

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR

Writ Petition No.765 of 2019

Sadgurukrupa Construction and RSK JV, Daryapur, Dist. Amravati
Versus
The Superintendent Engineer, Public Works Circle, Amravati and others

Office Notes, Memoranda of Coram,
 appearances, Court's orders or directions Court's or Judge's orders
 and Registrar's order

Shri S.D. Chopde, Advocate for the petitioner,
 Ms N.P. Mehta, A.G.P. for the respondent nos.1 and 2,
 Shri Subodh Dharmadhikari, Senior Advocate, assisted by Shri N.R.
 Tekade, Advocate for the respondent no.3.

Coram : R.K. Deshpande & Vinay Joshi, JJ.

Date : 16.07.2019.

1. The technical bid for the construction of major submersible bridge across Chandrabhaga river at road joining construction of major submersible bridge across Chandrabhaga river at road joining Banosa-Babhali road and internal cement concrete road in Daryapur Municipal Council area submitted by the petitioner is rejected, which is challenged in this petition.

2. The reason assigned to reject is reproduced below :

“Sadgurukrupa Construction and RSK JV, As per J.V. Condition Clause No.4.1 (I). The experience of the other joint partner M/s. Sadgurukrupa Construction shall be not less than 30% of the qualifying criteria as mentioned in the Qualifying Criteria Clause No.4.2 (b) Single Work for Bridge Length is short & 4.2 (c) Execution of Quantity is C.C.M.-30 is short, Hence

Disqualify.”

3. This Court passed an order on 29.01.2019, as under :

“The challenge is to the rejection of the technical bid of the petitioner for the reasons stated on page 135 regarding non fulfillment of 30% of criteria by the partners other than leading partner. It is the contention raised in the petition that the reasons are factually incorrect.

Issue notice for final disposal of the matter, returnable on 12.03.2019.

Learned AGP waives service of notice for respondent nos.1 and 2.

The issuance of work order shall be subject to result of this petition.”

Thereafter, on 27.06.2019, we passed an order that the work shall not proceed further and the matter is now taken up for disposal.

4. The qualifying criteria is contained in Clause 4.1, which is reproduced below :

“The combination is of the contractor as a whole and not individual partners and-

(i) They draw a registered partnership deed and submit a copy thereof to the authority at the time of purchase of the tender forms. Whenever the advantage of such combination of two or more contractors is to be taken for quoting for a work, the registered partnership deed should be irrevocable till the completion of work for which they have combined and till all the

liabilities there of are liquidated. The share of contractor of higher financial capacity should not be less than 51%. Further, the percentage share of the contractor of the lower financial capacity in such a partnership/combination should not be less than 30%.

For financial capacity, Average Annual Turn Over C.A. Certificate of last five years shall be considered.

The lead partners shall meet not less than 51% of all qualifying criteria like annual turn over, single work, execution quantities and Bid capacity etc. The Joint Venture must collectively satisfy 100% criteria of qualifying criteria above. The experience of the other Joint partner shall be considered only if it is not less than 30% of the qualifying criteria as mentioned in the qualifying criteria like Annual Turn Over, Single Work, Execution of Quantities, Bid Capacity etc.”

5. The requirement seems to be that the '**lead partners**' shall meet not less than 51% of all qualifying criteria like annual turn over, single work, execution quantities and Bid capacity etc. It further states that the Joint Venture must collectively satisfy 100% criteria of qualifying criteria above. It further states that the experience of '**the other Joint partner**' shall be considered only if it is not less than 30% of the qualifying criteria as mentioned in the qualifying criteria like Annual Turn Over, Single Work, Execution of Quantities, Bid Capacity etc.

6. The agreement is the Joint Venture of Sadgurukrupa Construction and RSK JV and Rajendra Singh Kiledar Constructions Private Limited, which have agreed to share the profit and loss in the

ration of 49% and 51% respectively. It is the claim of the petitioner that Rajendra Singh Kiledar Constructions Private Limited satisfies 100% qualifying criteria and even if Sadgurukrupa Construction does not satisfy the qualifying criteria of not less than 51%, the decision to reject the petitioner's bid was wrong. He has placed reliance upon the decision of this Court in the case of **Aakar Construction (JV), Bhandara .vs. State of Maharashtra, reported in 2017 (4) Mh.L.J. 143** to urge that if the lead partner itself has satisfied all norms in clauses of NIT, then it fulfills all stipulations of eligibility independently.

7. We have heard the learned counsel appearing for the parties. Though the agreement gives the share in the profit and loss as 49% and 51% between two partners i.e. Sadgurukrupa Construction and Rajendra Singh Kiledar Constructions Private Limited respectively, Clauses 10 and 11 of the agreement which throw light upon this and hence reproduced below :

“10. That First partner shall be the working partners of the joint venture business who shall be entitled to get salary including remuneration, bonus, and commission from the partnership business. The total salary payable to the working partners that shall be determined to the extent of maximum limit of admissible deduction u/s 40 (b) (v) of the I.T. Act and the same shall be paid to working partners.

11. That this agreement of joint venture will not be terminated or revoked until the said work undertaken by the firm Sadgurukrupa Construction and RSK JV are completed or finalized by the department in all respect including defect,

liability, period. First partner would be responsibility for execution of works awarded to Sadgurukrupa Construction and RSK JV as per the terms and conditions of the tender or concerning departments. Any tax liability if any arises in future it shall be borne by the firm. Further in case of default by the firm, liability of the firm shall be paid by the working partner only.”

8. In the absence of definition of '**lead partner**' in the tender document, the respondent nos.1 and 2 have evaluated the technical bid of the petitioner taking into consideration the aforesaid clauses under the joint venture agreement and this stand taken in paragraph 6 of the affidavit of the respondent nos.1 and 2, which is reproduced below :

“I say that a bare perusal of the Joint Venture agreement of the petitioner (ANNEXURE-A), more specifically clauses 10 and 11 thereof would reveal that Sadguru Construction is designated as the working partner, and is shouldered with the responsibility of executing the entire work. Whereas, I say that the second partner, namely, RSK Construction Pvt. Ltd. is merely a sleeping partner and beneficiary in profit only, with absolutely no responsibility shouldered by it. In view thereof, in the petitioner Joint Venture, for all practical purposes, Sadguru Construction is the lead partner, and therefore it ought to have fulfilled on its own, the requisite qualifying criteria for a lead partner.”

9. It is clear that the department has considered Sadgurukrupa Construction as a '**lead partner**' and the other partner Rajendra Singh Killedar Constructions Private Limited as a '**sleeping partner**', as

against the claim of the petitioner that Rajendra Singh Killedar Constructions Private Limited as a '**lead partner**'. It is an undisputed position that the partner Sadgurukrupa Construction even failed to satisfy 30% of the qualifying criteria.

10. In this respect, the stand of the respondents in paragraph 8 is also relevant, which is reproduced below :

“I reiterate that, although RSK Construction Pvt. Ltd. did qualify the 100% requisite criteria, it was merely a sleeping partner which was not going to contribute in the execution of the work to be awarded, and therefore, it was thought necessary for the working and lead partner, namely, Sadgurukrupa Construction to fulfill at least 30% of the qualification criteria, i.e. the qualification criteria set forth for the other partner, after taking a lenient approach.”

11. Possibly, we may subscribe to the view of the learned Senior Advocate Shri Subhodh Dharmadhikari that framing of partnership is tricky to hide the leadership of Sadgurukrupa Construction and unwillingness on the part of Rajendra Singh Killedar Constructions Private Limited to shoulder the responsibility of the work.

12. At any rate, if the possible view of the matter taken by the respondent nos.1 and 2, in rejecting the claim of the petitioner, based upon interpretation. The writ petition is **dismissed**.

(Vinay Joshi, J.)

(R.K. Deshpande, J.)