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

+ **O.M.P. (COMM) 186/2018 & IA Nos. 5851/2018**
& 5852/2018

MRT SIGNALS LIMITED

..... Petitioner

Through: Mr Rana Mukherjee, Senior Advocate
with Mr Saurav Gupta, Advocate Ms
Kasturika Kaumudi, Advocate.

Versus

JMC PROJECTS (INDIA) LIMITED
& ANR.

..... Respondents

Through: Mr Dayan Krishnan, Senior Advocate
with Mr Rishi Agarwal, Ms Aanchal
Mullick, Mr Karan Luthra, Mr
Sameer Sagar, Ms Gunika Gupta,
Advocates.

CORAM:
HON'BLE MR. JUSTICE VIBHU BAKHRU

ORDER
% **01.05.2018**

VIBHU BAKHRU, J

1. The petitioner has filed the present petition under Section 34 of the Arbitration and Conciliation Act, 1996 (hereafter 'the Act'), *inter alia*, impugning the arbitral award dated 05.01.2018 (hereafter 'the impugned award') delivered by the Arbitral Tribunal constituted by the sole arbitrator, Justice V.K. Shali (Retired) (hereafter 'the Arbitral Tribunal').
2. The impugned award was rendered in the context of the

disputes that had arisen between the parties in respect of the two separate agreements – captioned as ‘Memorandum of Understanding’ (MOU) – entered into between the parties to form a joint venture in the name of ‘JMC–KPTL– MRTL (JV)’ for submission of the bids in response to the tenders invited by Rail Vikas Nigam Limited (RVNL).

3. Briefly stated, the controversy arises in the following context:-

3.1 On 02.09.2014, RVNL had invited bids for construction of roadbed, bridges, supply of ballast, installation of track excluding supply of rails, electrical (General Electrification) signalling and telecommunication works in Ahmedabad Division of Western Railway, Gujarat. The said tenders were invited for two separate packages referred to as “Package No.1” and “Package No.2”. Package No.1 was related to doubling of the tracks between Samakhya and Kidiyanagarh (34.66 Km) in the Ahmedabad Division of the Western Railways, Gujarat and Package No.2 related to doubling of track between Bhildi and Diyodar (29.48 Km) in the Ahmedabad Division of Western Railways.

3.2 The tender documents floated by RVNL permitted a consortium to bid for the contracts subject to certain conditions. As stated above, the parties entered into two separate MOUs for forming a consortium for submitting bids and performing the works in respect of the aforementioned two packages, for which tenders were invited by RVNL. Respondent No.1 was the lead member of the consortium in terms of the MOUs entered into between the parties.

3.3 The tender documents expressly provided that bidders would be disqualified if any previous contract of the bidder or any of its constituents had been terminated by RVNL within a period of two years prior to the deadline for submission of the bids. Clause 4.4(b) and Clause 4.4(g) of the tender documents floated by RVNL are relevant and are set out below:-

Clause 4.4(b)

“(b) Any previous contract of the bidder or any of its constituents had been terminated for contractor’s failure by Rail Vikas Nigam Ltd (RVNL) any time starting from 2 years before the deadline for submission of bids and up to the day before opening of price bids.”

Clause 4.4(g)

“(g) The Bidder shall submit an affidavit stating that they are not liable to be disqualified as per this sub clause using the appropriate Performa given in Section 4. Non-submission of an affidavit by the bidder shall result in summary rejection of his bid.”

3.4 Further, in terms of Clause 4.5 of the tender documents, RVNL was entitled to forfeit the bid security in the event the bidder had submitted a false affidavit. Clause 4.5 of the tender documents is quoted below:-

“4.5 Bidder shall immediately inform the Employer in case they cease to fulfill eligibility in terms of ITB 4.3 & 4.4. In case the bidder fails to inform the Employer or submits a false affidavit his bid shall be summarily rejected and bid security shall be forfeited. The bidder

shall also be liable for Banning of Business dealings for a period up to five years.”

3.5 Respondent No.1, being the lead member had submitted the bid security in the form of bank guarantees: a bank guarantee in the sum of ₹2 crores was provided as bid security for tender submitted in respect of Package No. 1 and a bank guarantee in the amount of ₹1.9 crores was provided as a bid security for Package No.2.

3.6 Respondent no.1 received a letter dated 18.12.2014 issued by RVNL, *inter alia*, stating that a contract awarded to IVRCL – MRT (JV) dated 13.08.2012 was terminated on 01.10.2013; therefore, the Consortium [JMC – KPTL – MRTS (JV)] was disqualified from participating in the tender and, accordingly, it proposed to forfeit the bid security.

3.7 Pursuant to the representations made by the respondents, RVNL initially agreed to withhold the letter invoking the bank guarantees. However, it is not disputed that subsequently RVNL invoked the bank guarantees and recovered a sum of ₹3.90 crores offered as bid security for the two packages.

3.8 In terms of the tender condition, each of the consortium members were required to give an affidavit affirming that they had complied with the tender conditions. It is not disputed that the petitioner had also furnished an affidavit, *inter alia*, affirming as under:-

“2. That none of the previous contracts of the bidder or any of its constituents had been terminated / rescinded for contractor’s failure by Rail Vikas Nigam Ltd. during the period of last 2 years before submission of bids.”

3.9 The said affidavit was found to be false and this had led RVNL to forfeit the bid security.

4. It is in the aforesaid context that the respondents made a claim to recover the amount of ₹3.90 crores which was forfeited by RVNL on account of an incorrect affidavit furnished by the petitioner.

5. The respondents had also further sought ₹15 lacs as cost for preparing the bid that was rejected by RVNL as a consequence of the consortium being disqualified.

6. Before the Arbitral Tribunal, the petitioner contended that it was not aware of the termination of the contract awarded to IVRCL-MRT (JV). It was also contended that the respondents were aware of such termination. Further, it was also stated that the said termination was challenged. The Arbitral Tribunal considered the above and found that the petitioner had taken contradictory stands.

7. Mr Mukherjee, learned Senior Counsel appearing for the petitioner contended that the Arbitral Tribunal had erred in holding that the petitioner had taken an inconsistent stand and had further failed to appreciate that the petitioner was not aware of the termination of any contract at the time of submission of the affidavit.

8. The aforesaid contentions are unpersuasive.

9. There is no dispute that the petitioner had furnished an affidavit that was incorrect. Furnishing of the said affidavit had resulted in RVNL forfeiting the bid security provided by Respondent No.1. Clearly, the consequences for furnishing an inaccurate affidavit must be borne by the petitioner.

10. The Arbitral Tribunal's finding that the petitioner had adopted inconsistent stands, does not call for any interference by this court. Plainly, the petitioner cannot be heard to state that it was not aware of the termination of the earlier contract but Respondent No.1 was aware of the same. In any view, the petitioner was unable to establish the same.

11. The Arbitral Tribunal had considered the pleadings as well as the material produced by the parties and had awarded a sum of ₹4.05 crores (₹3.90 crores plus ₹15 lacs for cost of preparing the bids) along with *pendente lite* and future interest at the rate of 9% per annum.

12. This Court finds no infirmity with the impugned award. At any rate none of the grounds as indicated in section 34(2) of the Act are established. The impugned award cannot by any stretch, be accepted as patently illegal or in conflict with the fundamental policy of Indian law.

13. The petition is, accordingly, dismissed as unmerited. All pending applications also stand disposed of. The parties are left to bear their own costs.

MAY 01, 2018
RK

VIBHU BAKHRU, J