

GAHC010233902024



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

Case No. : WP(C)/5776/2024

R TRADE AND LOGISTIC PVT LTD
HAVING ITS OFFICE AT 2ND FLOOR, MAHANTA COMPLEX, KUNDIL
NAGAR ROAD, BASISTHA CHARIALI, GUWAHATI-781029 REPRESENTED
BY ONE OF ITS DIRECTORS SRI RAUNAK AGARWAL AGED ABOUT 39
YEARS, R/O A-14/504, GAMES VILLAGE, BORSAJAI, LALMATI, GUWAHATI-
781029

VERSUS

THE FOOD CORPORATION OF INDIA AND 5 ORS
REPRESENTED BY THE CHAIRMAN CUM MANAGING DIRECTOR
BARAKHAMBA ROAD, NEW DELHI-110006

2:THE EXECUTIVE DIRECTOR (NE)
FOOD CORPORATION OF INDIA
GUWAHATI-781008
ASSAM

3:THE GENERAL MANAGER
FOOD CORPORATION OF INDIA
REGIONAL OFFICE
ASSAM REGION
GUWAHATI-781008
ASSAM

4:THE ASSISTANT GENERAL MANAGER (CONTRACTS)
FOOD CORPORATION OF INDIA
REGIONAL OFFICE
ASSAM REGION
GUWAHATI-781008
ASSAM

5:THE GENERAL MANAGER (REGION)
CONTRACT DIVISION
FOOD CORPORATION OF INDIA

REGIONAL OFFICE (ASSAM REGION)
GUWAHATI-781008
ASSAM

6:THE GRIEVANCE REDRESSAL COMMITTEE
FOOD CORPORATION OF INDIA
ZONAL OFFICE (NE)
GUWAHATI
GL PUBLICATION BUILDING
GUWAHATI-78100

Advocate for the Petitioner : DR B P TODI, MS. R JUGLI,MS M PARBIN,DR ANKIT TODI,MR A NATH

Advocate for the Respondent : SC, F C I,

BEFORE
HONOURABLE MR. JUSTICE MICHAEL ZOTHANKHUMA

ORDER

08.11.2024

1. Heard Dr. B.P. Todi, learned Sr. Counsel for the petitioner assisted by Mr. A. Todi. Also heard Mr. V.K. Singh, learned Standing Counsel, FCI.
2. The petitioner has challenged the impugned termination order dated 19.10.2024, by which the acceptance of the bid of the petitioner in respect of the road transport contract work has been terminated, besides debarring it from participating in any of the tender enquiry with the FCI for a period of 2 years and forfeiture of the security deposit of Rs.6.5 lakhs, in terms of Clause IX(d) & Clause XI(b) of the Model Tender Form (MTF). By the impugned order dated 19.10.2024, the petitioner has also been informed that for any dispute/grievance, the petitioner may approach the Dispute/Grievance Redressal

Committee constituted and functioning at the FCI, Zonal Office (NE), Guwahati as per Clause XX(b) of the MTF.

3. The petitioner's counsel submits that in terms of the Notice Inviting e-Tender dated 06.06.2024 (hereinafter referred to as the 'NIT'), for appointment on regular basis for a period of 2 years, as road transport contractors for various works, the petitioner submitted its bid in respect of e-Tender No.22.0011.0(11.0)/89/2023-Cont Division/05, wherein the estimated value of the contract was Rs.2,88,00,000/-.

4. The petitioner was thereafter issued a Letter of Acceptance dated 30.08.2024 in respect of the said contract work for a period of 2 years involving "Road Transport Contract Ex-FCI Siding New Guwahati Complex to PEG Byrnihat via Weighbridge" at its quoted rate of Rs.580/- per MT for the entire distance for transportation.

5. In terms of the Letter of Acceptance (LoA) dated 30.08.2024 and in terms of Clause 7(i)(a) & (b) and Clause IX (a)(i) & (ii) of the terms and conditions of the MTF, the petitioner was to furnish within 15 working days of the acceptance of his tender, 5% of the value of the contract as security deposit and another 15% of the value of the contract in the form of an irrevocable and unconditional bank guarantee.

6. The petitioner's counsel submits that when the bank guarantee cannot be submitted within 15 days from the date of acceptance of the tender, a further extension of 15 working days can be given to the tenderer to deposit the bank guarantee, subject to a levy of penalty @1% of the whole amount of the

security deposit.

7. The petitioner's counsel submits that the State respondents had determined that the 15 working days required for deposit of the security deposit and bank guarantee would end on 19.09.2024. Though the petitioner had taken steps with its bank for submission of the bank guarantee within 19.09.2024, the same was apparently not done. However, in view of Clause 7(ii) and Clause IX(b) of the MTF, the tenderer/petitioner is to be given another 15 working days for submission of the bank guarantee, subject to the levy of penalty @1% of the whole amount of the security deposit. The petitioner's counsel submits that though the petitioner had submitted a request to the respondents, to submit the bank guarantee with the penalty of 1% on the whole amount of the security deposit, by granting another 15 days' time to submit the bank guarantee, vide letter dated 19.09.2024 and e-mail dated 20.09.2024, the respondents did not make any reply to the same. Instead, they issued a show-cause notice dated 05.10.2024, which was replied to by the petitioner on 09.10.2024.

8. The petitioner's counsel submits that in the meantime, a fresh Notice Inviting e-Tender dated 19.10.2024 has been issued by the respondents for the same work. He submits that though the petitioner has filed an application before the Grievance Redressal Committee on 25.10.2024 against the impugned termination order dated 19.10.2024, the same has not been taken up by the Grievance Redressal Committee. The petitioner's counsel thus prays that the show-cause-notice dated 05.10.2024 and the impugned termination order dated 09.10.2024 should be set aside. He further prays for setting aside and quashing the fresh NIT dated 19.10.2024 and to issue a direction to the respondents, to allow the petitioner to submit the bank guarantee by extending the period of

submission by another 15 days, as provided under Clause 7(i)(b) & (c) of the RTC MTF.

9. Mr. V.K. Singh, learned Standing Counsel for the FCI, on the other hand, submits that though the petitioner was to submit Rs.12,95,000/- as security deposit by 19.09.2024, which was equivalent to 5% of the value of the contract work as per the LoA dated 30.08.2024, which was in terms of Clause 7(i)(a) and Clause IX(a)(i) of the terms and conditions of the MTF, the petitioner had apparently submitted only Rs.6,50,000/-, which was not accepted by the FCI. As such, the petitioner has not even submitted the required security deposit. He submits that there is no provision in the MTF, for giving extension of the period for submission of the security deposit, though there is a provision of extension of time for depositing the bank guarantee. He accordingly submits that there is no infirmity with the decision of the respondents in terminating the acceptance of the petitioner's bid, as the petitioner has failed to comply with Clause 7 and IX of the terms and conditions of the MTF. He further submits that when the petitioner has already availed the efficacious alternative remedy available, by filing an application before the Grievance Redressal Committee on 25.10.2024, the present writ petition should be dismissed as not being maintainable.

10. I have heard the learned counsels for the parties.

11. Clause 7 and Clause IX of the terms and conditions of the MTF are reproduced hereinbelow as follows:-

“7. Security Deposit

(i) The successful Tenderer shall furnish, within fifteen working days of acceptance of his tender, a Security Deposit for the due performance of his obligations under the contract. The Security Deposit shall consist of;

(a) A sum equivalent to 5% of the value of the Contract submitted electronically through NEFT/RTGS/ other electronic means in favour of the General Manager, Food Corporation of India; and

(b) Another sum equivalent to 15% of the value of contract, in the form of an irrevocable and unconditional Bank Guarantee (including e- Bank Guarantee) issued by 'Scheduled Commercial Bank' notified by RBI (excluding all Urban/ Rural/ state Co-operative Banks and Gramin Banks) in the format prescribed in Appendix-IV which shall be enforceable till six months after the expiry of the contract period.

(c) If applicable, an additional sum equivalent to 10% of the value of the contract, in terms of an undertaking provided by the tenderer for relaxation of eligibility conditions, in the form of an irrevocable and unconditional Bank Guarantee (including e-Bank Guarantee) issued by 'Scheduled Commercial Bank' notified by RBI (excluding all Urban/ Rural/ state Co-operative Banks and Gramin Banks) in the format prescribed in Appendix-V which shall be enforceable till six months after the expiry of the contract period.

(ii) In case of failure of tenderer to deposit the Bank Guarantee as stipulated in clause 7(i) (b)&(c) within 15 working days of acceptance of his tender, further extension of 15 working days can be given subject to levy of penalty @ 1% of the whole amount of the Security Deposit.

(iii) The Security Deposit furnished by the Tenderer will be subject to the terms and conditions given in the Annexure and the Corporation will not be liable for payment of any interest on the Security Deposit.

(iv) In the event of the Tenderer failure, after the communication of acceptance of the tender by the Corporation, to furnish the requisite Security Deposit under clause 7(i)a by the due date or requisite Security deposit in the form of Bank Guarantee under 7(i)b & 7(i)c including extension period (applicable to submission of BG only), his contract shall be summarily terminated besides forfeiture of Earnest Money and the corporation shall proceed for appointment another contractor. Any losses or damages arising out of and incurred by the Corporation by such conduct of the contractor will be recovered from the

contractor, without prejudice to any other rights and remedies of the Corporation under the Contract and Law. The contractor will also be debarred from participating in any future tenders of the Corporation for a period of two years. After the completion of prescribed period of two years, the party may be allowed to participate in the future tenders of FCI provided all the recoveries/ dues have been effected by the Corporation and there is no dispute pending with the contractor/party.

(v) If the successful tenderer had previously held any contract and furnished security deposit, the same shall not be adjusted against this tender and a fresh security deposit will be required to be furnished.

(VI) (a) The BG issuing Bank shall send cover for BG issued through SFMS platform to the FCI banker, i.e. ICICI bank Ltd, 9 Phelps building, C.P., New Delhi. IFSC code ICIC0000007 as per the detail below:

(i) MT760 COV for issuance of bank guarantee.

(ii) MT767 COV for amendment of bank guarantee

(iii) Issuing bank shall mention FCI beneficiary office code in field 7037 of MT760COV/MT767COV.

(iv) FCI beneficiary code will be "FCIFB11" where FB11 is four digit unit code of respective office of FCI.

(b) The bidder shall submit the copy of SFMS message as sent by the issuing bank branch along with the original Bank Guarantee.

(c) BG submitted without these details shall not be accepted.

(VII) In case contract is awarded to two or more bidders the successful bidder shall furnish the Security Deposit/Performance Bank Guarantee as applicable in proportion to the work awarded to them."

"IX. Security Deposit

*(a) The successful Tenderer shall furnish **within fifteen working days** of*

acceptance of his tender, a Security Deposit for the due, proper and complete discharge of all their obligations under the Contract. The Security Deposit will comprise of the total of the amounts specified in following clauses (i) (ii) and (iii):

*(1) A sum equivalent to 5% of the value of the Contract **submitted electronically through NEFT/RTGS/Other Electronic Means** in favour of the General Manager, Food Corporation of India. The contractor at his option may deposit 50 (fifty) percent of this amount within fifteen working days of acceptance of his tender while the balance 50 (fifty) percent may be paid by the contractors by deductions at the rate of 10 (ten)per cent from the admitted bills. The Security Deposit shall not earn any interest.*

*(ii) Another sum equivalent to 15% of the value of Contract, in the form of an irrevocable and unconditional Bank Guarantee (**including e-Bank Guarantee**) issued by 'Scheduled Commercial Bank' notified by RBI (excluding all Urban/ Rural/ state Co-operative Banks and Gramin Banks) in the format prescribed in Appendix-IV which shall be enforceable till six months after the expiry of contract period.*

*(iii) If applicable, an additional sum equivalent to 10% of the value of Contract, in terms of the undertaking provided by the Tenderer for relaxation of eligibility conditions, in the form of an irrevocable and unconditional Bank Guarantee (**including e-Bank Guarantee**) issued by 'Scheduled Commercial Bank' notified by RBI (excluding all Urban/ Rural/ state Co- operative Banks and Gramin Banks) in the format prescribed in Appendix- V which shall be enforceable till six months after the expiry of contract period.*

(b) In case of failure of tenderer to deposit the Bank Guarantee as stipulated in Clause 7(i) (b)&(c) within 15 working days of acceptance of his tender, further extension of 15 working days can be given subject to levy of penalty @ 1% of the whole amount of the Security Deposit.

(c) The Security Deposit will be refunded to the Contractors on due satisfactory performance of the services, and on completion of all obligations by the Contractor under the terms of the Contract, and on submission of a 'No demand certificate' subject to such deduction from the Security as may be necessary for recovering the Corporation's claims against the Contractor. The Corporation will

not be liable for payment of any interest on the Security Deposit.

(d) The General Manager shall have the rights to forfeit the entire or part of the amount of security deposit lodged by the contractors or to appropriate the security deposit or any part, thereof in or towards the satisfaction of any sum due to be claimed for any damages, losses charges, expenses or costs that may be suffered or incurred by the Corporation. The decision of General Manager (Region) in respect of such losses, damages, charges, costs or expenses shall be final and binding on the contractors.

(e) Whenever the Security Deposit falls short of the specified amount, the Contractors shall make good the deficit so that the total amount of Security Deposit shall not at any time be less than specified amount.

*(f) In the event of the Tenderer failure, after the communication of acceptance of the tender by the Corporation, to furnish the requisite Security Deposit **under clause 7(i)a by the due date or requisite Security Deposit in the form of Bank Guarantee under 7(i)b & 7(i)c including extension period (applicable to submission of BG only)**, his contract shall be summarily terminated besides forfeiture of Earnest Money and the corporation shall proceed for appointment of another contractor. Any losses or damages arising out of and incurred by the Corporation by such conduct of the contractor will be recovered from the contractor, without prejudice to any other rights and remedies of the Corporation under the Contract and Law. The contractor will also be debarred from participating in any future tenders of the Corporation for a period of **two years**. After the completion of prescribed period of **two years**, the party may be allowed to participate in the future tenders of FCI provided all the recoveries/dues have been effected by the Corporation and there is no dispute pending with the contractor/party.*

(g) (a) The BG issuing Bank shall send cover for BG issued through SFMS platform to the FCI banker, i.e. ICICI bank Ltd, 9 Phelps building, C.P., New Delhi. IFSC code ICIC0000007 as per the detail below:

(i) MT760 COV for issuance of bank guarantee.

(ii) MT767 COV for amendment of bank guarantee

(iii) Issuing bank shall mention FCI beneficiary office code in field 7037 of MT760GOV/MT767COV.

(iv) FCI beneficiary code will be "**FCIFB11**" where **FB11** is four digit unit code of respective office of FCI.

(b) The bidder shall submit the copy of SFMS message as sent by the issuing bank branch along with the original Bank Guarantee.

(c) BG submitted without these details shall not be accepted.

(h) In case contract is awarded to two or more bidders the successful bidder shall furnish the Security Deposit/Performance Bank Guarantee as applicable in proportion to the work awarded to them."

12. The Letter of Acceptance (LoA) dated 30.08.2024 issued to the petitioner, provides the conditions to be fulfilled by the petitioner, which are as follows:-

"You are now requested to furnish the Security Deposits comprising of:

a. A sum equivalent to 5% of the Value of the Contract (SD Money) amounting to Rs.12,95,000/- (Rupees Twelve Lakh Ninety Five Thousand only) through NEFT/RTGS/other Electronic means in favour of the General Manager, Food Corporation of India.

b. Another sum equivalent to 15% of the Value of the Contract amounting to Rs.38,85,000/- (Rupees Thirty Eight Lakh Eighty Five Thousand only) in the form of an irrevocable and unconditional Bank Guarantee (including e-Bank Guarantee) issued by 'Scheduled Commercial Bank' notified by RBI (excluding all Urban/Rural/State Co-Operative banks and Gramin Banks) in the format prescribed in Appendix-IV of the MTF which shall be enforceable till six months after the expiry of the contract period.

C. An additional sum equivalent to 10% of the Value of the Contract, in terms of the undertaking provided by you (for applying without experience) amounting to Rs.25,90,000/- (Rupees Twenty Five Lakh Ninety Thousand only) in the form of an irrevocable and unconditional Bank Guarantee (including e-Bank

Guarantee) issued by 'Scheduled Commercial Bank' notified by RBI (excluding all Urban/Rural/State Co-Operative banks and Gramin Banks) in the format prescribed in Appendix-V of the MTF which shall be enforceable till six months after the expiry of the contract period.

Further to above as per MTF Clause 7 sub clause (VI) the BG issuing bank shall send cover for BG issued through SFMS platform to the FCI Banker, i.e. ICICI Bank Ltd., 9 Phelps Building, C.P., New Delhi, IFSC Code ICIC0000007 as per the detail below:

- i. MT760 COV for issuance of bank guarantee.*
- ii. MT767 COV for amendment of bank guarantee.*
- iii. Issuing bank shall mention FCI beneficiary office code in field 7037 of MT760COV/MT767COV.*
- iv. FCI beneficiary code will be "FCIFB11" where FB11 is four digit unit code of FCI Regional Office, Assam.*
- v. The bidder shall submit the copy of SFMS message as sent by the issuing Bank Branch along with original Bank Guarantee.*

BG(S) SUBMITTED WITHOUT AFORESAID DETAILS SHALL NOT BE ACCEPTED.

N.B.-1: YOU ARE REQUESTED TO FURNISH PRESCRIBED SECURITY MONEY ALONG WITH BANK GUARANTEE(S) AS STATED ABOVE WITHIN 15 (FIFTEEN) WORKING DAYS AS PER MTF. FAILURE TO SUBMIT/DEPOSIT THE SD MONEY & PHYSICAL COPY OF BG(S) WITHIN THE PRESCRIBED PERIOD WILL ATTRACT APPROPRIATE ACTION AGAINST YOUR FIRM/COMPANY AS PER MTF.

N.B.-2: Bank Guarantee(s) must be submitted in toto as per MTF Appendix-IV& V along with SFMS Cover message and should invariably contain the Seal, Sign, Name and Post Code of the signing officers of the Bank. The Bank Guarantee(s) should invariably be as per the format in Appendix-IV & V, if any discrepancies are found, the Bank Guarantee(s) will not be accepted under any circumstances.

This is issued with the approval of the Competent Authority."

13. As can be seen from the LoA, the petitioner was to submit the security deposit of Rs.12,95,000/- within 15 days from the date of acceptance of the tender, i.e., by 19.09.2024. However, the petitioner submitted only Rs.6,50,000/- and that too, only on 20.09.2024. The above is completely in violation of Clause 7(i)(a) of the MTF and in terms of Clause 7(iv) & Clause IX(f) of the terms and conditions of the MTF, the respondents have the power to summarily terminate the contract. The above being said, the submission made by the petitioner's counsel only relates to the petitioner not being given additional time to submit the bank guarantee. However, the annexures to the writ petition and the submission of the FCI counsel shows that the petitioner had not even submitted the security deposit in full and within the time limit prescribed in the MTF and the LoA.

14. Thus, though the petitioner could have been given an extension for a period of another 15 days for submission of his bank guarantee in terms of the MTF, the fact remains that the petitioner had not even submitted the required security deposit within 19.09.2024, i.e., the period stipulated for submission of the security deposit, wherein there is no provision for giving an extension in terms of the MTF.

15. On considering the above facts, this Court is of the prima facie view that there is no merit in the writ petition. However, in view of the fact that the petitioner has filed a representation before the Grievance Redressal Committee in terms of Clause XX of the MTF, for redressal of his grievance, this Court is of the view that the present writ petition should not be entertained any further by this Court, as two parallel proceedings on the same issue cannot be allowed to be pursued by the petitioner.

16. Accordingly, this writ petition is dismissed. Having said that, as the alternative remedy has been availed of by the petitioner, this Court hopes and trusts that the Disputes/Grievance Redressal Committee shall dispose of the petitioner's representation/petition dated 25.10.2024 at the earliest and preferably within a period of 2(two) weeks from the date of receipt of a certified copy of this order. The Disputes/Grievance Redressal Committee should not consider the observations or findings made by this Court to be the final observations or findings made by this Court. They should also not be swayed by any findings and observations made by this Court and should decide the petitioner's representation/petition on its own merit.

JUDGE

Comparing Assistant