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

+ W.P.(C) 1556/2020

DBL-JPL CONSORTIUM (CONSORTIUM OF M/S DILIP
BUILDCON LIMITED AND M/S JINDAL POWER LIMITED)

..... Petitioner

Through: Mr. Manoj K. Singh, Mr. Vijay K.
Singh, Mr. Nilav Bandhopadhyaya,
Ms. Kanishka Prasad & Mr. Sahil
Sood, Advs.

versus

NTPC LIMITED AND ANR.

..... Respondents

Through: Ms. Maninder Acharya, ASG with
Mr. Puneet Taneja, Mr. Laxmi
Kumari, Mr. Viplav Acharya, Advs.
with Mr. Sanjay Deodhar, AGM
(contracts) & Mr. Vishwanathan
(Law Officer) for NTPC.

CORAM:

HON'BLE MR. JUSTICE G.S.SISTANI

HON'BLE MR. JUSTICE ANUP JAIRAM BHAMBHANI

ORDER

% **11.02.2020**

CM APPL. No. 5424/2020 (exemption)

Exemption allowed, subject to all just exceptions.

The application stands disposed of.

W.P.(C) 1556/2020 & CM APPL. No. 5423/2020 (stay)

Learned counsel for the petitioner submits that after the advance copy was served, the petitioner received a communication dated 10.02.2020 informing him that Techno-Commercial Proposal has been rejected on account of not meeting the criteria laid down in terms of Clause 6.3.2 of ITB, Volume-I of the bidding document. The relevant

portion of the communication dated 10.02.2020 is being reproduced herein below :

"2.0 In terms of Clause No. 6.3.2 of ITB, Volume-I of the Bidding Documents, your Techno-Commercial Proposal has not been considered meeting the requirements stipulated under Chapter-7 (Qualifying Requirements) of ITB and therefore it has been rejected."

2. During the course of hearing, learned Additional Solicitor General points-out that the petitioner has not met the technical criteria as per clause 7.1.1, which is reproduced below :

"7.1 Technical Criteria

7.1.1 The Bidder should have, in the preceding 7 (seven) years reckoned from the date of opening of the Techno-commercial Bids developed & operated single coal / lignite mine having coal/lignite reserves of at least 150 million tonnes & annual capacity of at least 6 MTPA and produced at least 2 million tonnes of coal/lignite from such mine."

3. Counsel for the petitioner submits that the petitioner being a consortium of M/s. Dilip Buildcon Limited and M/s. Jindal Power Limited falls under the category of Route-3 (consortium) as mentioned in clause 7.3.3 of the bidding documents.

"7.3.3. ROUTE -3 (Consortium)

i. Bidder may be a Consortium of up to three corporate entities and should collectively meet the requirement of technical criteria mentioned at clause 7.1 above. For Bidders who are qualified as per clause 7.1.2, requirement of clause 7.1.2 (b) should be met by atleast one of the consortium partners.

ii. All the Consortium members shall select one of the members as the "leader" who should meet on its own financial criteria mentioned at clause 7.2 above.

iii. Net worth of all the consortium members in combined manner, as on the last date of the last financial year out of the three consecutive Financial Years, proposed by bidder for meeting Financial Criteria, should be equal to or more than 100% of their total paid up share capital.

However, net worth of each member of the consortium excluding the leader, as on the last date of the last financial year out of the three consecutive Financial Years, considered by bidder for meeting Financial Criteria, should not be less than 75% of their respective paid up share capital individually.

iv. Each member of the consortium should meet either

a. Technical criteria at clause 7.1.1

or

b. At least 20% of the technical criteria at clause 7.1.2 (a) i.e. **6 Million BCM** of aggregated volume of overburden and/ or coal/ lignite from a maximum of **Seven** open cast mines of Coal / Lignite, in any year. However the total number of mines to be considered for meeting the technical criteria at 7.1.2(a) collectively by all consortium members shall not exceed **Seven**.

Or

c. At least 20% of the absolute value(s) of the Financial Criteria mentioned at Clause 7.2 above.

v. In this route, none of the consortium members will be allowed to draw any technical or financial strength from its Subsidiary (ies) and/or Holding Company.

vi. Each of the Consortium members will be required to furnish a legally enforceable Consortium Operating Agreement (COA) along with Techno-commercial Bid holding themselves jointly & severally responsible and liable to NTPC to perform all contractual obligations, valid for the entire period of contract, as per the format enclosed in the bidding documents. The number of executants of the COA should not exceed three."

4. Be that as it may, learned counsel for the petitioner submits that if a rejection letter is issued citing specific reasons, he would assail the same in accordance with law. Leave is sought to withdraw this writ petition, with the aforesaid liberty.

5. Learned ASG submits that although the reasons of rejection have been explained during the course of hearing, however as an exception another communication would be issued to the petitioner setting-out the specific reasons which will be served on the petitioner within two days.

6. Accordingly, the petition is dismissed as withdrawn, with liberty as prayed for.

G.S.SISTANI, J.

ANUP JAIRAM BHAMBHANI, J.

FEBRUARY 11, 2020/uj