IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE V.CHITAMBARESH

THURSDAY, THE 6TH DAY OF AUGUST 2015/15TH SRAVANA, 1937

WP(C).No. 19381 of 2015 (W)

PETITIONER:

SHANKAR CONDUCTORS (P) LTD.
UMAYANALLOOR INDUSTRIAL ESTATE, UMAYANALLOOR
QUILON-691509, REPRESENTED BY ITS MANAGER
DINESH KUMAR SINGH.

BY ADV. SRI.MILLU DANDAPANI

RESPONDENTS:
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1. **THE CHIEF ENGINEER (SUPPLY CHAIN MANAGEMENT) KSEB**
   KERALA STATE ELECTRICITY BOARD, VYDYUTHI BHAVANAM
   PATTOM, THIRUVANANTHAPURAM-695004.

2. **THE CHIEF ENGINEER (DISTRIBUTION NORTH)**
   KERALA STATE ELECTRICITY BOARD, VYDYUTHI BHAVANAM
   KOZHIKODE-673011.

*** ADDL. R3 IS IMPLEADED**

3. **KRITIKA WIRES PVT. LTD.**
   BONFIELD LANE, CHINA BAZAR, KOLKATTA
   WEST BENGAL - 700 001
   REPRESENTED BY ITS MANAGING DIRECTOR
   MOB:9331129806.

*** ADDL.R3 IMPLEADED AS PER ORDER DATED 01.07.2015 IN I.A. NO. 8959/15 IN THE W.P.(C).**

R1 & R2 BY ADVS. SRI.RAJU JOSEPH (SR.)
SRI.K.T.PAULOSE, SC, KSEB
ADDL.R3 BY ADVS. SRI.K.L.NARASIMHAN
SRI.N.KRISHNA PRASAD
SRI.P.G.PRAMOD

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 06-08-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

DCS

WP(C).No. 19381 of 2015 (W)

<u>APPENDIX</u>

PETITIONER(S)' EXHIBITS

EXT.P1 : TRUE COPY OF THE E-TENDER NOTICE NO.KSEB/CEDN/AEE5/PRCH-LT STAY WIRE 7/2.5MM/2014-15 DT.23-3-2015.

EXT.P2 : TRUE COPY OF THE LETTER NO.AEES/7/2.5MM GI STAY WIRE/2015-16/295 DT.12-5-2015.

EXT.P3 : TRUE COPY OF THE REPLY LETTER NO.SCPL/758/1364/2015 DT.13-5-2015 SENT BY THE PETITIONER.

EXT.P4 : TRUE COPY OF THE RELEVANT EXTRACT OF THE TENDER DOCUMENT NO.KSEB/CEDN/29/2014-15/23-3-2015.

EXT.P5 : TRUE COPY OF THE RELEVANT EXTRACT OF THE TENDER DOCUMENT RELATING TO ELIGIBILITY CONDITION.

EXT.P6 : TRUE COPY OF THE PRINT OUT OBTAINED FROM THE WEBSITE.

EXT.P7 : TRUE COPY OF THE LETTER NO.SCPL/758/1388/2015 DT.5-6-2015 ISSUED BY THE PETITIONER.

EXT.P8 : TRUE COPY OF THE LETTER NO.SCPL/758/1391/2015 DT.6-6-2015

EXT.P9 : TRUE COPY OF THE NETWORTH CERTIFICATE DT.16-1-2015 ISSUED TO THE PETITIONER.

RESPONDENT(S)' EXHIBITS:-

EXT. R3(a): TRUE COPY OF THE RELEVANT EXTRACTS OF THE TENDER BID ALONG WITH NOTIFICATION INVITING TENDER DATED 23.03.2015

/TRUE COPY/

P.A. TO JUDGE

DCS

V. CHITAMBARESH, J

W.P.(C). NO. 19381 OF 2015

Dated this the 06th day of August, 2015

JUDGMENT

The probable amount of contract specified in Ext. P1 notice inviting tender for the supply of 200 MT of 7/2.5 mm GI stay wire is Rs. 1,63,00,000/-. All the tenderers were given one more opportunity to make up the deficit in the production of documents by Ext. P2 letter. The petitioner by Ext.P3 reply maintained that the Net worth Certificate has already been produced for consideration of its tender.

2. The relevant part of Ext. P3 Net worth Certificate produced by the petitioner is as follows:-

NETWORTH CERTIFICATE

SHANKAR CONDUCTORS PRIVATE LIMITED

STATEMENT OF NETWORTH COMPUTATION:

PARTICULARS	**As on 31.10.2014**
Paid Up Capital	9000000.00
Add: Reserve & Surplus	2780464.32
Less: Miscellaneous Expenditure (Not written off)	0.00
Net Worth	**11780464.32**

This is in tune with Section 2(57) of the Companies Act, 2013 whereunder the term 'Net worth' has been defined. It is extracted hereunder:-

> "2(57). "net worth" means the aggregate value of the paid-up share capital and all reserves created out of the profits and securities premium account, after deducting the aggregate value of the accumulated losses, deferred expenditure and miscellaneous expenditure not written off, as per the audited balance sheet, but does not include reserves created out of revaluation of assets, write-back of depreciation and amalgamation;"

3. The short question is whether Ext. P3 Net worth Certificate produced by the petitioner satisfies Ext. P4 General Conditions of tender. Clause 23 of Ext. P4 General Conditions is to the following effect:-

> "23. The firm should have sufficient financial capacity to supply the materials as per Board's requirement. The firm should have a minimum average annual turnover of 163 Lakh for the last three financial years immediately preceding the date of submission of bid. Annual audited financial statement for the last three years shall be furnished along with the bid. The bidders shall produce a Solvency Certificate in the

format as per Section F obtained within a period of six months for an amount equivalent to PAC or more obtained from Thahasildar or Nationalized/scheduled bank (except Indus Ind Bank) or Net worth Certificate issued by a Chartered Accountant along with their bid."

4. This is reiterated in Ext. P5 Eligibility Conditions and Clause 8 thereof is as follows:-

> "8. Scanned Solvency Certificate within a period of six months, for an amount equivalent to PAC or more obtained from Tahasildar/Nationalised/ Scheduled Bank or Net Worth Certificate issued by a Chartered Accountant should be furnished."

A reading of Clause 23 in Ext. P4 General Conditions and Clause 8 of Ext. P5 Eligibility Conditions clarifies that the Net worth Certificate should be for an amount equivalent to probable amount of contract or more. The Net worth of the petitioner as per the certificate is only Rs. 1,17,80,464.32 whereas the probable amount of contract as stated above is Rs. 1,63,00,000/-. The Net worth of the petitioner as disclosed by its certificate evidently falls short of the stipulation mentioned in Ext. P4 General Conditions and Ext. P5 Eligibility Conditions.

5. Heavy reliance is placed on the following sentence in Ext. P3 Net worth Certificate:-

> "The company has adequate financial capacity to execute contracts worth Rs. 30 Crores in a year."

It is one thing to say that the petitioner has the financial capacity to execute contracts worth crores of rupees. But it is another thing to say that the Net worth of the company is only Rs. 1,17,80,464.32. The financial capacity to execute a contract is totally different from the Net worth of the petitioner in the context of Section 2(57) of the Companies Act, 2013. That the petitioner himself understood so is evident from Ext. P8 Net worth Certificate produced subsequently.

6. A sum of Rs. 1,00,00,000/- is added in Ext. P8 Net worth Certificate by the incorporation of the following:-

Long Term Deposit from Friends & Relatives not withdrawable without permission from Board of Directors of M/s. Shankar Conductors (P) Ltd., hence considered quashi capital.	1,00,00,000.00

Firstly Ext. P8 Net worth Certificate was produced on 06.06.2015 after the rejection of the tender of the petitioner by Ext. P6 communication on 05.06.2015. Secondly Ext. P8 Net worth Certificate has been jacked up by the inclusion of Rs. 1,00,00,000/- therein. It is beyond comprehension as to how the deposits from friends and relatives (details not furnished) can be considered as a quasi capital. It can only be treated as the result of the imagination of the Chartered Accountant who issued Ext. P8 Net worth Certificate. Ext.P8 Net worth Certificate is evidently not in tune with Section 2(57) of the Companies Act, 2013 wherein the term 'Net worth' is defined.

7. The petitioner has a further contention that Ext. P8 'Net worth Certificate' (similarly fashioned) was accepted by respondents 1 and 2 on an earlier occasion. The third respondent successful tenderer contends that acceptance of Ext. P9 Net worth Certificate was an illegality which cannot be perpetuated. The fact remains that the third respondent was not a party to the tender wherein Ext. P9 Net worth Certificate was submitted.

The acceptance of Ext. P9 Net worth Certificate by respondents 1 and 2 does not at any rate falls for consideration in this writ petition.

8. Suffice it to say that I do not find any error in the process of tender being finalised by respondents 1 and 2. That there was only one successful tenderer who satisfied all the Eligibility Conditions is no ground to invalidate the tender process. I do not find any illegality or arbitrariness warranting interference under Article 226 of the Constitution of India.

The writ petition fails and is dismissed. No costs.

V. CHITAMBARESH
JUDGE

DCS