

GAHC010175522022



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

Case No. : WP(C)/5755/2022

YASHASWI ISPAT PVT LTD
A COMPANY DULY REGD. IN TERMS OF THE PROVISIONS OF THE
COMPANIES ACT, 1956 HAVING ITS REGD. OFFICE AT B.K.KAKOTI ROAD,
REHABARI, GHY-08 AND IS REP. BY ITS AUTHORIZED SIGNATORY, SRI
BIJAY KUMAR JAISWAL, S/O- LT. RAJA RAM JAISWAL, R/O- 31 KHELAT
BABU LANE, P.O. BELGACHIA, P.S. TALA, KOLKATA

VERSUS

THE STATE OF ASSAM AND 4 ORS
REP. BY THE PRINCIPAL SECY., POWER (ELECTRICITY) DEPTT., D-BLOCK,
1ST FLOOR, ASSAM SECRETARIAT, DISPUR, GHY-06

2:ASSAM ELECTRICITY GRID CORPORATION LTD. (AEGCL)
BIJULEE BHAWAN (FIRST FLOOR)
PALTAN BAZAR
GHY-01
ASSAM
REP. BY ITS CHAIRMAN

3:THE MANAGING DIRECTOR
ASSAM ELECTRICITY GRID CORPORATION LTD. (AEGCL)
BIJULEE BHAWAN (FIRST FLOOR)
PALTAN BAZAR
GHY-01
ASSAM
REP. BY ITS CHAIRMAN

4:THE CHIEF GENERAL MANAGER
(O AND M)
ASSAM ELECTRICITY GRID CORPORATION LTD. (AEGCL)
BIJULEE BHAWAN (FIRST FLOOR)

PALTAN BAZAR
GHY-01
ASSAM
REP. BY ITS CHAIRMAN

5:THE CHIEF GENERAL MANAGER
PP AND D
ASSAM ELECTRICITY GRID CORPORATION LTD. (AEGCL)
BIJULEE BHAWAN (FIRST FLOOR)
PALTAN BAZAR
GHY-01
ASSAM
REP. BY ITS CHAIRMA

Advocate for the Petitioner : MR G N SAHEWALLA

Advocate for the Respondent : SC, AEGCL

BEFORE
HON'BLE MR. JUSTICE MANISH CHOUDHURY

ORDER

21.02.2023

Heard Mr. P. Bora, learned Senior counsel for the petitioner; Mr. N. Goswami, learned Junior Government Advocate, Assam, for the respondent no. 1 and Mr. S. Kataki, learned standing counsel, AEGCL for the respondent nos. 2—5.

2. The petitioner is a private limited company incorporated under the provisions of the Companies Act, 1956 and it participated in an E-Auction process initiated under the aegis of M/s Metal Scrap Trade Corporation [MSTC] Ltd., a Government of India Enterprise. The E-Auction process was for the purpose of auctioning a number of miscellaneous scrap and salvable materials belonging to the respondent M/s Assam Electricity Grid Corporation Limited [AEGCL]. The petitioner participated in the E-Auction process and emerged successful as the highest bidder [H1] in respect of Lot no. 3. After the petitioner emerged as the H1 bidder for Lot no. 1, a Letter of Acceptance [LoA] was issued in its favour by M/s MSTC Ltd. on 27.05.2022 by accepting the bid-value of ₹ 6,56,68,189/- [Rupees six crores fifty six lakhs sixty eight thousand one hundred eighty nine] inclusive of GST & TCS, quoted by the petitioner. As per the Letter of Acceptance, the lifting period was 60 days. In compliance of the conditions mentioned in the Letter of Acceptance, the petitioner deposited the security amount against ₹ 6,56,68,189/- [Rupees six crores fifty six lakhs sixty eight thousand one hundred eighty nine]. Thereafter, a Delivery Order dated 21.06.2022 was issued mentioning the last date of delivery

as 11.08.2022. The petitioner had thereafter, made an application for extension of the lifting period by minimum of 6[six] months and the respondent AEGCL by its letter dated 22.06.2022, extended the time period of lifting up to 30.11.2022. The petitioner had accordingly, started lifting the scrap materials but all on a sudden, the respondent authorities by an e-mail dated 01.07.2022 had informed the petitioner that the State Government had instructed that the whole process of disposal of scrap and salvable materials should be kept in abeyance and the petitioner was thereby, directed to stop lifting of scrap and salvable materials in respect of Lot no. 3 for the time being at present. By a subsequent e-mail dated 11.08.2022, the petitioner was informed that the process of lifting of materials had been kept in abeyance. Aggrieved thereby, the petitioner has approached this Court by instituting the writ petition under Article 226 of the Constitution of India seeking, inter alia, a direction to the respondent authorities to allow the petitioner to lift the scrap and salvable materials in respect of Lot no. 3.

3. Mr. Bora, learned Senior counsel for the petitioner has submitted that from the stands taken by the respondent authorities in their counter affidavits, it has emerged that the entire process of lifting of scrap and salvable materials has been kept in abeyance by the State Government in the Power [Electricity] Department on the premise that irregularities had occurred in the auction of scrap and salvable materials through E-Auction initiated under the aegis M/s MSTC Ltd. on behalf of M/s AEGCL. He has referred to the statements and averments made in paragraph 5 of the affidavit-in-opposition filed by the respondent no. 1 on 01.11.2022.

4. Paragraph 5 has made reference to a letter bearing No. PEL.130/2022/44 dated 14.09.2022 of the Government of Assam in the Power [Electricity] Department and addressed to the respondent no. 2. For ready reference, the entire contents of the letter dated 14.09.2022 are quoted hereinbelow:-

"In inviting a reference to the subject above, I am directed to draw your attention to the matter of e-auction of scraps and salvable materials and to keep the entire process in abeyance as communicated vide our letter No.PEL. 109/2022/10 dated 29.06.2022.

In this connection, I am directed to inform you that you should immediately return back the deposited money to the bidder (H1) alongwith all admissible interest from the date of depositing the money to the date of return. If there is any financial liability it should be borne by AEGCL from its own fund.

Besides, it was informed vide your letter dated 01.08.2022 that some materials from two GSS were already lifted by H1 bidder, i.e. M/S Yashaswi Ispat Ltd. In this regard, I am directed to request you to appoint valuer to deduct the amount suitably from the amount to be refunded to M/S Yashaswi Ispat Ltd.

An Action Taken Report in this regard may be intimated to this department at the earliest."

5. The learned counsel for the respondents have conjointly submitted that as per the instructions given by the State Government in the Power [Electricity] Department, the AEGCL authorities have [i] to return back the deposited money to the H1 bidder i.e. the petitioner alongwith admissible interest from the date of deposit to the date of return of the money; [ii] to bear any other financial liability from the fund of the AEGCL; and [iii] to appoint valuer in respect of the scrap and salvable materials already lifted by the petitioner and to deduct an amount suitably from the amount to be refunded.
6. Mr. Bora, learned Senior counsel for the petitioner has submitted that in view of the decision taken not to permit lifting of the scrap and salvable materials anymore under Lot no. 3 by the State Government and the authorities in the AEGCL, the petitioner is no longer interested to lift any scrap and salvable materials under Lot no. 3 and also to pursue the instant writ petition, provided the respondent authorities comply with the instructions contained in the letter dated 14.09.2022.
7. The learned counsel for the respondents have submitted that the process in terms of the letter dated 14.09.2022 will be immediately undertaken for the purpose refunding the money deposited by the petitioner along with admissible interest. Necessary steps will also be undertaken to appoint a valuer and to calculate the admissible amount in respect of the materials already lifted by the petitioner till the petitioner was stopped from lifting further materials. It is also submitted by the learned counsel for the respondents that the process will be completed within a period of 2[two] months from the date of submission of a certified copy of this order.
8. Having heard the learned counsel for the parties and having noted about the broad consensus arrived at by the parties, this writ petition is disposed of with the direction to the respondent authorities to undertake the process in terms of the letter dated 14.09.2022 so as to return the admissible amount to the petitioner alongwith admissible interest, etc. within a period of 2[two] months from the date of submission of a certified copy of this order by the petitioner at the office of the respondent no. 3.
9. This order disposes of the writ petition. No costs.

Sd/- Manish Choudhury
JUDGE

Comparing Assistant