

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

Civil Writ Petition No. 6315 of 2016

Date of Decision: 02.06.2016

M/s The Warriar Mining Minerals and Infra Pvt. Ltd.

..Petitioner

versus

State of Haryana and others

..Respondents

**CORAM: HON'BLE MR. JUSTICE S.J.VAZIFDAR, ACTING CHIEF JUSTICE.
HON'BLE MR. JUSTICE ARUN PALLI.**

Present : Dr. Anmol Rattan Sidhu, Senior Advocate with
Mr. S.K.Sharma, Advocate, for the petitioner.

Mr. Rahul Dev Singh, Deputy Advocate General, Haryana,
for respondent Nos.1 to 3.

Mr. Aman Chaudhary, Advocate, for respondent No.4.

Mr. R.S.Rai, Senior Advocate with
Ms. Rubina Virmani, Advocate, for respondent Nos. 5 & 6.

S.J.VAZIFDAR, ACTING CHIEF JUSTICE

The petitioner has challenged the acceptance of the bid of respondent Nos. 5 and 6 on the ground that they were submitted beyond the time stipulated in the e-auction notice. The petitioner submits that the bids submitted by respondent Nos. 5 and 6 although higher than the petitioner's bid by ₹ 14 crores and ₹ 38.10 crores respectively ought not to have been accepted as they were made more than 10 minutes after the petitioner's bid. We have rejected the petition.

2. By a notice dated 22.01.2016 the Haryana Government informed the general public that mining leases would be granted for the extraction of minor minerals. Nine mining leases were to be auctioned for a period of ten years each. The bids were to be submitted for amounts per

annum. The rival contentions require a construction of the following conditions of the e-auction notice:-

B. The intending bidders before participation in the e-auction/bidding process will be required to create their user account online by selection the option of e-auction from discipline column and obtain user-id / password.....”

D. In case of any query regarding process of e-Auction, the intended bidder can contact the service provider at below mentioned address:

E. Any bidder interested to participate in the auction can submit his bid/s from 23.02.2016 from 09:00 AM to 24.02.2016 till 12:00 noon.

F. However, in case any bid in respect of any mine/ block is received 10 minutes prior to time fixed for closure for the bids i.e. bid received between 11:50 AM to 12:00 Noon then the time for closure of the auction would be extended automatically by 10 minutes, so that equal opportunity is made available to the persons participating in the bidding process. Such extensions of ten minutes will continue till bids are received within next 10 minutes of last bid for any of the mine, otherwise the same would get concluded.

G. In case the bidding would continue during such extensions of 10-10 minutes, the bidding process will finally conclude at 04:00 pm and no further extension would be given thereafter.

12. The bids offered/ received during the e-auction process shall be provisionally accepted and the Director shall obtain the orders of Government thereon. No bid shall be regarded as successful bid unless accepted by the Government.

3. As we mentioned earlier, the bids were to be for amounts per annum but the duration of the leases was 10 years. The petitioner submitted

bids for plot Nos.2 and 3, respondent No.5 bid for plot Nos.2 and 3 and respondent No.6 bid for plot No.3.

4. Respondent No.5 did submit bids more than 10 minutes after the petitioner's bid in respect of the same mine. The first time this happened was when the petitioner bid Rs.15,06,50000/- at 12:16:42.830 and respondent No.5 bid ₹ 15,07,50,000/- at 12:27:12.160. The bid of respondent No.5 was, therefore, more than 10 minutes after the petitioner's bid. The petitioner, however, continued bidding till the end as did the other bidders. Ultimately the bid of respondent No.5 of ₹ 16,46,50,000/- was the highest.

5. This was so even in the bidding between the petitioner and respondents No.5 and 6 for plot No.3. The first time the 10 minutes limit was crossed between the petitioner and respondent Nos.5 and 6 was when the petitioner bid ₹ 11,64,50,000/- at 12:32:46.219 and respondent No.5 bid ₹ 11,65,50,000/- at 12:46:01.885. All the bidders in respect of plot No.3 including the petitioner, however, continued bidding. Ultimately the bid of respondent No.6 of ₹ 15,45,50,000/- at 15:59:56.480 was the highest.

6. Dr. Sidhu, the learned senior counsel appearing on behalf of the petitioner submitted that the moment more than 10 minutes had elapsed between the petitioner's bid and those of the respondents, the sale ought to have been confirmed in the petitioner's favour without permitting any further bids. He contended that under clause (F) of the e-auction notice, once 10 minutes elapsed after a bid, no further bids can be permitted. He further submitted that the 10 minute period must be computed in respect of the bids for each of the nine mines separately. The respondents contended otherwise.

According to them if a bid is submitted in respect of any of the nine mines, the period of 10 minutes commences from that time for all the mines. In other words, according to the respondents, merely because a period of 10 minutes elapses from a bid in respect of a particular mine, it would make no difference if during this 10 minute period a bid is submitted in respect of any other mine.

7. It is important to note that the auction was held in respect of all the nine mines simultaneously. The bidding took place simultaneously for all the nine mines. Each of the bidders was given a single user I.D. which entitled them to submit the bids on-line. A bidder was entitled to bid for any number of mines. He could bid for just one mine or all the nine mines. These facts assist in the interpretation of clauses (F) and (G).

8. The first sentence in clause (F) provides that *“however, in case any bid in respect of any mine/block is received 10 minutes prior to time fixed for closure for the bids”*. The reference is to *“any bid in respect of any mine/block”*. The words *“any bid in respect of any mine”* indicate a reference to a bid in respect of any of the nine mines and not to any particular mine. The words that follows *“.....then the time for closure of the auction.....”* refer to the auction in general in respect of all the nine mines and not to the mine in respect of which the earlier bid is received. If the intention was to limit the reference to the bids in respect of only a particular mine, the clause would have been worded differently. It would have been specifically provided that in case any bid in respect of a particular mine is received 10 minutes prior to closure of the bids between the time stipulated, then the time for closure of the auction in respect of that

particular mine would be extended. That, however, would require the clause to be rewritten which is not permissible.

9. The second sentence in clause (F) also supports this construction. It provides that the extension of 10 minutes would continue till the bids are received within the next 10 minutes of the last bid “for any of the mine”. The words “*for any of the mine*” make it clear that the reference to the bids is not in respect of a particular mine but in respect of any of the nine mines. The singular ‘mine’ appears to be a typographical error. The intention was obviously to use the plural ‘mines’. This is clear from the words “*any of the mine*”.

10. Thus the extension of 10 minutes would commence from a bid in respect of any of the mines and be applicable to any of the mines. In other words, if a bid is received in respect of a particular mine, there would automatically be an extension of 10 minutes to submit a bid in respect any of the other mines as well.

11. Even from a practical point of view, this construction commends itself to us. As we mentioned earlier, a bidder may bid for any number of mines - he may bid for all the nine mines. The intention was to give the bidders reasonable time to improve their bids. A bidder may be influenced by the bids received not merely in respect of one of the mines that he has bid for but even in respect of the other mines that he has bid for. A bidder who has bid for more than one mine would naturally take more time to respond in respect of each of them than a bidder who bids for only one mine. It would be difficult for such a bidder to keep track of the time in respect of several bids separately.

12. It is reasonable to presume that the party inviting tenders intended to make it convenient for bidders to improve their bids. A party inviting tenders cannot be presumed to cause obstacles/difficulties in parties improving their bids. That would be self defeating.

13. Dr. Sidhu submitted that the clause is not clear. He submitted that the interpretation placed by him is also plausible.

14. Let us presume that to be so. If a clause in a commercial document especially one that stipulates the terms and conditions of an auction is capable of two interpretations, we would unhesitatingly favour the one that advances the purpose of an auction namely to obtain the best price. An auction is essentially conducted to enable the seller to obtain the best price. That an auction conducted by the State or its instrumentalities is also to give all the parties similarly situated an opportunity of participating in the ventures of the State is a different matter altogether. An open auction is nevertheless to obtain the best price from all the eligible bidders.

15. If the petitioner's contention is accepted, the official respondents would lose about ₹ 14 crores in respect of plot No.2 and about ₹ 38.10 crores in respect of plot No.3. They would also loose large amounts on account of such an interpretation even in respect of the other seven plots. That, however, is not the basis for interpreting the agreement. If the plain language of the terms was clear, the Court would not be justified in interpreting the terms otherwise merely on account of the financial gain that accrues in favour of the official respondents.

16. However, even if the petitioner's case is accepted, the official respondents would not be bound to enter into a contract with it. This is clear

from clause 12 which provides that the bids offered would be provisionally accepted and the Director would obtain the orders of the Government thereon. To leave no room for doubt, clause 12 provides that no bid shall be regarded as successful unless accepted by the Government. Had we held in favour of the petitioner, it would still have been open to the official respondents to either accept or reject the bid. If on account of the enormous difference in the bids the official respondents decided to hold a fresh auction, they could not have been faulted.

17. In the circumstances, the petition is dismissed.

(S.J.VAZIFDAR)
ACTING CHIEF JUSTICE

02.06.2016
'ravinder'

(ARUN PALLI)
JUDGE

To be referred to the reporter	√Yes	No.
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