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HIGH COURT OF CHHATTISGARH AT BILASPUR

WPC No. 1396 of 2020

D. B. Power Ltd. Having Its Registered Office At Office Block 1A, 5th Floor, Corporate Block, DB City Park, DB City, Arera Hills, Opposite MP Nagar, Zone-I, Bhopal- 462016, Through Its Authorized Signatory Shailendra Bajpai S/o Shri D.P. Bajpai, Aged About 39 Years R/o Village- Badadarha Tahsil Dabhara, District Janjgir-Champa, Chhattisgarh

---- Petitioner

Versus

1. South Eastern Coalfields Limited (SECL) Through Its Chairman-Cum-Managing Director, Office At Seepat Road, Bilaspur, District : Bilaspur, Chhattisgarh
2. The General Manager (M & S) South Eastern Coalfields Limited, SECL Office At Seepat Road, Bilaspur, District : Bilaspur, Chhattisgarh
3. Central Bank Of India, Through Its Branch Manager, Corporate Finance Branch, 1st Floor, MMO Building, M.G. Road, Fort, Mumbai, 400023

---- Respondents

For Petitioner	:	Mr. Ravindra Shrivastava, Sr. Advocate along with Mr. Avinash N. Mishra, Advocate
For Respondents	:	Mr. Vaibhav Shukla, Advocate

Hon'ble Shri Justice P. Sam Koshy

Order on Board

02/07/2020

1. The present writ petition has been filed claiming for the following main reliefs:

> **"10.1. (i) This Hon'ble Court may be pleased to issue a writ of mandamus or such other appropriate writ directing Respondent No. 1 to extend to the Petitioner herein the facility of lifting coal quantity scheduled for the Month of April 2020 (under Phase III Special Forward e-Auction) at the applicable 'notified price' (i.e. without any markup/premium) along with the right to seek adjustment for supply of lower grade or varied quantity of Coal, or**
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> **(ii) In the alternative, this Hon'ble Court may be pleased to issue a writ of mandamus or such other appropriate writ directing Respondent No. 1 to shift the Validity period' of lifting coal quantity scheduled for the Month of April 2020 (under Phase III Special Forward e-Auction) till Respondent No.1 resumes**

offering sale of Coal at the Premium price with 2 months lifting period thereafter, or

(iii) In the alternative to all the above, this Hon'ble Court may be pleased to issue a writ of mandamus or such other appropriate writ directing Respondent No.1 to return the Petitioners' Bank Guarantee (bearing No. 03007BGA20000065) dated 20.02.2020 (being valid till 15.09.2020) for an amount of Rs 12,00,00,000/- (Rupees Twelve Crores Only) without encashment/forfeiture

10.2. This Hon'ble Court may be pleased to Issue a writ of certiorari or such other appropriate writ quashing and setting aside Respondent No. 2's purported notice dated 22.06.2020."

2. Primarily the writ petition has been filed assailing the notice issued by the SECL, so far as forfeiture of the EMD failing which resorting to encashment of the bank guarantee. The contention of the learned Senior counsel is that the petitioner had participated in an e-Auction proceedings for purchase of coal from respondents No.1 & 2. The petitioner has successfully participated in the bid and sale letter to this effect was issued on the 27.02.2020 (Annexure P/4) giving details of the quantity of coal that was supposed to be lifted by the petitioner within the stipulated period. According to the learned Senior counsel because of the peculiar circumstances faced by the country at large, on account of the global COVID-19 pandemic and the situation that was prevailing during this period, the lifting of coal for the month of April could not be carried out, on account of movement of transport being completely stalled by virtue of the Lock-down. That for which the petitioner was not at fault, neither was there any deliberate or intentional default on their part, but it was on account of the Force Majeure situation that arose. According to the counsel for the petitioner, the petitioner who is a power generator and other similar players had approached the Coal India Limited for considering their case, looking to the situation that arose in between and the Coal India

Limited had been considering their case sympathetically and had also given certain relaxation permitting change of the mode of transport from road to rail and also change in price in certain cases. According to the petitioner, though this facility was granted to many other power generating companies, but similar facility was not provided to the petitioner and they were compelled to transport the coal by road alone, which because of the lockdown caused further hardship in the timely lifting of coal.

3. Giving the said fact, the counsel for the petitioner submits that since the situation of shortfall in the lifting of the coal was exclusively on account of the force majeure situation, the respondents should not have taken a decision by issuing the impugned notice (Annexure P/11) dated 22.06.2020 noticing the petitioner in respect of the forfeiture of the EMD failing which encashment of the bank guarantee. The learned senior counsel made a statement that on the 01-06-2020 the SECL have sent a letter to the Resp.no.3 Bank for the encashment of the Bank Guarantee. The prayer of the petitioner is that in the event if the said letter is put to execution, the petitioner would be put to substantial loss and they would also find it difficult in running the very business establishment itself because of the liquidity crunch that is prevailing these days, which the power sector is particularly facing acutely.

4. Countering the submissions of the learned Senior counsel, Mr. Vaibhav Shukla, Advocate appearing for the respondents No.1 & 2 submits that it is a case, where the petitioner and similar power generating companies were granted extension of time for lifting of the coal up till the 17th of June and this extension was granted taking into account the prevailing situation that was there in the Country. Mr. Shukla further

submits that from the instructions that he has received, out of the 14 successful bidders who had participated, 8 of the power generating companies have been able to lift the entire coal stipulated for each of them within the stipulated period and it is only 6 of the other power generating companies including the petitioner, who were not able to lift the entire coal specified. Learned counsel for the respondents further submits that they have not in any manner discriminated the petitioner by issuing Annexure P/11. Similar notices have also been issued to other similar defaulters also. So far as the resolution of Board of Directors of Coal India Limited is concerned, the contention of the learned counsel for the respondents was that those resolutions were applicable for all those e-Auction finalized in the first two quarters of the financial year 2020-2021, whereas the e-Auction finalized in the case of the petitioner is one which falls in the last quarter of the previous financial year 2019-2020, thus the said resolution of the Coal India Limited may not be applicable in the instant case.

5. Having heard the contentions put forth on either side, what really comes out from the discussions is that there was an admitted force majeure situation prevailing in the country. This appears to be the sole reason, which prevented the petitioner-establishment from lifting the stipulated coal within the stipulated period. The said situation was beyond the control of either the petitioner or for that matter the respondents No.1 & 2. The respondents No.1 & 2 though have extended the period for lifting of the coal up till the 17th of June, but what cannot be lost sight of is that for the whole of the April and also for the whole of May the Lock-down situation was prevailing substantially with some relaxations though, things have not normalized

even till date. The CIL has in any case granted certain relaxation for the e-auction finalized in the first two quarters of the present financial year. However what cannot be lost sight of is that the month during which the petitioner was unable to lift the coal was in the peak of the lockdown period and things were beyond the control of the petitioners.

6. Given the said situation which is not disputed, this Court is of the opinion that the action on the part of the respondents SECL in issuing Annexure P/11 at this juncture seems to be a little bit too early and also looks too harsh. The petitioners were also entitled for certain grace period granted enabling the petitioners in fulfilling with their commitment.

7. The contents of the petition would reveal that immediately on receipt of the notice Annexure P/11, the petitioners have submitted their reply (Annexure P/12) on 24.06.2020. The said reply also contains certain request being made by the petitioner and also have alternative proposals made along with the said request. It seems that the said letter submitted by the petitioner till date has not been decided or acted upon by the respondents.

8. Given the situation and considering the entire facts and circumstances of the case, this Court intends to dispose of the writ petition directing that the extension of time granted to the petitioner till 17th of June be extended for a further period of 45 days starting from today i.e up till 14th of August within which period the petitioner would have to positively lift the entire coal as per the agreement, beyond which the respondents would be a liberty to take appropriate action in accordance with the agreement.

9. Meanwhile, the notice (Annexure P/11) dated 22.06.2020 shall not be acted upon and it is further directed that the respondents No.1 & 2 shall intimate the respondent No.3-Bank also not to act upon the correspondence made in this regard to the Bank as has been submitted by the learned Senior counsel referring to a correspondence made to the Bank by SECL on the 01.07.2020.

10. With the aforesaid observations, the present writ petition stands disposed of.

Sd/-
(P. Sam Koshy)
Judge

Ved