comply to the following:*

*For the other Rig equipment (listed at Clause No. 11.12 of Annexure-AA of the Tender), the bidder can either source the equipment from the specified Manufacturers listed at Clause No. 11.12 of Annexure-AA of the tender, or source from any other Manufacturer (including self), as per the following conditions:*

*(A) In case bidder sources the other Rig equipment (listed at Clause No. 11.12 of Annexure-AA of the Tender), from amongst the specified Manufacturers then the Bidder is not required to submit any documentary evidence in support of manufacturing and/or supply experience of the Manufacturer of the particular equipment.*

*(B) In case bidder sources the other Rig equipment (listed at Clause No. 11.12 of Annexure-AA of the Tender), from any other Manufacturer (including self) which are not specified in the list at Clause No. 11.12 of Annexure-AA of the Tender, then the bidder should submit the following documentary evidence from the quoted manufacturer(s), along with the techno-commercial bid:*

*Copies of contract(s)/purchase order (s) for supply of minimum three (03) numbers of the particular rig equipment of tendered capacity/rating or higher capacity/rating by the quoted manufacturing plant to E&P Companies/ Drilling Contractors/ Drilling Rig Package Integrators /Drilling Service Providers to Oil and Gas industry, during the last ten (10) years preceding the original bid closing date, of the tender.*

*Documentary evidence in respect of above should be submitted in the form of copies of relevant Purchase Order(s) along with copies of any of the following documents in respect of satisfactory execution of each of those Purchase Order(s) failing which the bids will be rejected:*

*(i) Signed & sealed satisfactory supply/completion report (OR)*

*(ii) Bill of Lading (OR)*

*(iii) Consignee delivery receipt/challan (OR)*

*(iv) Central Excise Gate Pass/Tax Invoice issued under relevant rules of Central Excise/Vat/GST (OR)*

*(v) Commercial Invoice/ Payment Invoice.*

*A.2.5 In case the Bidder is subsidiary company (should be 100% owned subsidiary of the parent/ ultimate parent/holding company) who does not meet financial criteria by itself and submits its bid based on the strength of parent/ultimate parent/holding company, then following documents need to be submitted:*

*(i) Turnover of the parent/ultimate parent/holding company should be in line with Para A.2.1 of Annexure-B*

*(ii) Net Worth of the parent/ultimate parent/holding company should be positive in line with Para A.2.2 of Annexure-B.*

*(iii) Corporate Guarantee (PROFORMA-B3) on parent/ultimate parent/holding company's company letter head signed by an authorised official undertaking that they would financially support their wholly owned subsidiary company for executing the project/job in case the same is awarded to them.*

*(iv) Documents to substantiate that the bidder is as 100% subsidiary of the parent/ ultimate parent/ holding company."*

26. It is seen that in paragraph 11 of their affidavit-in-opposition, the following statement is made by respondent no.1:

*"That the deponent begs to state that the Respondent no.2 i.e. M/s Megha Engineering & Infrastructures Limited (herein after referred as M/s MEIL), who does not fulfill the Bid Evaluation Criteria/Bid Rejection Criteria on its own, had submitted its bid in the present tender on the technical strength of M/s Drillemec Inc., USA and also M/s Drillemec S.P.A., Italy, which are 100% subsidiary/sub-subsidiary. The bid was made by claiming the experience and technological expertise of M/s Drillemec Inc., USA, who is a Manufacturer (OEM) of Mast, Substructures & Crown Block Assembly and also a Rig Package Integrator. The Respondent No.2 in their offer have also categorically clarified to carry out integration of the Rig Packages by themselves, in their own facility in India. For supplementing past supply experiences again Draw-Works, Top Drive and Drilling Control, System, the Respondent no.2 has relied upon the technical experience of their subsidiary M/s Drillemec, SpA, Italy."*

27. Thus, the stand of the respondent no. 2 is to the effect that the respondent no.2, had submitted its bid under the first of the two alternatives, i.e. by bidding as OEM of mast, substructure and crown block assembly, and that they were complying with clause A.1.2.1 of the bid document. In this regard, the respondent no. 2 had taken the help of the experience and credentials of Drillmec Inc., USA. However, for the second of the two alternatives, i.e. for bidding as manufacturer of three major rig components, namely, Draw-works, Top-drive and Drilling Control System, the respondent no. 2 had taken the help of experience and credentials of Drillmec, S.P.A., Italy.

28. It is not in dispute that the respondent no. 3 had committed a breach of "integrity pact" applicable to the Purchase Order no.7950934/SDG/P8 dated 05.09.2015 and accordingly, the said Drillmec S.P.A., Italy (respondent no.3), was debarred for a period of three years by Oil India Ltd. (respondent no.1) vide its Speaking Order no. MM/25/F/257/2021-22 dated 09.11.2021. However, the appellate authority of respondent no.1, vide order no. DO:OIL:03:04(B)-379 dated 21.02.2022, had reduced the period of debarment up to one year, i.e. up to 08.11.2022.

29. On 30.09.2021, the respondent no. 1 had floated the tender in question, wherein the original bid closing date was 03.11.2021, which was extended to 15.12.2021. As per Clause 37.0 of the General Note to Bidders, which forms a part of Annexure-A to the bid document, it was provided that the Banning Policy dated 06.01.2017 of the respondent no. 1 was applicable. Admittedly, the banning policy as contained in the tender document was not altered to make it in consonance with Rule 151 of the GFR, 2017, and as

directed by OM dated 02.11.2021 issued by the Procurement Policy Division, Department of Expenditure, Ministry of Finance, Govt. of India. The petitioner had participated in the bidding process without challenging the legality of the herein before referred Clause 37.0 regarding banning policy of respondent no.1. Therefore, having participated in the tender process without registering any protest against Clause 37.0 relating to the banning policy, the Court is inclined to hold that it would not be open to the petitioner to assail the award of contract to the respondent no. 2 by relying on GFR, 2017 and OM dated 02.11.2021. No material could be shown by the petitioner to show that Rule 151 of GFR, 2017 would automatically prevail over Clause 37.0, even without amendment of the tender document.

30. Therefore, as per the banning policy applicable for the tender in question, merely because the respondent no. 3 was suffering a banning order, the respondent no. 2 would not be disqualified to participate in the tender process, notwithstanding that the respondent no. 2 would be covered by definition of "allied firm" as provided for in the "Debarment Policy" circulated vide the herein before referred OM dated 02.11.2021.

31. In the case of *Jagdish Mandal (supra)*, the Supreme Court of India had held that a Court before interfering in tender or contractual matters in exercise of power of judicial review, should pose to itself the following questions:-

- (i) Whether the process adopted or decision made by the authority is mala fide or intended to favour someone? Or Whether the process adopted or decision made is so arbitrary and irrational that the court

can say "the decision is such that no responsible authority acting reasonably and in accordance with relevant law could have reached?

(ii) Whether public interest is affected?

It was then held that if the answers to the said two questions are in the negative, there should be no interference with the tender process under Article 226 of the Constitution of India.

32. Considered the facts of this case in the backdrop of the questions posed in the case of *Jagdish Mandal (supra)*. In this case, the respondent no. 2 had participated in the tender process with the experience and credentials of Drillmec Inc. USA. The learned senior counsel for the petitioner could not successfully dispel that under the first of the two alternatives for bidding in the tender process, the credentials of the respondent no. 3 was neither applicable nor was it invoked. Moreover, it could not be dispelled that as per Clause 37.0, the banning order on the respondent no. 3 did not make the respondent no.2 ineligible to bid. Therefore, the answer to both the questions referred in the case of *Jagdish Mandal (supra)*, is in the negative. Therefore, the petitioner has not been able to make out a case for interference in the award of tender in question by the respondent no.1 to the respondent no.2.

33. Thus, we are not required to deal with the cases cited by the learned senior counsel for the respondent nos. 2 and 3.

34. There is no quarrel with the well settled legal proposition that "*a decision is an authority for what it decides and not what can be logically deduced and/or flowing therefrom*". In the said regard, the learned senior

counsel for the petitioner had placed reliance on the case of *Sudhansu Sekhar Misra (supra)*, where the Supreme Court of India had observed as under:-

*A decision is only an authority for what it actually decides. What is of the essence in a decision is its ratio and not every observation found therein nor what logically follows from the various observations made in it. On this topic this is what Earl of Halsbury. LC said in Quinn v. Leathem, 1901 AC 495.*

*"Now before discussing the case of Allen v. Flood, (1898) AC 1 and what was decided therein, there are two observations of a general character which I wish to make, and one is to repeat what I have very often said before, that every judgment must be read as applicable to the particular facts proved, or assumed to be proved, since the generality of the expressions which may be found there are not intended to be expositions of the whole law, but governed and qualified by the particular facts of the case in which such expressions are to be found. The other is that a case is only an authority for what it actually decides. I entirely deny that it can be quoted for a proposition that may seem to follow logically from it. Such a mode of reasoning assumes that the law is necessarily a logical Code, whereas every lawyer must acknowledge that the law is not always logical at all."*

35. In view of the discussions above, the Court is unable to concur with the stand taken on behalf of the petitioner that the respondent no. 1 had treated unequal as equal. Moreover, merely because the petitioner had taken opinion from its legal cell, the senior counsel engaged by them and from the Solicitor General of India, the Court does not find it to be an attempt by the respondent no. 1 to somehow justify their action. The action of the respondent no.1, as discussed above, is not found to be illegal, arbitrary or contrary to the clauses contained in the tender document.

36. Therefore, the case of *W.B. Electricity Board (supra)*, and *Asia Foundation & Construction Ltd. (supra)*, cited by the learned senior counsel for the petitioner is not found to help the petitioner in any way and therefore, the

said cases are not discussed herein.

37. Therefore, this writ petition fails and the same is dismissed. However, leaving the parties to bear their own cost.

**JUDGE**

**Comparing Assistant**