

\$~11

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

+ W.P.(C) 2818/2016 & CM No.11882/2016

GKC PROJECTS LTD.

..... Petitioner

Through: Mr Arvind Nigam, Sr.Advocate with Mr
Mr Atul Sharma, Mr Sarojanand Jha, Ms
Satakshi Sood and Ms Deeksha Rao,
Advs.

versus

POWER GRID CORPORATION OF INDIA LIMITED Respondent

Through: Mr Sanjay Jain, ASG with Ms Sharmila
Upadhyay, Mr Pawan Upadhyay, Mr
Rajesh Chhetri, Mr Akash Tyagi, Mr
Rajeev Chhetri and Ms Meenakshi
Rawat, Advs.

CORAM:

HON'BLE MR. JUSTICE BADAR DURREZ AHMED

HON'BLE MR. JUSTICE ASHUTOSH KUMAR

ORDER

% **20.09.2016**

On 07.04.2016 when this matter came up for hearing, the following order was passed:-

“The learned counsel for the petitioner has instruction to state that the petitioner is not pursuing the subject tender any further and shall not challenge the award of the tender to any third party by the respondent Power Grid Corporation of India Limited. However, the learned counsel submits that it has serious objection to the letter dated 21.03.2016 insofar as it puts an impediment in the petitioner's future participation in tenders to be floated by the Power Grid Corporation of India Limited. This is with particular reference to the comments made in paragraph 2.0 in the said letter.

At the oral request made by the learned counsel for the petitioner the Union of India through Secretary, Ministry of Finance, is added as respondent no.2. The amended memo of parties be filed within two days.

We are issuing notice limited to the issue raised by the petitioner as noted above pertaining to paragraph 2.0 of the

impugned letter dated 21.03.2016 with regard to assessment of capacity and capability for future participation in tenders.

Notice is accepted by the counsel for the respondents. The counter affidavit be filed within four weeks. The rejoinder affidavit, if necessary, be filed within two weeks thereafter.

Renotify on 25.07.2016.

The interim order stands vacated.”

From the above it is evident that notice was issued limited to the question raised by the petitioner with regard to paragraph 2.0 of the letter dated 21.03.2016 which is impugned in the present writ petition. It was contended that by virtue of the said paragraph a serious impediment had been put in the petitioner’s future participation in the tenders to be floated by the Power Grid Corporation of India Ltd. The said letter dated 21.03.2016 which is impugned in this petition is reproduced herein below:-

“Ref. No.CC-CS/165-NER/REW-2911/3/G8/2ND ENVELOPE

Date: 21/03/2016

To,

M/s.GKC Projects Limited,

Sy.No.9(P), CII Green Building Lane, Hitec City,

Kondapur, Hyderabad-50084

CIN: L40101DL1989GOI03812:

Ph: +91 40 44554545; Fax: +91 40 44554555; Mob: +91 80084 00690

Kind Attention: Mr P Ravi Kumar, DGM-Business Development

Sub: Package-ARP-DMS-03 for Distribution Works under Comprehensive Scheme for Strengthening of Transmission & Distribution System in NER & Sikkim: Intra State-Arunachal Pradesh.

Specification No: CC-CS/165/REW-2911/3/G8

(Domestic Competitive Bidding) (Under e-procurement)

Dear Sir,

- 1.0 This has reference to the bid submitted by you for the subject package, First Envelope i.e. Techno-Commercial part of which were opened on 09/12/2015 and clause ITB 23.2 of BDS of volume-I of Bidding Documents.
- 2.0 It may be mentioned here that from the documents furnished and discussion held with you and your banks during

assessment of Capacity and Capability of GKQ, it is noted that GKC is presently passing through a phase of financial distress and is under CDR.

In view of the aforesaid, POWERGRID does not consider it prudent to take exposure with GKC at present. Accordingly, based on assessment, GKC is not considered to have requisite capacity &, capability.

However, the financial position of GKC may be reviewed after commencement of repayment of principal amount based on the audited financial statement for FY 2016-17, if you bid for POWERGRID projects in future.”

On going through sub paragraph 3 of paragraph 2.0 of the impugned letter, it appears that the same would operate more or less like a black listing order at least till October, 2017 which is the point of time by which the audited reports for the financial year of 2016-17 would be available. This direction has been given in the impugned letter without a show cause notice having been issued to the petitioner and the petitioner having had an opportunity to respond to the same. Therefore, to that extent, sub paragraph 3 of paragraph 2.0 needs to be set aside. It is accordingly set aside.

In so far as the future participation of the petitioner in Power Grid projects is concerned, the petitioner would be at liberty to participate and the respondents would also have the liberty to assess the petitioner on the parameters and criteria set out in the tender conditions, independently.

With these observations and directions, the writ petition is disposed of. We are also making it clear that this order may not be construed as an expression on the merits of the matter.

BADAR DURREZ AHMED, J

ASHUTOSH KUMAR, J

SEPTEMBER 20, 2016

k