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HIGH COURT OF CHHATTISGARH, BILASPURWPC No. 5266 of 2021

1. M/s Clean Coal Enterprises Private Limited Having Its Registered Office At, First Floor, Shrisai Parisar Commercial Complex, Shrikant Verma Marg, Bilaspur 495001 Chhattisgarh Through Its Authorized Signatory, Shri Sanjay Agrawal.
2. M/s Hind Energy And Coal Beneficiation India Limited, Having Its Registered Office At, Office No. 01, 319, Karnani Mansion 25a, Park Street, Kolkata, Kolkata, Wb 700016, India, Through Its Authorized Signatory, Shri Sanjay Agrawal.
3. M/s Gk Associates, Having Its Office At, H.No. 271, Besides Shivam Heights, Kalpana Vihar, Ameri Road, Bilaspur Chhattisgarh Through Its Authorized Signatory, Shri Sanjay Agrawal.

---- **Petitioners****Versus**

1. South Eastern Coalfields Limited Through Its Chairman And Managing Director, Having Its Registered Office At, Secl Bhavan, Seepat Road, Bilaspur 495006 Chhattisgarh.
2. The Chief Manager, Contract Management Cell South Eastern Coalfields Limited, Having Its Registered Office At, Secl Bhavan, Seepat Road, Bilaspur 495006, Chhattisgarh.
3. M/s Dilip Buildcon Limited, Having Its Registered Office At, Plot No. 5, Inside Govind Narayan Singh Chuna Bhatti, Kolar Road, Bhopal-462016, Madhya Pradesh.

---- **Respondents**

(Cause-title taken from Case Information System)

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For Petitioners : Mr. Ashish Anand Barnad alongwith Mr. Ankit Singhal, Advocates.  
 For Respondents No. 1 and 2 : Mr. Vaibhav Shukla, Advocate.

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Hon'ble Shri Arup Kumar Goswami, Chief Justice

Hon'ble Shri N. K. Chandravanshi, Judge

Order on Board

Per Arup Kumar Goswami, Chief Justice

16.12.2021

Heard Mr. Ashish Anand Barnad, learned counsel for the petitioners.  
Also heard Mr. Vaibhav Shukla, learned counsel for the respondents No. 1 & 2.

2. The 3 (three) petitioners formed a joint venture by the name and style of 'M/s Gayatri Mining and Logistics JV' (herein after referred to as the JV) and had responded to an e-tender notice, hereinafter referred to as NIT, bearing No.SECL/BSP/CMC/e-Tender/473 for hiring of Heavy Earth Moving Machinery (HEMM) and allied equipment for Over Burden Removal, loading in to tippers, transportation & unloading of excavated materials & silt, dumping, dozing, scrapping / removal of all bands, preparation / maintenance of haul road, water sprinkling and spreading of excavated material at the site shown & levelling dumps as per direction of the Management / Engineer-in-charge for a period of 1795 days at Amadand OCP, Jamuna Kotma Area.
3. The estimated value of the tender is Rs.2455,40,47,830.00 (Two Thousand Four Hundred & Fifty Five Crore Forty Lacs Forty Seven Thousand Eight Hundred and Thirty Only).
4. The technical bid of the JV was rejected by an order dated 06.12.2021.
5. Challenging the rejection of the technical bid of the JV, this petition is filed alongwith a prayer for a declaration that the JV is qualified for the

technical bid and consequently, to direct the respondent No. 2 to open the financial bid of the JV.

6. Twelve bidders had participated pursuant to the said NIT and out of them, tender of three bidders, including that of the JV, were rejected. Remarks, in the order dated 06.12.2021, as against the JV, was indicated as “Failed to submit confirmatory document on subhead of ‘Work Experience’ required as per NIT”. This was followed by detailed reasons of rejection of bidders. It will be appropriate to take note of the reasons of rejection of bid of the JV, as reflected in the order dated 06.12.2021, which is as under :

**“5) Reasons of Rejection of Bidder (s)**

**“1. M/s GAYATRI MINING AND LOGISTICS -**

Rejected under Confirmatory documents subhead of Work Experience.

**WORK EXPERIENCE:**

**(I) Min value required – 50% of Annualised value =  
Rs. 2,49,64,42,1889; Period of 07 years: 01.09.2014 to  
31.08.2021;**

**(II) Claimed period as per BSCS: 01.09.2018 to  
31.08.2019**

1. In BSCS (Bid Submission Confirmation Sheet), the bidder had claimed to have executed 7 different works for a total updated value of Rs. 4,17,84,46,789 during the period 01.09.2018 to 31.08.2019. On evaluation of the uploaded

documents, it has been observed that the bidder did not upload work execution/Performance certificate for the works at sl No 5, 6 & 7 claimed in the BSCS.

2. From the work experiences at SI No 1, 2, 3 & 4 claimed by the bidder in the BSCS and submitted the work Execution/ Performance Certificates from the employers, the value of works executed is Rs.91,55,030.68 + Rs.13,83,49,177.00 + Rs.75,00,62,84 + Rs.96,52,76,887 = Rs. 118,77,87,378.68 which is less than the required minimum value of work experience.

3. **The bidder was asked to upload the Work Execution Certificates from the employer for the work description, value and period of work claimed in SI No. 5, 6 & 7 of BSCS under the Confirmatory Document Subhead of 'Work Experience' as per clause Nos. 6(A) & 7(2) of the NIT.**

4. In response, the bidder submitted the clarification by submitting self certification confirming that the value of work performed by their JV partner and their subsidiaries are as follows:

1. Hind Energy and Coal Benefication Inida Ltd-  
Rs.45,07,10,559

2. Hindi Multi Services Pvt Ltd-Rs. 28,91,84,700.

3. Radiant Coal Benefication Pvt Ltd-Rs. 53,02,41,708.

The bidder informed that their JV partners and their

subsidiaries have performed the work as mentioned above and certified by the CA in the period mentioned in BSCS. They informed that the certificate 26AS was attached with the earlier documents in the tender documents.

From the work experiences SI No. 1, 2, 3 & 4 claimed by the bidder in the BSCS and submitted the work Execution/ Performance Certificates from the employers, the value of works executed is Rs. 91,55,030.68 + Rs. 13,83,49,177.00 + Rs. 75,00,62,840 + Rs. 96,52,76,887 = 186,28,43,934.68 which is less than the required minimum value of work experience.

**5. The Tender Committee deliberated on the uploaded shortfall confirmatory documents and opined that the bidder did not submit the Work experience Certificates from the Employers for the work Experiences claimed by them under SI No. 5, 6 and 7 for the BSCS and hence the bidder does not meet the eligibility requirements under subhead of 'Work Experience' clause 6 A and 7.2 of the e-Tender notice."**

7. Mr. Barnad submits that the JV had submitted work experience certificate for an amount of Rs.186,28,43,934.68 (Rupees One Hundred & Eighty Six Crores Twenty Eight Lacs Forty Three Thousand Nine Hundred & Thirty Four and paise Sixty Eight) and had submitted work orders, purchase orders, tax invoice along with statement obtained under Form 26 AS for deduction of TDS for the work completed for one Nabha Power Limited for an amount of Rs. 191,96,23,002.00 (Rupees One Hundred & Ninety One Crores

Ninety Six Lacs Twenty Three Thousand and Two only) and thus, the JV has total work experience of Rs. 379,81,15,009.00 (Rupees Three Hundred & Seventy Nine Crores Eighty One Lacs Fifteen Thousand and Nine Only) which is far in excess of the required minimum value required, which is Rs. 249,64,42,189.00 (Rupees Two Hundred & Forty Nine Crores Sixty Four Lacs Forty Two Thousand One Hundred and Eighty Nine Only). It is on the basis thereof, he submits that there was no application of mind on the part of the tendering authority in rejecting the bid of the JV. To support his contention that documents submitted in connection with work done for Nabha Power Limited can be taken into consideration to ascertain whether the tenderer had requisite work experience, he has drawn the attention of the Court to Clause (6) pertaining to eligibility criteria and Clause (iii) of "Data / Information to be furnished by Bidder on-line", which is part of Clause 6. He has also drawn the attention of the Court to the contents under the heading "Scanned copy of documents to be uploaded by bidders (CONFIRMATORY DOCUMENT), which is also part of Clause 6 of the NIT. He has further drawn attention of the Court to pages 68 and 69 of the appeal papers which indicate, amongst other, work order issued by Nabha Power Limited. The tendering authority committed an error of law in not looking into the documents submitted by the JV, he submits.

8. Mr. Vaibhav Shukla, learned counsel appearing for respondents No. 1 and 2, on the other hand, submits that the essential condition is submission of work experience certificate issued by the employer. He submits that the work experience certificates submitted by the JV do not meet the minimum required work experience of Rs. 249,64,42,189.00 (Rupees Two Hundred & Forty Nine Crores Sixty Four Lacs Forty Two Thousand One Hundred and Eighty Nine Only). In absence of work experience certificate for minimum value required,

the tendering authority has rightly rejected the technical bid of the JV. He submits that after the experience certificates are submitted, the other documents on which reliance is placed by Mr. Barnad, may be taken into consideration for verification, etc. but submission of such documents cannot be a substitute for the work experience certificate. It is on the aforesaid premise, Mr. Shukla submits that no case is made out for inference with the order of rejection of the technical bid of the JV.

9. We have considered the submissions of the learned counsel for the parties and have perused the materials on record.

10. Relevant portions of Clause 6 of the NIT reads as follows:

“6 (A) **Work Experience**: The bidder must have experience of works (includes completed / ongoing) of similar nature valuing 50% of the annualized estimated value of the work put to tender (for period of completion over 1 year) / 50% of the estimated value of the work (for completion period up to one year) put to Tender in any year (consecutive 365 days) during last 7(seven) years ending last day of month previous to the one in which bid applications are invited.

x                      x                      x                      x                      x

Data / Information to be furnished by Bidder on-line:

I. Start date of the year for which work experience of bidder is to be considered for eligibility.

ii. Start date & end date of each qualifying experience

(similar nature)

iii. Work Order Number / Agreement Number of each experience

iv. Name & address of Employer / Work Order Issuing authority of each experience

v. Percentage (%) share of each experience (100% in case of an individual / proprietorship firm or an entity registered as company under the Companies Act and the actual % of share in case of a Joint Venture / Partnership firm)

vi. Executed Value of work against each experience.

Vii. In case the bidder is a Joint Venture, the work experience of any one, two or three of the individual partners of JV or the JV itself may be furnished as the work experience of the bidder.

x                      x                      x                      x                      x

Scanned copy of documents to be uploaded by bidders  
(CONFIRMATORY DOCUMENT)

For work experience, bidders are required to submit Work Experience Certificate issued by the employer against the experience of similar work containing all the information as sought on-line. Work order, BOQ, TDS etc, may be sought during clarification or along with deficient

documents. In case of JV, above documents of partner(s).” (emphasis supplied)

11. Clause 7(2) reads as under:

“7. All the bidders are to submit the information in objective manner confirmed by the uploaded documents. The documents related to the furnished online information, based on which the auto evaluation takes place will only be considered. If the bidder uploads any other document, it will be given no cognizance.

The scanned copy of following documents will be submitted by the bidder on-line while submitting bid under Cover-I (Part-I).”

|    |                 |                                                                                                                                                                                                                                                                                                                                                                                                                                                                  |
|----|-----------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 2. | Work Experience | <p>Work Experience Certificate (includes completed/ongoing works) issued by the employer against the experience of similar work containing all information as sought on-line. Work order, BOQ,TDS etc. may be sought during clarification or along with deficient documents.</p> <p>In case of JV, above documents of partner(s).</p> <p>If a bidder participates as a Joint Venture (JV), the benefits as per Public Procurement Policy for MSEs Order-2012</p> |
|----|-----------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|

|  |  |                                   |
|--|--|-----------------------------------|
|  |  | shall not be applicable for them. |
|--|--|-----------------------------------|

12. A perusal of the above would go to show that for work experience, bidders are required to submit work experience certificate issued by the employer against the experience of similar work containing all the information on-line. It is also apparent from Clause 7 that the documents as are required to be furnished online, based on which the auto evaluation takes place, will only be considered and if the bidder uploads any other documents, the same would be given no cognizance. It is also seen that the work orders, bill of quantities, TDS *etc.* may be sought for for clarification. Serial No. (iii) of the 'Data/Information to be furnished by Bidder on-line', *i.e.*, Work Order Number/Agreement Number of each experience, on which Mr. Barnad has placed strong reliance, cannot be read in isolation in the face of specific requirement of submission of work experience certificate. Merely because some work order number, agreements *etc.* had been submitted, such submission of documents will not meet the requirement of certificate of work experience.

13. In the instant case, three writ petitioners had formed JV. As noticed earlier, the estimated value of the tender is Rs.2455,40,47,830.00 (Two Thousand Four Hundred & Fifty Five Crores Forty Lacs Forty Seven Thousand Eight Hundred & Thirty Only) and the undisputed work experience certificate submitted amounts to Rs.191,96,23,002.00 (Rupees One Hundred & Ninety One Crores Ninety Six Lacs Twenty Three Thousand and Two only), which is less than the minimum requirement of Rs. 249,64,42,189.00 (Rupees Two Hundred & Forty Nine Crores Sixty Four Lacs Forty Two Thousand One Hundred and Eighty Nine Only).

14. In case of *Central Coalfields Limited and Another v. SLL-SML (Joint Venture Consortium and Others) with PLR-RPL-SMSL (JV) v. SLL-SML (Joint venture Consortium and Others)*, reported in *(2016) 8 SCC 622*, the Hon'ble Supreme Court had observed that a contract is a commercial transaction and evaluating tenders and awarding contracts are essentially commercial functions. If the decision relating to award of contract is *bonafide* and is in public interest, Court ought not, in exercise of power of judicial review, interfere even if a procedural aberration or error in assessment or prejudice to a tenderer is made out. It is further highlighted that the issue of the acceptance or rejection of a bid or a bidder should be looked at not only from the point of view of the unsuccessful party but also from the point of view of the employer. The terms of NIT cannot be ignored as being redundant or superfluous and they must be given a meaning and the necessary significance.

15. A perusal of the order of rejection of the technical bid would go to show that such rejection cannot be held to be an outcome of arbitrary, irrational or *malafide* exercise of power.

16. In that view of the matter, we find no merit in this application and accordingly, the same is dismissed.

Sd/-  
(Arup Kumar Goswami)  
Chief Justice

Sd/-  
(N. K. Chandravanshi)  
Judge