

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 07.06.2017

CORAM

THE HONOURABLE MR.JUSTICE M.M.SUNDRESH

W.P.No.2591 of 2017
in WMP.Nos. 2556 & 2557 of 2017

M/s. Herodex Power System Pvt. Ltd.,
Rep.by its Director
Mr. Rajshekhar Kashinath Kale ... Petitioner

Vs.

- 1.The Chief Engineer (Protection and Communication),
TNEB Complex,
No.144, Anna Salai,
Chennai - 02.
2. The Superintending Engineer, D (Protection & Communication)
L.D. Center, TNEB Complex,
No.144, Anna Salai,
Chennai - 02. ... Respondents

Prayer:- Writ petition is filed under Article 226 of the Constitution of India praying to issue writ of certiorarified mandamus, calling for the records relating to the Order bearing Lr.No.CE/P&C/SE/D/P&C/EPC-3/AEE5/Specn.No.P&C902/F.P.O.885/D.109, dated 27.6.2016 and the Order bearing Lr.No.CE/P&C/SE/D/P&C/EPC-3/AEE5/Specn.No.P&C902/F.P.O.885/D 251/17, dated 6.1.2017 and the order bearing Lr.No.CE/P&C/SC/D/P&C/Chi/EPC-III/A.5/Specn.P&C.902/F.P.O.885/D 258/16, dated 19.1.2017 on the file of the 1st respondent, quash the same in so far as the same are relating to insistence of 5% Performance Bank Guarantee and consequently direct the respondents to accept the Letter of Undertaking dated 2.1.2017 from petitioner as provided in Clause 11 of the Contract-P.O.885, dated 8.1.2013, retain 5% of the Bill amounts from the 7th year Milestone Bill towards Performance Guarantee and release the balance amount for the completed works as per the Bills submitted by it within the time that may be fixed by this Court.

For Petitioner : Mr. T.P. Manoharan,
Senior counsel for
Mr. C.T. Prabhakar
For Respondents : Mr. C. Manishankar,
AAG., Assisted by
Mr. S.K.Raameshwar for RR1&2

ORDER

By the impugned order, the petitioner was asked to give the bank guarantee. Though the contentions have been raised substantially on merit, in view of the agreement between the learned counsel for the parties only for the purpose of disposal of the Writ Petition, they have not gone into. There appears to be a dispute between the parties with respect to the quantum of amount, incidentally there is another issue with respect to the provision of Software -MS-Excel format.

2.The learned Additional Advocate General, on the last hearing would submit that out of the total amount payable, according to the respondents, after withholding the amount corresponding to the bank guarantee, which the petitioner is supposed to furnish a further sum of Rs.2,63,98,258/- would be given in favour of the petitioner for the work done. It is further submitted that in the eventuality, the petitioner will have to provide Software as required by the respondents with respect to the installation made.

3.The learned Senior counsel appearing for the petitioner would submit that the aforesaid amount would be paid, as there is no difficulty in providing the software as stated in para 6 of the reply affidavit. The learned senior counsel would further submit that the withholding of amount corresponding to the bank guarantee would be subject to the furnishing the bank guarantee by the petitioner.

4.Considering the above, Writ Petition stands disposed of without going into any of the contentions on merit. Accordingly, the respondents are directed to pay a sum of Rs.2,63,98,258/- (Rupees Two crores sixty three lakhs ninety eight thousand two hundred and fifty eight only) in favour of the petitioner, on receipt of the software as required by them.

5.The petitioner undertakes to make the software available within a week's time. If it is done, the payment as undertaken by the learned by the learned Additional Advocate General, within further period of two weeks.

6. The Writ Petition is disposed of accordingly. No costs.
Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

pbn/ms

To

- 1.The Chief Engineer (Protection and Communication),
TNEB Complex,
No.144, Anna Salai,
Chennai - 02.
2. The Superintending Engineer, D (Protection & Communication)
L.D. Center, TNEB Complex,
No.144, Anna Salai,
Chennai - 02.

+1cc to Mr.S.K.Rameshwar, Advocate, S.R.No.40178

+1cc to Mr.C.T.Prabakar, Advocate, S.R.No.40442

RSK(CO)
RS(12/06/2017)

W.P.No.2591 of 2017

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