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HIGH COURT OF CHHATTISGARH, BILASPUR

WPC No. 336 of 2017

- M/s V T C Transport Private Limited S/o Registered Office At 1383, Sector 33- C, Chandigarh 60020 India, Through Its Director, Smt. Rani Verma, Authorised Signatory.

---- Petitioner

Versus

1. Steel Authority Of India Limited Ispat Bhawan Lodi Road, New Delhi 110003, Through Its Chairman And Managing Director, New Delhi 110003
2. Chief Executive, Central Marketing Organization, Steel Authority Of India Ltd., Ispat Bhawan, Lodi Road, New Delhi 110003
3. Assistant General Manager M- W H And W H M, Steel Authority Of India Ltd., Central Marketing Organization, Bhilai Warehouse, Khursipar Road, Bhilai, Distt. Durg, Chhattisgarh
4. United Warehousing Private Limited, Registered Office, 30, Ground Floor, Devika Tower-6, Nehru Place, New Delhi 110019plot No. 4, Sector 5, Faridabad Haryana 121006

---- Respondents

For Petitioner	: Shri Ashish Shrivastava and Shri Animesh Verma, Advocates
For Respondents-SAIL	: Shri B.D. Guru, Advocate
For Respondent No.4	: Shri Vikram Sharma, Advocate

Hon'ble Shri P. R. Ramachandra Menon, Chief Justice
Hon'ble Shri Goutam Bhaduri, Judge

Order on Board

Per, P. R. Ramachandra Menon, Chief Justice

17.06.2019

1. The cancellation of the 'Letter of Intent' (LOI) and the 'Letter of Compliance' (LOC) issued by the Respondent-Steel Authority of India (SAIL) in favour of the Petitioner along with the forfeiture of the EMD and also debarring the Petitioner from participating in the re-tender process in connection with the subject matter made the Petitioner to approach this Court by filing the writ petition.

2. The sequence of events reveals that the Petitioner herein, pursuant to the tender notification floated by the SAIL for awarding of handling contract within the premises of Bhilai Steel Plant, participated in the process and quoted the amount to an appropriate extent, satisfying all the requirements including by way of EMD

and also by producing the necessary materials. There is no dispute with regard to the credentials of the Petitioner, particularly, in respect of the technical aspects and having satisfied over the same, the price bid submitted by the Petitioner was opened on 14.09.2016. On opening the price bid, it was noted that the amount quoted by the Petitioner was much lower than the estimate price fixed by the SAIL and under such circumstances, an explanation was sought from the Petitioner as to the circumstance under which the quote was preferred by him and the viability in this regard. This was answered by the Petitioner on 27.09.2016 and on satisfying the position, 'Letter of Intent' was given to the Petitioner vide Annexure-P/7 on 29.09.2016, followed by the 'Letter of Compliance'. In view of the fact that the Petitioner had quoted less than the estimate amount fixed by the SAIL, the Petitioner was required to furnish additional bank guarantee on 18.10.2016 and the same was satisfied accordingly, though time was sought for at the first instance. The Petitioner also submitted the documents in support of the tender on 27.10.2016 and on such other dates, but the Respondent-SAIL sought for some additional documents, whereupon the Petitioner sought for time by submitting a representation on 08.11.2016. The learned counsel for the Petitioner submits that almost all the documents sought to be produced by the awarder of the contract were supplied, except the certificate of clearance to be issued by the Labour Department and the clearance to be given by the ESI with regard to the engagement of the workers.

3. The case of the Petitioner is that, because of the demonetization implemented by the Central Government as a matter of policy, all of a sudden *w.e.f.* 08.11.2016, much adverse consequences were resulted,

whereby the financial transactions throughout the country assumed a slow pace. By virtue of the detrimental results as above, the Petitioner was also not in a position to satisfy the requirements in respect of the ESI and also towards the Labour Department and to procure the certificates to be issued by the authorities in this regard. In the said circumstance, the Petitioner preferred a representation seeking for further time, specifically referring to the effect of demonetization as above. However, without going into the reasons given the Petitioner, the LOI already issued to the Petitioner came to be cancelled by the Respondent-SAIL as per Annexure-P/1, followed by the cancellation of the LOC as well. The EMD (Rs. 25 lacs) was forfeited and the Petitioner was debarred from participating in the tender. This according to the Petitioner is quite arbitrary in all respects and hence, the challenge through the writ petition. It is also pointed out that no proper notice was issued before taking the stringent steps including the debarring of the Petitioner and as such, there is violation of principles of natural justice as well.

4. The version that the Petitioner is sought to be rebutted by the learned standing counsel for the SAIL, with reference to the materials on record. It is pointed out that the terms and conditions were clearly stipulated and made known to all concerned including the Petitioner. The Petitioner was given opportunity to produce the relevant materials, granting extension of time. Admittedly, he did not produce the same and sought for further indulgence. It was only because of failure on part of the Petitioner, that the SAIL was constrained to put an end into the contract by issuing the orders under challenge, also forfeiting the EMD and debarring the Petitioner from participating in the re-tender. This, according to learned standing counsel

representing the SAIL is perfectly within the four walls of the law and is not assailable under any circumstance. Reference is made to the contents of the relevant notice/proceedings issued, referring to the failure on the part of the Petitioner and the proposed forfeiture of the EMD and debarring of the Petitioner. The learned counsel for the Petitioner points out that, by virtue of subsequent turn of events, the Respondent-SAIL issued a re-tender notification and the same has also been sought to be challenged in the writ petition and later, the work was awarded to the 4th Respondent.

5. The learned counsel for the 4th Respondent submits that the said Respondent came to be successful in the re-tender proceedings and that he has no role at all with regard to the circumstances under which the LOI and LOC issued earlier to the Petitioner came to be cancelled, admittedly, for the lapse on the side of the latter.

6. The learned counsel for the Petitioner submits that by virtue of the subsequent turn of events and passage of time, the Petitioner is not pressing the challenge against the 're-tender' notification issued by the SAIL and awarding of the work to the 4th Respondent, but would like to confine the relief only with regard to the forfeiture of the EMD and debarring of the Petitioner from participating in the tenders.

7. The learned standing counsel for the Respondent-SAIL submits that the proceedings pursued by the SAIL are quite in order and if at all, if there is any grievance of the Petitioner, it is open for the him to challenge the same invoking the remedy as provided in Clause-12 of the Agreement executed between the SAIL and the Petitioner with reference to the Arbitration Clause.

8. The learned counsel for the Petitioner submits that the specific aspect pointed out by the Petitioner as to the alleged lapse was more with regard to the demonetization declared over in the country all of a sudden and the adverse consequences resulted there from. Though this aspect was very much pointed out in the representation preferred before the SAIL, it was not properly considered while passing the orders under challenge. This has adversely affected rights and interests of the Petitioner, particularly, as to the forfeiture of the EMD and debarring him.

9. The operative portion with regard to the debarring of the Petitioner from participating in the tender is extracted as follows :

> "In view of your failure to fully comply with the formalities mentioned in our LOC Dt. 29-09-16 even within the extended period provided to you as a final opportunity, as per Clause 2.4.1 of "Instruction to Bidders" of the subject tender, Clause 9.4 read with sub clause (b) (ii) of "Instruction to Bidders" & as per terms of the LOC Dt. 29-09-16 at Ref (3) above, it is to inform you that the Letter of Intent Dt. 29-09-16 at Ref (2) above stands cancelled and your EMD of Rs.25 lacs submitted by you along with your tender stands forfeited. Besides, you shall be debarred along with inter-connected agency from participating in re-tender(s). Moreover, you will be held responsible for all consequences and damages."

It is seen from the above proceedings that the debarring of the Petitioner is <u>not for ever</u> but restricted and confined <u>only to participating in the "re-tender"</u> in respect of which Annexure-P/1 order was issued. This obviously is more so, since it was because of the failure on the part of the Petitioner, that the LOC and LOI already issued to him came to be cancelled, leading to 're-tender'. It is in respect of such 're-tender', that the Petitioner has been denied entry, wherein no illegality or irregularity could be inferred.

10. That apart, since the re-tender proceedings are already over, the work has been awarded to the 4th Respondent and since the Petitioner submitted across the bar that the challenge in this regard raised in the writ petition is not pressed any further, the denial of the entry with regard to “re-tender” pursuant to the fresh notification issued by the SAIL is not relevant or significant in any manner.

11. Coming to forfeiture of the EMD of Rs.25 lacs, the learned counsel for the Petitioner submits that the matter ought to have been considered by the SAIL with reference to the consequences of demonetization and had it been done properly, the Petitioner could have atleast saved the EMD, particularly, when the Petitioner has already suffered much. On going through the contents of the orders under challenge, it is not seen that said aspect was considered by the SAIL, but they cannot blamed as well for cancellation of the contract, in view of the specific clauses in the notification, the agreement executed and the admitted lapse on the part of the Petitioner. The lapse resulted, whether could be connected to demonetization or whether it should yield any allowance or concession to the Petitioner with regard to the forfeiture of the EMD, could be a matter to be considered by the SAIL by way of appropriate proceedings. The learned standing counsel for the SAIL submits that this aspect will be considered independently and a detailed order would be passed after affording opportunity of hearing to the Petitioner. But this can't be a ground to interdict the cancellation of the LOI/LOC, as it is within the four walls of law.

12. During the course of the hearing, the learned counsel for the Petitioner points out that the reliance sought to be placed by the Respondent-SAIL on the 'Arbitration Clause' in the agreement as such is not correct because of the

factual scenario. It is further pointed out that, prior to Arbitration, there has to be 'Conciliation' and a request was made by the Petitioner in this regard, way back on 28.12.2016; which however was not acted upon by the Respondent-SAIL. Reliance is also sought to be placed on the verdict passed by the Apex Court in case of ***Union of India and Others Vs. Tantia Construction Private Limited; (2011) 5 SCC 697*** (Paragraphs 33 and 34). We have gone through the said verdict. The observation is only to the effect that the stipulation of the Arbitration Clause and availability of alternate remedy is not a bar and as such, the High Court was justified in interfering with the matter without relegating to the party to pursue the remedy by an Arbitration. There is no dispute to the law declared, that the existence of alternate remedy is not a bar, but the question is whether the matter should be entertained by this Court, notwithstanding the alternate remedy. In the case in hand, various aspects, particularly, with reference to the nature of pleadings raised, may have to be elicited, involving a 'fact finding exercise', which cannot be done by this Court in exercise of the jurisdiction under Article 226 of the Constitution of India.

13. In the above facts and circumstances, we find it appropriate to cause the grievance of the Petitioner with regard to the forfeiture of the EMD, as agreed to be considered by the SAIL as mentioned above, after giving an opportunity of hearing to the Petitioner. This shall be done and a reasoned order shall be passed at the earliest, at any rate within three months from the date of receipt of a copy of this judgment. If the Petitioner is aggrieved in any manner, it is open for the Petitioner to invoke the remedy under Clause-12 of the Arbitration Agreement and proceed further accordingly.

14. Writ Petition stands disposed off, declining interference, except to the extent, as mentioned above.

Sd/-
(P.R. Ramachandra Menon)
Chief Justice

Sd/-
(Goutam Bhaduri)
Judge

Chandra