

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.16373 of 2011

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Civcon Construction Pvt. Ltd., a Company incorporated under the provisions of the Companies Act, 1956 having its Registered Office At 21-A, Shakespeare Sarani, Kolkata-700017- through its Chief Executive Officer Sri Sudip Kumar Dutta, son of Sri Sushanta Kumar Dutta 17-D, Ashutosh Choudhury Avenue, Kolkata-19

.... Petitioner

Versus

1. National Building Construction Corporation Ltd., a Govt. of India Enterprises, having its Corporate Office At NBCC Bhawan, Lodi Road, New Delhi-11003 and its SBG Office At P-6, Vijay Nagar, Rash Behari Path, Rukanpura, P.O. B.V. College, Patna, through its Managing Director.

2. Senior General Manager, National Building Construction Corporation Ltd., P-6, Vijay Nagar, Rash Behari Path, Rukanpura, P.O. B.V. College, Patna- 800014.

.... Respondents

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Appearance :

For the Petitioner/s : Mr. Rajiv Ranjan Prasad, Adv.
Mr. Rajendra Kumar, Adv.

For the Respondent/s : Mr. Satish Kumar Sinha, Adv.

CORAM: HONOURABLE MR. JUSTICE VIKASH JAIN

ORAL JUDGMENT

Date: 26-04-2016

Heard learned counsel for the petitioner and the respondents.

2. The present writ petition has been filed for quashing and cancelling the order dated 04.04.2011 issued under the signature of Senior General Manager (respondent no. 2) on the representation of the petitioner, whereby and whereunder he has rejected the claim of the petitioner for refund of the Earnest Money Deposit (hereinafter referred to in short as 'the EMD'); amounting to Rs. 10,84,000/-, and for interest thereon.

3. The short facts of the case are that the petitioner participated in a tender advertised on 27.04.2010 for the construction of the Academic Block of the College of Horticulture at Noorsarai, District- Nalanda, and being



the lowest tenderer was awarded the tender. The tender required the work to be completed within a period of 18 months. Clause 6 of the General Conditions of Contract ('GCC' for short) contained an undertaking which was signed by the petitioner, to commence work within 10 days of the date of issue of the letter of award. In terms of Clause-9 of the GCC, the petitioner was required to furnish a performance guarantee within 30 days from the date of issue of the letter of award, or within extended time. In case of failure on the part of the petitioner to sign the agreement or to submit performance guarantee, the respondents would be at liberty to cancel the Letter of Award and the EMD would also be liable for forfeiture.

4. It is stated on behalf of the petitioner the letter of award dated 15.06.2010 was received by it on 25.06.2010 i.e. after a delay of 10 days of its issuance. Almost immediately thereafter, on 28.06.2010, the respondents started putting pressure on the petitioner for mobilizing the work. The respondents threatened that as provided under Clause-9 of the GCC in case work was not mobilized at site and performance guarantee not submitted within 7 days, the letter of award would be cancelled and the petitioner would be made to forfeit the EMD. The petitioner responded with its letter dated 3.7.2010 requesting the respondents to issue Form-5 under the Contract Labour (Regulation and Abolition) Act, 1970, that being a mandatory requirement to enable the petitioner to obtain a labour licence for engaging contract labour for executing the work. Request was also made for handing over the site free from encumbrances and for issuance of drawings for construction. The requests of the petitioner in the said letter dated 3.7.2010 as well as in its subsequent letter dated 20.7.2010 requesting for



extension of time for submitting performance guarantee were ignored by the respondents. After considerable delay, the respondents handed over a map to the petitioner on 5.8.2010, and two days later ie on 7.8.2010, only two employees, a mason and head choukidar, were deputed by the respondents. However, Form-5 aforesaid was not issued. Instead, the respondents issued a letter dated 17.08.2010 informing the petitioner that the letter of award was cancelled and the EMD stood forfeited as per the clauses of the GCC by reason of the petitioner's failure to comply with the terms and conditions of the NIT dated 09.04.2010. The same was challenged in C.W.J.C. No. 14674 of 2010, which was disposed of with direction to the respondents to consider the application to be filed by the petitioner and decide the matter relating to refund of EMD. On such application being filed, the impugned order dated 4.4.2011 was passed rejecting the claim for refund of EMD on the ground that the petitioner had failed to comply with the terms and conditions of the tender, leading to filing of the present writ petition.

5. It is submitted that the respondents have acted arbitrarily, and with uncalled for haste as even though sufficient time remained for expiry of the 30-day period available for submitting performance guarantee, the same had inexplicably been demanded from it within 7 days by letter dated 28.06.2010, thereby violating the terms of the GCC. It is therefore submitted that the conduct of the respondents has been impelled by ulterior motive, and accordingly the action of the respondents in cancelling the Letter of Award dated 15.06.2010 and directing forfeiture of EMD is wholly arbitrary and illegal.

6. Learned counsel for the respondents on the other hand,



opposes the writ petition relying on the counter affidavit. It is pointed out that the petitioner had agreed to Clause-6 of the GCC containing an undertaking to commence work within 10 days of the date of issue of letter of award, and in case of failure to sign the agreement or submit the performance guarantee, the respondents would be at liberty to cancel the letter of award and the EMD would be liable for forfeiture. It is further submitted that the respondents repeatedly wrote to the petitioner in terms of letters dated 28.06.2010, 5/7.7.2010 and 17.08.2010 requiring compliance from the petitioner before cancelling the letter of award and taking action for forfeiture of the EMD.

7. Having heard the parties and on a careful consideration of the materials on record, this Court finds merit in the writ petition. The fact that the letter of award dated 15.06.2010 was received by the petitioner after a 10-day delay on 25.06.2010 is not in dispute. In that view of the matter, requiring the petitioner to commence work within 10 days from the issue of the letter of award must be treated to mean from the date of receipt of the letter of award. In other words, the petitioner could be faulted only if it failed to commence work by 5.7.2010, and therefore the respondents have acted in undue haste in issuing the letter dated 28.06.2010 requiring mobilization of work. The respondents could not also have demanded for furnishing of the performance guarantee within 7 days of the said letter in view of sufficient time remaining with the petitioner for the purpose. Moreover, failure on the part of the respondents in issuing Form-5 and the delay in handing over site and drawings though requested by the petitioner in its letter dated 3.7.2010 also contributed to the delay and thus part of the delay is attributable to the

respondents as well. In such a situation, this Court is of the view that the petitioner could not have been held liable for delay in commencement of the work or in furnishing the performance guarantee.

8. This Court therefore directs that the amount of Rs. 10,84,000/- deposited by the petitioner by way of EMD shall be refunded by the respondents within a period of eight weeks from the date of receipt/production of a copy of this judgment, together with simple interest calculated @ 6% per annum from the date when the deposit was made up to the date of its refund.

9. The writ petition stands allowed.

(Vikash Jain, J)

Md. Ibrarul/-

AFR/NAFR	AFR
CAV DATE	
Uploading Date	30.04.2016
Transmission Date	