25.04.2022
Court No.13
Item No.15
AP

WPA 6939 of 2022

BLA Projects Private Limited and Ors.
Vs.
Eastern Coalfields Limited and Ors.

(Through Video Conference)

Mr. Kishore Datta, Senior Advocate
Mr. Amitesh P. Ray
... For the Petitioners.

Mr. Jishnu Chowdhury
Mr. Syed Nurul Arefin
Mr. Rahul Singh
Mr. A. Tarafdar
... For the Respondent Nos.1 to 3.

This Court has been called upon under Article 226 of the Constitution of India to decide as to whether the work order issued to the petitioners on 17th March 2022 was in terms of the Notice Inviting Tender (NIT). For the said purpose the terms and conditions of the NIT also required to be interpreted.

The short facts of the case are inter alia that Eastern Coalfields Limited (ECL) subsidiary of Coal India Limited (CIL), pursuant to NIT on 25th October 2021 issued a work order to the petitioner for "Construction of Concrete Road for Coal Transportation from Lohat More to Bonjemari Railway Siding via Dalmiya Railway Siding Bonjemari OC Salanpur Area". The estimated cost of the work is Rs.13,47,28,107.75/-.

Three categories of bidders were permitted to participate. The first of which was the GST Registered bidder under Regular Scheme. The second category was a GST Registered bidder under Composition Scheme and the third category was GST unregistered bidder. The writ petitioner submitted its bid under the third category.

Mr. Kishore Datta, learned senior counsel appearing for the petitioners has labored to demonstrate that the petitioners were a GST unregistered bidder and was not required to factor in the GST payable. All GST was to be separately paid by the ECL. The impugned work order issued to the petitioners is, therefore, wholly erroneous and arbitrary. The petitioners, according to counsel, cannot be now compelled to bear and pay the 18% of GST within the sum of Rs.9,78,83,395.57/-, quoted by and awarded to them.

Mr. Jishnu Chowdhury, Ld. Advocate for the ECL, has argued that the GST component of the work was required to be borne entirely by the ECL since the quotes were to be quantified for assessing the ranking of bidders would automatically include 18 percent of added GST. Such addition automatic and must have been factored in by the bidders since the petitioners' bid must include the same. The GST component was the bidder's liability.

Counsel appearing for the ECL has also placed various provisions of the NIT to indicate that the bidders like the petitioners were required to quote rates based on the principles the under the GST Act that it is they i.e. the service providers that are primarily liable to pay GST.

It appears clearly that the petitioners require this Court to interpret clauses of the contract and/or NIT. Both sides have taken extreme positions. The ECL contends that the contract awarded to the petitioners in terms of the NIT itself presupposes that the GST component would have to factor in the GST component. The petitioners argue that the GST component was on a plain reading of some provisions of the contract, required to be borne exclusively by the CIL.

The following judgments have been relied upon by Mr. Chowdhury for the ECL. **AFCONS Infrastructure Limited Vs. Nagpur Metro Rail Corporation Limited & Anr.** reported in **(2016) 16 SCC 818** particularly paragraph 13; **JSW Infrastructure Limited & Anr. Vs. Kakinanda Seaports Limited & Ors**. reported in **(2017) 4 SCC 170** at paragraphs 9, 10 and 11; **Silppi Constructions Contractors Vs. UOI & Anr**. reported in **(2020) 16 SCC 489** at paragraph 20; **Agmatel India Pvt. Ltd. Vs. Resoursys Telecom & Ors**. reported in **2022 SCC OnLine SC 113** at paragraphs 39 & 54; **State of Punjab and Ors. Vs. Mehar Din** reported in **2022 SCC OnLine SC 250** at paragraphs 23 & 24.

Based on the above it is argued that the interpretation of the employer/CIL must be final.

However, under Article 226 of the Constitution of India, this Court is not inclined to enter into such controversy. Interpretation in one way or other would involve entering into the disputed questions of fact. Some oral expert evidence may also be required in the process of doing so. Interpretation of contractual terms is not an exercise that is normally undertaken under Article 226 of the Constitution of India unless they are clear and absolutely unambiguous.

Admittedly the contract has an arbitration clause which reads as follows:-

> “**16A. Settlement of Disputes through Arbitration**
> If the parties fail to resolve the disputes/differences by in house mechanism, then, depending on the position of the case, either the employer/owner or the contractor shall give notice to other party to refer the matter to arbitration instead of directly approaching Court. The contractor shall, however, be entitled to invoke arbitration clause only after exhausting the remedy available under the clause 16.
> In case of parties other than Govt. agencies, the redressal of disputes/differences shall be sought through Sole Arbitration as under.
>
> **Sole Arbitration:**
> In the event of any question, dispute or difference arising under these terms & conditions or any condition contained in this contract or interpretation of the terms of, or in connection with this Contract (except as to any matter the decision of which is specially provided for by these conditions), the same shall be referred to the sole arbitration of a person, appointed to be the arbitrator by the Competent Authority of CIL/CMD of Subsidiary Company (as the case may be). The award of

> the arbitrator shall be final and binding on the parties of this Contract.
> (a) In the event of the Arbitrator dying, neglecting or refusing to act or resigning or being unable to act for any reason, or his/her award being set aside by the court for any reason, it shall be lawful for the Competent Authority of CIL/CMD of Subsidiary Company (as the case may be) to appoint another arbitrator in place of the outgoing arbitrator in the manner aforesaid.
> (b) It is further a term of this contract that no person other than the person appointed by the Competent Authority of CIL/CMD of Subsidiary Company (as the case may be) as aforesaid should act as arbitrator and that, if for any reason that is not possible, the matter is not to be referred to Arbitration at all.
> Subject as aforesaid, Arbitration and Conciliation Act, 1996 as amended by Amendment Act of 2015, and the rules thereunder and any statutory modification thereof for the time being in force shall be deemed to apply to the Arbitration proceedings under this clause.
> The venue of arbitration shall be the place from which the contract is issued.
> <u>Applicable Law:</u> The contracts shall be interpreted in accordance with the laws of the Union of India.
> <u>Contracts with Partnership firm/Joint Venture:</u>
> The Partnership firm/Joint Venture is required to submit written consent of all the partners to above arbitration clause at the time of submission of bid."

Since the work order has already been issued the Arbitration clause in the NIT would automatically come to play. Reference in this regard may be made to the decision of **Dresser Rand S.A. v. Bindal Agro Chem Ltd.** reported in (2006) 1 SCC 751 particularly Paragraphs 27 and 32 thereof.

This Court is, therefore, of the view that as to whether the GST liability was to be borne by the bidder in its entirety in addition to the quoted value of the bid, is best left to be decided in the contractual agreed forum i.e. “Arbitration”. Hence this Court under Article 226 of the Constitution of India is not inclined to interfere with the work order issued. The parties may take appropriate steps in accordance with law.

With the aforesaid observations, the writ petition is disposed of without any further orders.

There shall be no order as to costs.

All parties shall act on the server copy of this order duly downloaded from the official website of this Court.

(Rajasekhar Mantha, J.)