

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Writ Petition (C) No. 591 of 2016**

ARSS Infrastructure Project Limited Sector-A, Zone D, Plot No. 38,
Mancheshwar Industrial Estate, Bhubaneswar 751010 Odisha, Through its
Managing Director Rajesh Agrawal.

---- Petitioner**Versus**

1. RITES Ltd, Rites Bhawan-1, Sector 29, Gurgaon 122001 Through its
Managing Director, A Government of India Enterprises, Ministry of Railway, New
Delhi.
2. The Chief Project Manager, Regional Project Office, Kolkata, Matro Railway
Service Building, Second Floor, C.R.Avenue, Kolkata 700012.

---- Respondents

For Petitioner : Shri K.K.Singh, Advocate.

Hon'ble Shri Navin Sinha, Chief Justice**Hon'ble Shri P. Sam Koshy, J.****Order on Board****Per Navin Sinha, Chief Justice****17/03/2016**

1. The Petitioner is aggrieved by order dated 8.12.2015 disqualifying it at
the stage of technical bid on the twin grounds that another contract awarded to it
by Respondent No. 1 had been terminated on 14.8.2015 thus rendering it
ineligible for consideration under clause 7(b) of the Notice Inviting Tender ('the
NIT') and that it had been blacklisted for two years with effect from 11.9.2015
due to poor performance of works.
2. Learned Counsel for the Petitioner submits that Respondent No. 1 floated
tender dated 17.7.2015 and a corrigendum was published on 10.8.2015. The
Petitioner submitted its bid in response to the same on 17.8.2015. Till that date,
it had not been communicated any information with regard to termination of the
earlier contract by order dated 14.8.2015. Therefore, rejection on that ground

was unjustified. The termination itself was contrary to the law and the Petitioner had raised a dispute with regard to the same which was pending arbitration. The Petitioner had represented against the termination on 31.8.2015. The order of blacklisting dated 29.9.2015 was challenged before the Punjab and Haryana High Court in Civil Writ Petition No. 24855 of 2015 (O&M) (M/s. ARSS Atlanata JV, Bhubaneshwar v. RITES Ltd.). On 10.12.2015, interim orders were passed and ultimately the writ petition was disposed on 10.2.2016 as the Respondents themselves withdrew the order of blacklisting. The second ground for rejection therefore no more existed. The Respondents may be directed to dispose the representation dated 31.8.2015.

3. Learned Counsel also sought to persuade us on the merits of the illegality of the termination dated 14.8.2015, contending that if the termination itself was also subjudice in arbitration, it could not be relied upon as a ground of disqualification.

4. We have considered the submissions on behalf of the Petitioner.

5. The disqualification of the Petitioner at the stage of technical bid was on two grounds. In so far as the second ground with regard to blacklisting is concerned, even if we accept the submission that it no more subsists due to withdrawal of the order for blacklisting by the Respondents that still leaves the disqualification under clause 7(b) of the NIT with regard to termination of the earlier contract on 14.8.2015. The impugned order states that the termination order was issued to the Petitioner before submission of its bid in question on 17.8.2015. The termination takes effect from the date of issuance and not that it will become effective only after it physically reaches the hands of the Petitioner. In any event, there is no pleading in the writ petition that it was never dispatched and remained in the files only. On the contrary, the representation of the Petitioner dated 31.8.2015 expressly acknowledges and assails the termination dated 14.8.2015 making it evident that it has received the same. It lends

complete credibility to the ground in the impugned order that it was issued prior to submission of bid by the Petitioner.

6. Clause 7(b) of the NIT reads as follows:

"7. DISQUALIFICATION ON CERTAIN GROUND

Even though the Bidders may meet the above qualifying criteria, they are subject to be disqualified if they have

a) xxx xxx xxx

b) Records of any contract awarded to them, having been determined during the past three years prior to the deadline for submission of bids.

xxx xxx xxx"

7. At this stage, we are not concerned with and cannot examine the validity of the termination dated 14.8.2015. So long as the order of termination is not withdrawn or set aside by the competent authority or Court, it continues to remain operative. The mere fact that the Petitioner may be of the opinion that it was issued contrary to the law does not tantamount to the termination becoming illegal. That adjudicatory order is yet to come in the pending proceedings. Therefore, it is difficult to accept the submission that if the termination was pending in a lis, it could not be taken into consideration. Moreover, it appears from paragraph 8.7 of the writ petition that the Petitioner has filed an application under Section 9 of the Arbitration and Conciliation Act, 1996 before the District Judge, Nagpur to prevent debarring it from consideration in other contracts on the said ground. The application is stated to be pending consideration. Neither do we have jurisdiction nor can we pre-empt the proceedings before the District Judge, Nagpur in any manner, much less conduct any parallel proceedings. The Petitioner may pursue its remedies thereunder in accordance with law.

8. There is no merit in the writ petition. It is dismissed.

Sd/-
(Navin Sinha)
CHIEF JUSTICE

Sd/-
(P. Sam Koshy)
JUDGE