

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Writ Petition (C) No.1542 of 2015**

AdCept Technologies Pvt. Ltd. through its Directors—

1. Chandra Shekhar Banerjee, son of Late DharaniDhar Banerjee (Director, AdCept Technologies Pvt. Ltd.), aged about 52 years, resident of 14, Mandeville Gardens, P.O. and P.S. Mandeville Gardens, District Kolkata 700019 (W.B.)
2. Soumya Kanti De, son of Late Tilak Chand De, (Director, AdCept Technologies Pvt. Ltd.), aged about 44 years, resident of 13 Ballygunge Terrace, P.O. and P.S. Ballygunge, District Kolkata 700029 (W.B.)

---- **Petitioners****versus**

1. South Eastern Coalfields Ltd. (A Government of India through Chairman-cum-Managing Director, South Eastern Coalfields Ltd., Headquarters, Seepat Road, Bilaspur, Chhattisgarh
2. General Manager (Materials Management), SECL Headquarters, Seepat Road, Bilaspur, Chhattisgarh

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For Petitioners	:	Shri Kishore Bhaduri and Shri Anup Majumdar, Advocates
For Respondents	:	Shri Prafull N. Bharat and Shri Vinod Deshmukh, Advocates

Hon'ble Shri Navin Sinha, Chief Justice
Hon'ble Shri Justice P. Sam Koshy

Order on Board**Per Navin Sinha, Chief Justice****2/9/2015**

1. The Respondents published a notice inviting tender No.SECL/BSP/MMW/SecIII/14-15/KKM/Radar/115 on 10.10.2014 inviting global bids for installing, commissioning of slope radar system in open cast mines for one year with comprehensive annual maintenance contract. The last date for submission of bids was 25.11.2014 and the techno-commercial bid was to be opened on 27.11.2014.

2. Learned Counsel for the Petitioners submits that there are two leading radar technologies available *inter alia* for monitoring stability of high walls and bench slopes in real time known as Real Aperture Radar (RAR) and Synthetic Aperture Radar (SAR). Both technologies have been successful worldwide and industrial users inquire and invite tenders from manufacturers of both technologies. The Respondents were therefore not justified in confining the NIT to Real Aperture Radar Technology only. The Petitioners represented in this regard before the last date for submission of tenders, on 17.10.2014. The representation was not effectively disposed and hence the writ petition.

3. Learned Counsel for the Respondents submits that the representation dated 17.10.2014 has been considered evident from Annexure P-6 to the writ petition. He further submits that the Petitioners had lodged a complaint with the Independent External Monitor (IEM) also and which had invited Petitioner No.2 to attend the deliberation of the complaint either in person or through authorised representative on 19.3.2015 at 10:00 a.m. It was further submitted that earlier Writ Petition (C) No.1192 of 2013 was filed by the Petitioners before Jharkhand High Court on the same grounds against Bharat Coking Coal Limited. It was dismissed on 14.8.2015 prior to the filing of the present writ petition on 21.8.2015. Notwithstanding it, the Petitioners still have misrepresented in paragraph 8.10 that the matter was pending before the Jharkhand High Court. It is lastly submitted that the terms of the tender are not open to judicial scrutiny, if the Respondents were satisfied of the technology with regard to which they had invited tenders.

4. We have heard Learned Counsel for the parties.

5. On the own showing of the Petitioners, there were two technologies available for monitoring stability of high walls and bench slopes that is Real

Aperture Radar and Synthetic Aperture Radar. Industrial users invite tenders from manufacturers of both technologies. Therefore, if the Respondents opted for one of them only, the writ jurisdiction under Article 226 of the Constitution of India cannot be invoked for inviting the Court to decide the suitability of the technology required by the Respondents by usurping that power and taking decision on their behalf. The terms of a tender cannot be scrutinised and rewritten by the Court unless there are gross illegalities and patent arbitrariness in the terms of the tender which is not the case presently.

6. Furthermore, the Petitioners had also petitioned the Jharkhand High Court on the same issue and which writ petition was dismissed on 14.8.2015 to the knowledge of the Petitioners, even before the present writ petition was filed. If all that were not enough, the present writ petition is also highly belated in nature filed on 21.8.2015 with regard to a tender the last date for which was 25.11.2014 and the technical bids to be opened on 27.11.2014.

7. Cumulatively, we do not find any merit in the writ petition. It is dismissed.

Sd/-
(**Navin Sinha**)
CHIEF JUSTICE

Sd/-
(**P. Sam Koshy**)
JUDGE