

IN THE HIGH COURT OF ORISSA AT CUTTACK

W.P (C) No. 9667 of 2019

M/s Niraj-UMSL JV

.....

Petitioner

Mr. D.K. Dwibedi, Adv.

Vs.

***Mahanadi Coalfields Ltd. and
others***

.....

Opposite Parties

Mr. H. Mohanty, Adv.

CORAM:

DR. JUSTICE B.R. SARANGI

MR. JUSTICE S.K. MISHRA

ORDER

07.07.2022

Order No.

12.

This matter is taken up through hybrid mode.

2. Heard Mr. D.K. Dwibedi, learned Counsel for the Petitioner and Mr. H. Mohanty, learned Counsel for the Opposite Party-MCL.

3. The Petitioner has filed this Writ Petition seeking to quash the letter dated 29.03.2018 under Annexure-9 forfeiting Earnest Money Deposit amounting to Rs.50,00,000/-, in respect of the tender call notice under Annexure-1, and to issue direction to the Opposite Parties to refund the EMD amount along with 12% interest within a stipulated time.

4. Mr. D.K. Dwibedi, learned Counsel for the Petitioner contended that since there is forfeiture of EMD amount, the Petitioner has invoked Clause-41 of the Detailed Tender Call Notice by approaching the Independent External Monitor, who, vide Annexure-12 dated 07.05.2018, directed to refund the EMD amount. But the Opposite Parties are not carrying out the direction issued by the Independent External Monitor. As a consequence thereof, the Petitioner has approached this Court seeking direction

to the Opposite Parties-MCL to comply with the direction issued by the Independent External Monitor, as expeditiously as possible.

5. Mr. H. Mohanty, learned Counsel for the Opposite Party-MCL contended that Clause-39 of the Detailed Tender Call Notice provides settlement of Disputes, which clearly states that matters relating to any dispute or difference arising out of the tender and subsequent contract awarded based on the tender, shall be dealt as per Clause No.16 of 'General Terms and Conditions' of 'Conditions of Contract' of the tender document. Therefore, if the Petitioner has any dispute with regard to refund of forfeiture of EMD amount, it should have raised the same before the Competent Authority as per Clause-39 of the DTCN. It is further contended that Independent External Monitor is nominated by the Authority to take its views and, therefore, the same is not binding upon the Opposite Parties.

6. Having heard learned Counsel for the parties and after going through the records, this Court finds that pursuant to the Tender Call Notice, the Petitioner participated in the tender process and deposited the EMD amount. But, subsequently, the work has not been allotted in its favour and, therefore, the Petitioner seeks refund of the EMD amount. But the Opposite Parties forfeited the EMD amount of the Petitioner. As a consequence thereof, the Petitioner approached the Independent External Monitor, as per Clause-41 of the DTCN, who in turn directed for refund of the amount along with interest. But the Opposite Parties are not carrying out the same on the ground that the Petitioner has not approached the Disputes Redressal Forum, as per Clause-39 of the DTCN, thereby it is not entitled to refund

the EMD amount which has already been forfeited. Independent External Monitor has been established wherein Swaraj Kumar Mohanty, Ex- Chief Commissioner of Income Tax, has been nominated as one of the Members, who adjudicated the grievance made by the Petitioner and passed the order on 07.05.2018. Instead of complying the said Order, a stand is taken by the Opposite Parties that since the Petitioner has not approached the Disputes Redressal Forum, it is not entitled to get the EMD amount. Such a stand cannot have any assistance to the Opposite Parties, in view of the fact the if the Independent External Monitor, which is established by the Opposite Parties has given some opinion, in that case the same should have considered by the Authority. Instead of doing so, the Opposite Parties cannot and could not have sat over the matter and appropriated the EMD amount by forfeiting the same.

7. In the above view of the matter, this Writ Petition stands disposed of directing the Opposite Parties to consider the grievance of the Petitioner by accepting the opinion expressed by the Independent External Monitor and pass appropriate Order, within a period of three months from the date of production of certified copy of this Order.

Issue urgent certified copy as per Rules.

(DR. B.R. SARANGI)
JUDGE

(S.K. MISHRA)
JUDGE

Ashok/Padma