IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
WRIT PETITION (L) NO. 2692 OF 2014
...
KSS Petron Private Limited ….. Petitioner
V/s
Naib Tahsildar, Recovery of Government Dues, Mumbai Suburban District & Ors. ….. Respondents
...
Mr. Vikram Nankani, Senior Counsel a/w Mr. Amit Vyas, Ms. Rhia Banerjee, Ms. Vaishnavi Chillakuva i/b M/s Economic Laws Practice for Petitioner.
Ms. Kiran Bagalia for Respondent no.2 – MMRDA.
...
CORAM : A.A. SAYED, J.
DATED : 3 MARCH 2015

P.C.

This Petition has been filed under Article 226 of the Constitution challenging the Notice dated 13 August 2014 of the Respondent No.1 threatening attachment of immoveable property and arrest under sections 179 to 184 of the Maharashtra Land Revenue Code, 1966, in the event the dues which are stated to be that of the Government are not paid within 48 hours. The Petitioner has also challenged the consequent auction notices dated 14 November 2014.

2. The Respondent No.2-Mumbai Metropolitan Region Development Authority (MMRDA) had invited bids in respect of construction of Andheri- Ghatkopar Link Road. One Petron Civil Engineering Pvt.Ltd. and Pratibha Industries Ltd. entered into a joint venture Agreement and

formed a joint venture Company and submitted a joint bid for the project. The said joint venture Company was known as Petron Prathibha Joint Venture ("PPJV" for short) . It was also agreed under the joint venture Agreement that Petron Civil Engineering Pvt.Ltd. would be the lead partner. Respondent-MMRDA accepted the bid of the PPJV for Rs.29.95 crores (approx). PPJV was required to furnish performance security in an amount of Rs.1.56 crores, which was accordingly furnished. Under the Contract entered into after the bidding process, MMRDA was required to clear the work site of encroachment to enable the Contractor to commence work.

3. Disputes and differences arose between the parties. According to the Petitioner, even after considerable amount of time, about 40% of the work was only made available and because of the delay PPJV de-mobilized its resources. According to the Petitioner, Respondent-MMRDA refused to extend the term of the Contract and did not respond to the PPJV's representation. Vide letter dated 26-2-2008, Respondent-MMRDA foreclosed the Contract in terms of Clause 59.2(g) of the Contract and called upon the PPJV to submit its final bill. PPJV accordingly furnished its final bill to Respondent-MMRDA claiming an amount of Rs.7.16 crores. Respondent-MMRDA, on the other hand, issued a letter to the PPJV stating that under the project a sum amounting to Rs.3.45 crores is due from the

PPJV to Respondent-MMRDA and called upon them to pay the said amount. According to the Petitioners, PPJV was forced to provide a Bank Guarantee in the amount of Rs.2.50 crores, which was renewed from time to time. On 8 August 2011, PPJV informed the Respondent-MMRDA that the final bill and claims relating to expenditure incurred on account of idle period was in a sum of Rs.5.55 crores, which amount has remained unpaid, and the said amount is receivable by the PPJV from Respondent-MMRDA after adjustment of mobilization advance. The Bank Guarantee of Rs.2.5 crores was extended till 31 March 2014.

4. On 15 February 2013, Petron Civil Engineering Pvt.Ltd. was amalgamated with one KazStroyServices Infra India Pvt.Ltd. and the name of amalgamated entity was changed to KSS Petron Pvt.Ltd., the Petitioner herein, from November 2013.

5. The Petitioner-KSS Petron Pvt.Ltd., thereafter, furnished a Corporate Guarantee for Rs.2.50 crores, which was valid upto 29 November 2014. By the impugned notice, PPJV and Pratibha Industries Ltd. were again called upon to pay the amount of Rs.3.45 crores to Respondent-MMRDA and in the event of failure to comply, a warrant of distraint of moveable property, attachment of immoveable property or warrant of arrest was threatened to be executed, as indicated earlier.

6. An Affidavit-in-Reply has been filed on behalf of the Respondent-MMRDA. According to Respondent-MMRDA, the Petitioner had availed mobilization advance/secured advance from them at the rate of 12% interest, and it also owes Respondent-MMRDA the land rent. It is the case of the Respondent-MMRDA that the said dues are not related to contractual obligations. According to Respondent-MMRDA once the Contract is closed, advances paid by the Respondent-MMRDA to the Petitioner become due and recoverable by Respondent-MMRDA forthwith. It is the case of the Respondent-MMRDA that the Petitioner is incorrectly linking this recovery with the claims made by them and the claims are untenable. Advance payments, according to Respondent-MMRDA, consists of (1) Mobilization advances, (2) Equipment Advances and (3) Secured Advances and more particularly set out in the Reply. According to Respondent-MMRDA, the Petitioner has acknowledged that an amount of Rs.13.23 lacs towards secured advance and Rs.1.60 crore towards uncovered mobilization advance is recoverable from the Petitioner alongwith further interest. It is averred that the advances are given as loan to the Petitioner and the repayments whereof is not related to the dispute in the Contract. It is pointed out that advances in the hands of the Petitioner are public funds and required to be recovered forthwith.

7. An Affidavit-in-Rejoinder has been filed on behalf of the Petitioner, wherein it is pointed out that instead of contractual period of one year, they have already spent number of years and this time overrun has contributed to the acute financial condition of the Petitioner and the Petitioner, therefore, had to demobilized the resources and Respondent-MMRDA is liable to compensate the Petitioner for the loss suffered by them.

8. I have heard learned Senior Counsel for the Petitioner and learned Counsel for the Respondent-MMRDA. Both learned Counsel are ad-idem that under Clauses 24 & 25 of the Contract, the procedure for resolution of the dispute has been provided. Clauses 24 & 25 of the Contract read as under:

> "24. ***Disputes: No Arbitration is Allowed.***
> *The entire work is to be carried out on the basis of terms & conditions of contract, bill on quantities specifications & drawings. In case of dispute, anyone of the above will prevail over the others based on the meaning to be obtained from Engineer or his authorized representative.*
>
> *24.1 The decision of the Chief Engineer shall be final, conclusive and binding on all parties to the contract upon all questions relating to the meaning of the specifications, designs, drawings, and instructions hereinbefore mentioned and as to the quality of workmanship or*

materials used on the work, or as to any other question, claim, right, matter or things, whatsoever if any, way arising out of or relating to the contracts designs drawings, specifications, estimates, instructions, orders or other conditions or otherwise concerning the works or the execution or failure to execute the same, whether arising, during the progress of the work or after completion or abandonment thereof.

24.2 The Contractor, may within Thirty days of receipt by him of any order passed by the Chief Engineer as aforesaid, appeal against it to the Additional Metropolitan Commissioner with the contract work or project, provided that:-

a) the accepted value of the contract exceeds Rs.5.00 Crores (Rupees five crores)

b) Amount of claim is not less than Rs.50.00 lacs (Rupees fifty lacs)

24.3 If the Contractor is not satisfied with the order passed by the Additional Metropolitan Commissioner as aforesaid, the Contractor may, within Thirty days of receipt by him of any such order, appeal against it to the Metropolitan Commissioner who, if convinced that prima-facie the Contractor's claim rejected by the Additional Metropolitan Commissioner is not frivolous and that there is some substance in the claim of the Contractor as would merit a detailed examination, the Metropolitan Commissioner, *shall render the decision which shall be final and binding to all parties to the contract.*

25. ***Procedure for Disputes***

25.1 The Metropolitan Commissioner shall give a decision in writing within 56 days of receipt of a notification of a dispute.

9. Having considered the facts and circumstances of the case and upon hearing learned Senior Counsel for the Petitioner and learned Counsel for Respondent- MMRDA, and particularly considering the fact that both the parties are ad-idem that there is a dispute resolution provided under Clauses 24 & 25 of the Contract, the Petition is disposed of by passing the following order:

O R D E R

(i) The Petitioner shall within a period of four weeks from today furnish a Bank Guarantee of a Nationalized Bank for an amount of Rs.1,00,00,000/- (Rupees One Crore only) to Respondent-MMRDA, which shall be kept alive until the process under Clauses 24 & 25 of the Contract is followed and the final decision on the disputes between the parties is taken and for a further period of four weeks thereafter.

(ii) The Petitioner shall within a period of four weeks from today file their claim alongwith all relevant documents, before the Chief Engineer with an advance copy to Respondent-MMRDA.

(iii) Respondent-MMRDA will be at liberty to file their reply/ counter-claim within three weeks thereafter.

(iv) The Chief Engineer shall take decision in respect of the claims within a period of four weeks thereafter.

(v) The further procedure as contemplated under Clauses 24 & 25 may be followed after the decision of the Chief Engineer, until the decision attains finality.

(vi) The impugned notices are quashed and set aside.

(vii) Until the decisions taken by the Authorities attain finality under Clauses 24 & 25 of the Contract and for a period of three weeks from the date of communication of the final order to the Petitioner, no coercive steps shall be taken by the Respondent-MMRDA .

(viii) In the event there are any claims recoverable by Respondent-MMRDA, it will be open for them to proceed against the Petitioner in accordance with Mumbai Metropolitan Regional Development Act, 1974.

(ix) All contentions of the parties are kept open.

(x) It is made clear that if the Bank Guarantee is not furnished as directed, the present Petition shall stand dismissed and the benefit of this order shall not be available to the Petitioner.

(A.A. SAYED, J.)

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