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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% Judgment delivered on: 21.03.2016

\+ **W.P.(C) 2418/2016 & CM 10352-10353/2016**

A2Z INFRA ENGINEERING LTD .... Petitioner

versus

POWER GRID CORPORATION OF INDIA LTD & ANR... Respondents

Advocates who appeared in this case:

For the Petitioner : Mr Anish Kapur with Mr Kuber Dewan, Ms Divya Bhaka, Mr Mohit Mathur and Ms Susana Nausad

For the Respondent R-1 : Mr Sanjay Jain, ASG with Ms Sharmila Upadhyay and Ms Rajul Jain

For the Respondent UOI : Mr Arjun Mitra

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 directed against the letter dated 04.03.2016 issued by the Power Grid Corporation of India Limited with regard to the invitation for bids (IFB) for Tower Package-TWb1 for (i) Balance work of 400kV D/C Silchar-Melriat line; (ii) 132 kV D/C Interconnecting Silchar-Melriat T/L using 220 kV towers; (iii) 132 kV D/C Melriat-Sihhmui T/L & (iv) 132 kV D/C Melriat-Zemabawk line (LILO of 132

kV D/C Aizawl-Zemabawk TL at Melriat) under Transmission System associated with Pallatana GBPP and Bongaigaon TPS.

2. By virtue of the impugned letter dated 04.03.2016 the petitioner's price bid has not been opened and the petitioner has been requested to arrange to collect the bid security from the Office of Power Grid Corporation of India Limited. The reason for not opening the price bid of the petitioner is that the Power Grid Corporation of India Limited has assessed that the capacity and capability of the bidder does not match up with their requirement for successful execution of the scope of work covered under the present tender within the stipulated period. There are several alleged material deviations which have been noted in paragraph 2 of the impugned letter but the main point of contention between the parties is with regard to the assessment of the capacity and the capability of the petitioner.

3. The petitioner has also challenged the following requirement which falls under the head of qualification of the bidder:-

> "The Employer may assess the capacity and capability of the bidder, to ascertain that the bidder can successfully execute the scope of work covered under the package within stipulated completion period. This assessment shall inter-alia include (i) document verification;

(ii) bidders work/manufacturing facilities visit; (iii) manufacturing capacity, details of works executed, works in hand, anticipated in future & the balance capacity available for the present scope of work; (iv) details of plant and machinery, manufacturing and testing facilities, manpower and financial resources; (v) details of quality systems in place; (vi) past experience and performance; (vii) customer feedback; (viii) banker's feedback etc.”.

4. We cannot permit the petitioner to challenge the said condition at this stage because the petitioner had participated in the subject tender and it is only after the petitioner has received the impugned letter dated 04.03.2016 that the petitioner has filed this writ petition challenging the above condition.

5. The learned counsel for the petitioner also submitted that the assessment done by the Power Grid Corporation of India Limited is not correct. However, from the record, we find that on 03.09.2013 a letter had been issued by the Power Grid Corporation to the petitioner regarding the bid capacity and overall performance indicator in ongoing contracts of Power Grid Corporation. In the said letter, it is indicated that based on the financial details furnished by the petitioner, the financial parameters were not encouraging. It had, therefore, been decided to carry

out an assessment of the petitioner, *inter alia,* with regard to performance in the contracts executed for Power Grid Corporation of India Limited. The financial position and other issues were also required to be gone into before taking a final view for award of further contracts. This document, that is, the letter dated 03.09.2013 was shown to us by Mr Sanjay Jain, the learned ASG, who has produced the same from the record of the Power Grid Corporation. We may also point out that for analysing the credit rating of the petitioner the task had been assigned to Credit Analysis and Research Limited (CARE). The report from CARE was also shown to us and it clearly indicated that the petitioner's long term bank facilities were rated as 'CARE D'. The rating symbol 'CARE D' indicated that instruments with this rating were in default or were expected to be in default soon.

6. Mr Sanjay Jain has also handed over a copy of the assessment of the petitioner dated 05.02.2016 done by the Assessment Committee comprising of the Chief Manager (DMS), Assistant General Manager (CS) and Manager (F). The said document is a detailed document. The conclusion of which is noted at paragraphs 8 and 8.1, which reads as under:-

" 8.0 CONCLUSION

8.1 Based on foregoing, the Committee concludes as follows:

(i) Based on the Copy of Minutes of Monitoring Committee meeting held on 10/8/2015 and Joint Lenders Forum meeting held on 14/10/2015 submitted by A2Z, it is noted that account of some of the CDR lenders viz SBI, SBH & ICICI Bank Limited and non CDR lenders viz SCB & DBS Bank are NPA (NON Performing Assets), while the accounts with other Banks are running irregular. A2Z is finding it difficult to provide additional collateral security for the proposed cash gap funding and the CDR banks have advised A2Z to built-up the LC/BC margin @ 5% of the LC/BG outstanding as per CDR package by 31/12/2015. The above mentioned stressed situation is supported by the Credit Rating of Bank Facilities carried out by CARE Rating Committee, wherein rating given is CARE D which can be interpreted as the Long/Medium Term Debt Instrument are in default or are expected to be in default soon.

(ii) Considering the above, the Committee is of the view that presently considering A2Z for award of contracts and taking any exposure on them is fraught with considerable risk. As such, it would be prudent not to consider bids from A2Z at present. The position may however be re-assessed in case A2Z chose to bid after this and if financial statement for FY 2015-16 are available. The decision to award the package may be taken based on Annual Report for FY2015-16 and other relevant aspects like latest Credit Rating of Bank Facilities etc."

7. From the above, it is evident that the Assessment Committee has gone into the details and has also considered the credit rating by CARE and has, in its wisdom, taken the view that considering the petitioner for award of contracts and taking any exposure on them would be fraught with considerable risk.

8. In judicial review we cannot sit in judgment over this assessment. Consequently, the writ petition is dismissed. There shall be no orders as to costs.

BADAR DURREZ AHMED, J

MARCH 21, 2016 **SANJEEV SACHDEVA, J**

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