08.06.2022
sayandeep
Sl. No. 06
Ct. No. 05

WPA 9260 of 2022
with
IA NO: CAN/1/2022

Pristine Malwa Logistics Park Pvt. Ltd.
-Versus-
West Bengal Power Development Corporation Ltd.
& Anr.

Mr. Bikash Ranjan Bhattacharya
Mr. Barnik Ghosh
...... for the petitioner

Mr. Abharajit Mitra
Mr. Anirban Ray
Mr. Chayan Gupta
Mr. Sandip Dasgupta
Mr. Aviroop Mitra
..... for the respondent No. 1
Mr. Rohit Das
Mr. Kishwar Rahaman
Mr. Preetam Majumdar
Mr. Pranit Biswas
.... for the respondent No. 2

The petitioner prays for stay of the operation of Request for Proposal (RFP) for Selection of Mine Developer and Operator for Development and Operation of Tara(East) and Tara(West) Coal Mine. The alternative prayer is for a restraint on the respondent No. 1 which is the West Bengal Power Development Corporation Limited(PDCL) from obtaining the bids till 24.06.2022, which is the date on which an application filed by the respondent no. 2 challenging a termination of an earlier tender is scheduled to be taken up by the NCLT, Chennai. The petitioner is a Resolution Applicant in respect of the respondent no. 2(Corporate Debtor) and is in the process of having the Resolution Plan approved by the NCLT, Chennai. The respondent No. 2, SICAL, was the earlier successful bidder of a tender of 2016 pursuant to which its wholly owned subsidiary SICAL Mining, was chosen as the second entity of an agreement of 27.10.2016. The agreement was terminated by the respondent no.1 in 2021 and the challenge to the termination, as stated above, is due to be taken up by NCLT, Chennai on 24.06.2022.

The respondent No. 1 opposes the prayer for stay of the RFP or adjourning the matter till after 24.06.2022 on the ground that the petitioner, failed to participate in the bid. Learned counsel appearing for the respondent No. 1 PDCL, relies on several previsions of the Specific Relief Act, 1963 as amended on 1st October, 2018.

Upon hearing learned counsel and considering the material on record, it is evident that the petitioner did not participate in the later bid which closed on 06.06.2022. Further, the petitioner as the Resolution Applicant of a Resolution Plan for the respondent No. 2(Corporate Debtor), has not been able to make out a persuasive nexus between the present facts and a stay of the tender process. Whether the Resolution Plan of the petitioner would be accepted on 24.06.2022 has little connection with the prayer in the writ petition and is also uncertain till the Plan is approved by the NCLT, Chennai. The only ground stated in the writ petition is that the value of the respondent No. 2 SICAL would be diminished if the respondent no. 1 selects a bidder for operating the concerned Coal Mine. This ground is not sufficient for staying tender. This Court has not been shown any compelling fact which would persuade the Court to restrain PDCL from proceeding with the tender.

The other fact which dissuades the Court to grant the relief as prayed for is the fact that the NCLT, Chennai proceedings have been pending since August, 2021 and the matter has been adjourned on several occasions.

This Court wishes to deal with the provisions of the Specific Relief Act, as amended, and relied upon on behalf of the respondent no. 1. Sections 20-A and 41(ha) have been brought into the 1963 Act, with the same objective. These provisions deal with infrastructure projects and prohibit any injunction from being granted by a Court in a suit involving such a project. The language used in both the provisions are mandatory - the word “shall” has been used in both sections. Section 41(ha) precludes a Court from granting an injunction which would have the effect of impeding or delaying the progress or completion of any Infrastructure Project. Infrastructure Project has been defined in the *explanation* to Section 20-A to include the categories of projects defined in the schedule to the Act. Item no. 2(a) of the Schedule includes "Electricity Generation" under the head "Energy". The contention advanced on behalf of the respondent no. 2 is that since the concerned project for which the respondent No. 2 invited bids is an infrastructure project, as defined in the Schedule, no injunction can be passed in respect of such project. Counsel has also relied on *N.G. Projects Limited vs. Vinod Kumar Jain and Ors.; 2022 SCC Online SC 336* where the Supreme Court relied on the said provisions and also stretched the provision to writs filed under Article 226 of the Constitution of India.

However, upon perusing the relevant documents on record in relation to the concerned project, it is arguable whether the said project can be brought within the definition of an Infrastructure Project under the 1963 Act. The Request for Proposal dated 08.04.2022 is *"for Selection of Mine Developer and Operator for Development and Operation of Tara(East) and Tara (West) Coal Mine."* The scope of work for the MDO (as defined in Clause 3.1.44 – Mine Developer and Operator) is for Mining of ROM coal using excavators and dumpers/tippers as per the production schedule of the approved Mining Plan(Clause 5.1.5). The definition relied upon in the schedule by the respondent No. 1 is for "electricity generation". The Schedule to the 1963

Act does not contain any project for Coal Mining or related activity. This Court is of the view that since the definitions of infrastructure project in the schedule are specific, any exclusion of a class of projects should be strictly construed. Hence, the contention with regard to the embargo under the Specific Relief Act is not acceptable. *Tata Consultancy Services Limited vs. SK Wheels Private Limited Resolution Professional, Vishal Ghisulal Jain; (2022)2 SCC 583* has been shown on behalf of respondent no. 1 for the purpose of the scope of the adjudication of the NCLT. This decision is not material for the present adjudication and would be relevant for the maintainability of the proceedings before the NCLT, Chennai.

Notwithstanding, the view of the Court with regard to the amended provisions of the Specific Relief Act, 1963, the undisputed fact remains that the petitioner does not have a credible explanation or defence for its failure to participate in the present bid. The pendency of the NCLT proceedings with regard to the challenge to the termination or otherwise cannot act as a reason for restraining the respondent no. 1 from proceeding with the RFP. The petitioner as well as the respondent No. 2 shall have the opportunity to argue its case before the NCLT and seek appropriate remedy if they succeed before the NCLT.

In view of the above reasons, the prayer for stay of the operation of the RFP or restraining the respondent No. 1 from proceeding with the RFP until 24.06.2022 is rejected.

WPA 9260 of 2022 along with CAN 1 of 2022 are disposed of in terms of the above.

Since the affidavits have not been called for, the allegations contained in the writ petition are deemed not to be admitted.

(Moushumi Bhattacharya, J.)