

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.7838 of 2019

Vikram Solar Limited, a Company registered under the Indian Companies Act, 1956 having its registered office at 8th Floor, The Chambers, 1865, Rajdanga Main Road, Kasba, Kolkata, West Bengal- 70017 through Authorised Representative Shri AmbhrinBhattacharyya, Working as Lead Contract Management, F and A Vikram Solar Limited, 8th Floor, the Chambers , 1865, Rajdanga Main Road, Kasba Kolkata, West Bengal- 70017.

... .. Petitioner/s

Versus

1. The Indian Oil Corporation Ltd. a company registered under the Indian Comapanies Act, 1956 having its registered Office at Indian Oil Bhawan, G-9, Ali Yavar Jung Marg, Bandra(East), Mumbai, Maharashtra- 400051 through its Chairman, Indian Oil Corporation Ltd., Indian Oil Bhawan, G-9, Ali Yavar Jung Marg, Bandra (East), Mumbai, Maharashtra- 400051.
2. The Director(Refineries), Indian Oil Corporation Ltd., SCOPE Complex, Core- 2, 7 Institutional Area, Lodhi Road, New Delhi- 110003
3. The Chief Materials Manager, Indian Oil Corporation Ltd., Barauni Refinery, P.O. Barauni Oil Refinery, District- Begusarai, Bihar- 851114.
4. The Manager (Materials), Indian Oil Corporation Ltd., Barauni Refinery, P.O. Barauni Oil Refinery, District- Begusarai, Bihar- 851114.
5. M/s Emeral Energy Solutions Pvt. Ltd. a company registered under the Indian Companies Act, 1956, having its registered Office at 215, Chandraprabha Complex, Near Sardar Patel Statue, Narayanpura, Ahmendabad- 380013, Gujarat through its Director, M/s. Emeral Eeneral Energy Solutions Pvt. Ltd Ltd., 215 Chandraprabha Complex, Near Sardar Patel Statue, Narayanpura Ahmendabad- 380013, Gujarat.

... .. Respondent/s

Appearance :

For the Petitioner/s : Mr.Piyush Lall, Advocate
For the Respondent/s : Mr.Anil Kumar Sinha, Advocate

CORAM: HONOURABLE THE CHIEF JUSTICE
and
HONOURABLE MR. JUSTICE PARTHA SARTHY
ORAL ORDER

(Per: HONOURABLE THE CHIEF JUSTICE)

2 01-11-2022 The petitioner has prayed for the following relief/s :-



- i. For holding and declaring that Clause VI of Annexure E to the General Terms and Conditions of Notice Inviting Tender bearing No. RBRM18V054 issued on 7.9.2018 by the Indian Oil Corporation Ltd., Barauni Refinery, Barauni providing for Price Preference for Micro and Small Enterprises shall not be enforceable or applicable to and cannot be given effect in relation to the said Notice Inviting Tender being in violation to section 11 of the Micro, Small and Medium Enterprises Development Act, 2006 and the Public Procurement Policy for Micro and Small Enterprises (MSEs) Order, 2012 issued thereunder by the Ministry of Micro, Small and Medium Enterprises Development, Government of India, New Delhi.
- ii. For holding and declaring that the Award of Contract vide Purchase Order No. 25747974 dated 17.12.2018 against the Notice Inviting Tender bearing No. RBRM18V054 by the Indian Oil Corporation Ltd., Barauni Refinery, Barauni to respondent No. 5 - M/s. Emeral Energy Solutions P. Ltd. is in violation of the above said section 11 of the Micro, Small and Medium Enterprises Development Act, 2006 and the Public Procurement Policy for Micro and Small Enterprises (MSEs) Order, 2012 and thus illegal after directing the respondent Nos. 1 to 4 to produce the said Purchase Order No. 25747974 dated 17.12.2018 and consequently firstly, to set aside the above Award of Contract vide Purchase Order No. 25747974 dated 17.12.2018 in favour of M/s. Emeral Energy Solutions P. Ltd. by the Indian Oil Corporation Ltd., Barauni Refinery, Barauni (a copy of which Purchase Order has been applied for under Right to Information Act, 2005 vide Online Application No. IOCLD/R/2019/50613 but not supplied till date) and secondly, for issuance of a Writ in the nature of Mandamus directing the Indian Oil Corporation Ltd. to award the contract under the said Notice Inviting Tender bearing No. RBRM18V054 dated 7.9.2018 in favour of the



petitioner being admittedly the technically qualified and L1 tenderer thereunder.

- iii. For holding and declaring, in the alternative, that in case Clause VI of Annexure E to the General Terms and Conditions of Notice Inviting Tender bearing No. RBRM18V054 dated 7.9.2018 is enforceable or applicable to and can be given effect in relation to the said Notice Inviting Tender even then M/s. Emeral Energy Solutions P. Ltd. does not qualify and is ineligible for being extended the price preference under the said Clause VI so as Award of Contract vide Purchase Order No. 25747974 dated 17.12.2018 to have been issued in its favour and consequently firstly, to set aside the said Award of Contract vide Purchase Order No. 25747974 dated 17.12.2018 issued in its favour by the Indian Oil Corporation Ltd., Barauni Refinery, Barauni and secondly, for issuance of a Writ in the nature of Mandamus directing the Indian Oil Corporation to award the contract under the said Notice Inviting Tender bearing No. RBRM18V054 issued on 7.9.2018 in favour of the petitioner being admittedly the technically qualified and L1 tenderer thereunder.
- iv. For holding and declaring, in the alternative, that in case Clause VI of Annexure E to the General Terms and Conditions of Notice Inviting Tender bearing No. RBRM18V054 dated 7.9.2018 is enforceable or applicable to and can be given effect in relation to the said Notice Inviting Tender and that in case M/s. Emeral Energy Solutions P. Ltd. is qualified and is eligible for being extended the price preference thereunder even then it is only eligible and entitled for Award of Contract under Notice Inviting Tender bearing No. RBRM18V054 dated 7.9.2018 to the extent of only 20% of the scope of work thereunder relating to supply of goods and services in terms of section 11 of the Micro, Small and Medium Enterprises Development Act, 2006 and the Public Procurement Policy for Micro and Small Enterprises (MSEs) Order, 2012 and consequently



for issuance of a Writ in the nature of Mandamus directing the Indian Oil Corporation to modify the said Award of Contract vide Purchase Order No. 25747974 dated 17.12.2018 issued by it in favour of M/s. Emeral Energy Solutions P. Ltd. to the said extent of only 20% of the goods and services tendered and to award the remaining balance of the tendered scope of work under Notice Inviting Tender bearing No. RBRM18V054 dated 7.9.2018 being a works contract to the petitioner being admittedly the technically qualified and L1 tenderer thereunder.

- v. For any other relief or reliefs, either independently or consequentially, in the facts and circumstances of the present case.

Learned counsel for the petitioner seeks permission to withdraw the present petition as it has become infructuous.

Permission granted.

Present petition stands disposed of as withdrawn having become infructuous.

Interlocutory application, if any, also stands disposed of.

(Sanjay Karol, CJ)

(Partha Sarthy, J)

Amrendra/Ashwini

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