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

\+ W.P.(C) 8484/2018

INDIRA CONTAINER TERMINAL PVT. LTD. AND ANR. ..... Petitioners

Through: Mr Arun Kathpalia, Sr. Advocate with Mr Angad Mehta, Mr Aditya Swarup and Mr Saurabh Gadkari, Advocates.

versus

UNION OF INDIA AND ORS. ..... Respondents

Through: Mr Sanjeev Narula, CGSC with Mr Rajat Gava, Advocate for R-1/UOI.
Mr Santosh Kumar Rout, Advocate for R-4/Canara Bank.
Mr Rajinder Wali, Advocate for R-5.
Mr Gautam Krishna, Advocate for R-6.

**CORAM:**
**HON'BLE MR. JUSTICE VIBHU BAKHRU**

**O R D E R**

% **14.08.2018**

**CM No.32592/2018**

1. Allowed, subject to all just exceptions.

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2. The petitioners have filed the present petition, *inter alia,* praying as under:-

> "(a) This Hon'ble Court be pleased to issue a writ of mandamus or a writ in the nature of mandamus directing Respondent Nos. 1 to 3 to implement the decision taken at

the meeting held in New Delhi on 20th March, 2018 (and erroneously dated as '20.02.018') (**Annexure "P-1"** hereto) for rebidding of the Indira Container Terminal on the terms and conditions recorded in the Meeting.

(b) This Hon'ble Court be pleased to issue a writ of mandamus or a writ in the nature of mandamus restraining the Respondents, their agents, or persons acting through or on behalf of them, from acting contrary to the decision taken at the Meeting dated 20th March, 2018 (and erroneously dated as '20.02.2018') (**Annexure "P-1"** hereto) for rebidding of the Indira Container Terminal."

3. The petitioner no. 1 was awarded the contract for construction and development of Offshore Container Terminal (OCT) at Mumbai Port (hereafter 'the Indira Container Terminal') on Build, Operate and Transfer basis (hereafter 'the Project'). The License Agreement dated 03.12.2007 (hereafter 'the Agreement') was also entered into between the petitioner no. 1 and respondent no.3 (Mumbai Port Trust), whereby petitioner no. 1 was granted the rights for implementation of:-

"(i) Operations and management including necessary developments, modifications and augmentation of facilities, of the Ballard Pier Station Container Terminal ("BPS") of berth admeasuring in aggregate 243 metres in length capable of handling vessels upto 210 metres LOA and beam of 27.4 metres and associated equipment; and

(ii) Development, construction, operation and management of an Offshore Container Terminal ("OCT") in the Mumbai Harbour in accordance with the Major Port Trusts Act, 1963 and the Guidelines for Private Sector Participation in Major Ports dared October 26, 1996 as modified and supplemented by Guidelines for Private Sector Participation in Major Ports through Joint

> Ventures and Foreign Collaboration dated June 1, 1998, as issued by Ministry of Shipping, Government of India."

4. The petitioners allege that the Agreement could not be implemented in its entirety due to delays and defaults on part of the Mumbai Port Trust.

5. The petitioners claim that the activity carried out from the Indira Container Terminal is limited to roll on – roll off cargo, which was about 5% of the total estimated traffic. It is stated that the Mumbai Port Trust has been extending the time for the construction as well as the term of the license, from time to time. However, the parties have been unable to arrive at an effective resolution for the situation. Substantial funds have been invested by respondent nos. 4 and 5 (respondent banks) in the Project as well.

6. It is in the aforesaid context that a joint meeting of the stakeholders was held on 20.03.2018. It appears from the minutes of the said meeting (incorrectly referred to as Minutes of the Meeting held on 20.02.2018 instead of 20.03.2018) that there was consensus amongst all the stakeholders including the respondent banks that the fresh round of bidding be conducted to discover the market value of the contract. The parties were also at *ad idem* that the petitioners would be given the right of first refusal. The petitioners' grievance is that although there was consensus amongst all the stakeholders but the Mumbai Port Trust has not implemented the same. The petitioners have also received notice from the respondent banks for recalling the financial assistance and threatening initiation of recovery proceedings.

7. A plain reading of the minutes of the meeting held on 20.03.2018 also

indicates that the parties were *ad idem* and the said decision was in the public interest. The petitioners contend that in view of the said decision, the petitioners had a legitimate expectation that the same would be implemented. Therefore, directions should be issued to the respondents to implement the same.

8. This Court is not inclined to accept the above contention, as the plain reading of the minutes of the meeting held on 20.03.2018 also indicates that the decision was subject to approval of the Cabinet/CCEA and was to be implemented only if such approval was granted. In this view, the relief as sought for by the petitioners cannot be granted.

9. However, there is merit in the petitioners' contention that having proceeded to examine the matter in some detail, the petitioners ought to have been informed as to the further developments in the matter and if it was decided not to implement the decision, the reasons for the same should have been provided to the petitioners.

10. Mr Kathpalia, the learned counsel for the petitioners states that if the decision was taken not to implement the said scheme as agreed on 20.03.2018, the petitioners ought to have been given an opportunity to dissuade the concerned authorities from abandoning the decision to call for rebiding as, according to the petitioners, the same would not be in the public interest as the same is the only viable solution to avoid any further litigation.

11. In the given circumstances, this Court considers it apposite to permit the petitioners to make a representation in this regard. It would be apposite if the Mumbai Port Trust and respondent no.1 considers the petitioners'

representation in this regard and take an informed decision. The petitioners would be at liberty to make a detailed representation to respondent nos. 1 and 3. If such representation is made within a period of ten days from today, the same would be considered and disposed of within a period of four weeks, thereafter.

12. In the meantime, it would be apposite if the respondent banks do not implement the notice dated 26.07.2018 for a period of six weeks. It is so directed.

13. The petition is disposed of in the above terms. The pending application also stands disposed of.

14. Order *dasti*.

**VIBHU BAKHRU, J**

**AUGUST 14, 2018/MK**