

THE HIGH COURT OF DELHI AT NEW DELHI

%

Judgment delivered on: 05.03.2015

+ W.P.(C) 1672/2015 and CM 3943/2015

JAYASWAL NECO INDUSTRIES LTD

... Petitioner

versus

UOI AND ANR

... Respondents

Advocates who appeared in this case:

For the Petitioner : Mr Kapil Sibal, Sr Advocate with Mr Devashish Bharuka
and Mr Ravi Bharuka

For the Respondents : Mr Sanjay Jain, ASG with Mr Akshay Makhija,
Mr Shreshth Jain and Ms Asstha Jain

CORAM:-

HON'BLE MR JUSTICE BADAR DURREZ AHMED

HON'BLE MR JUSTICE SANJEEV SACHDEVA

JUDGMENT

BADAR DURREZ AHMED, J (ORAL)

1. This writ petition is in respect of the Gare Palma IV/8 coal mine. The petitioner's technical bid has been rejected by the Technical Evaluation Committee for the following reasons:-

“Capacity of rolling mill, sinter plant and producer gas plant is not considered for assessment of coal requirement as these are not specified end-use. Since consumption norms for coal requirement for blast furnace were not provided for this mine, coal requirement for blast furnace shall not be considered.

Also, washery and transit losses shall not be considered for assessment of coal requirement as per clarification issued.

The Bidder's coal entitlement as computed after considering permission end uses and excluding washery and transit losses, is less than the extractable reserves of the Coal Mine. Hence, the bid is rejected.”

From the above, it is seen that the capacity of the rolling mills, sinter plant and producer gas plant, according to the respondents, is not to be considered for assessment of the coal requirement. It is also indicated that the coal requirement for the blast furnace is also not to be considered. Washery and transit losses are also stated to be ignored for the purposes of assessment of coal.

2. According to Mr Sibal, the learned senior counsel appearing on behalf of the petitioner, even if the aforesaid elements are ignored for the sake of arguments, without admitting that they could be ignored for an integrated steel plant, the petitioner would still be entitled inasmuch as the total coal requirement of the sponge iron plants and the captive power plants and the pellet plant taken together on the basis of the formula given in the tender documents would be in excess of the extractable results of 45.85 million tonnes. In fact, the respondents have not included the computation of the requirement for the pellet plant while stating that the coal requirements of the petitioner is only 45.76 million tonnes. Although the learned counsel for the petitioner states that they do not accept the

computation of 45.76 million tonnes and in fact, according to them, the computation would be 52.12 million tonnes, even if the manner of computation of the respondents is taken and the requirement for the pellet plant is included, the deficiency of 0.09 million tonnes is covered.

3. We have heard the learned counsel for the parties at great length. Mr Sanjay Jain, the learned ASG, submitted that the computation for the requirement of the pellet plant has not been included in any of the other bidders' cases. Therefore, in the present case also, it has not been computed and that the computation has been made on the basis of the coal consumption norms for evaluation of bids as per annexure P-6 given at page 152 onwards of the paper book.

4. It is well settled that the reasons for rejection have to be the very reasons which have been recorded on the file and no subsequent reasons can be added. In the present case, the reasons communicated to the petitioner, which we have extracted above, are exactly the same as available on the file. Those reasons do not exclude the pellet plant. Therefore, we find no reason to permit the respondents, at this stage, to exclude the pellet plant. Once the pellet plant requirement is included, admittedly, even as per the calculations of the respondents, the petitioner's coal requirement would cross the threshold of 45.85 million tonnes. Therefore, in our view, the petitioner's technical bid could not

have been rejected on the basis of the reasons on record. We are making it clear that we have not expressed any opinion on the mode and manner of calculation of the petitioner or the respondents and this decision has been made in the peculiar facts of this case.

5. The result is that the petitioner would be entitled to participate as a ‘technically qualified bidder’ in the auction to be held on 08.03.2015. The writ petition is allowed to this extent. There shall be no orders as to costs.

Dasti under the signatures of the Court Master.

BADAR DURREZ AHMED, J

MARCH 05, 2015
kb

SANJEEV SACHDEVA, J