IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.12594 OF 2022

Fabtech Projects & Engineers Ltd.] ... Petitioner

Vs.

Rashtriya Chemicals & Fertilizers Ltd.]
& Anr.] ... Respondents

…

Mr. Mayur Khandeparkar i/b Mr. Prasad Savankar for the petitioner.

Mr. Shenoy M. Bodhanwalla with Mr. Burjis Doctor i/b M.S. Bodhanwalla & Co. for respondent No.1-R.C.F.

Mr. M.S. Bharadwaj for respondent No.2-Union of India.

…

CORAM : R.D. DHANUKA &
KAMAL KHATA, JJ.

DATED : 19TH OCTOBER, 2022.

P.C.:-

1. By this petition filed under Article 226 of the Constitution of India, the petitioner seeks a writ of certiorari for quashing and setting aside the impugned tender condition viz. Tender Condition No.A)(a)(i) i.e. under Financial Criteria in Clause

8.1.2 in Part I: Commercial Section – 1.0 Instructions to Bidders qua the petitioner as the same being violative of Article 14 of the Constitution of India.

2. A petition under Section 7 of the Insolvency & Bankruptcy Code, 2016 (for short, **“IBC”**) was admitted against the petitioner-Company and a Corporate Insolvency Resolution Process (for short, “CIRP”) was initiated against the petitioner-Company on 24/09/2019. The Resolution Plan was submitted by the consortium of Manjeet Cotton Pvt. Ltd. and Parason Machinery (India) Pvt. Ltd. and the same was approved by the Committee of Creditors on 30/03/2021.

3. The said Resolution Plan received approval of the National Company Law Tribunal (for short, **“NCLT”**) under Section 31 of the IBC on 16/11/2021. The plan provided payment of Rs.136 crores by the successful resolution applicant, which shall be accepted by all the creditors and further a capital infusion of 50 crores within 30 days. The said payments have been made and the management of the ‘Corporate Debtor’ i.e. the petitioner-company was handed over to the new management by the Resolution Professional. The closing date was 15/12/2021.

4. On 10/03/2022, a tender was invited for the work of Ammonia Storage Tank and associated facility at Thal, Maharashtra. The Pre-Qualifications Financial Criteria as per

the tender were (1) Average Annual Turnover of Rs.260 crores of last three years, (2) Positive Networth of last three years and (3) Solvency Certificate from a reputed banker of a value not less than 52 crores.

5. Mr. Khandeparkar, learned counsel for the petitioner-Company submitted that out of the three conditions, the petitioner-Company shall not be directed to comply with the second condition i.e. the Positive Networth for the last three years, on the ground that for about two years the petitioner-Company was under insolvency process before the NCLT. He submitted that if this condition is not relaxed, the petitioner-Company, who has already come out of the insolvency process, would be deprived of participating in the tender process.

6. In our view, the petition is thoroughly misconceived. This Court cannot relax the tender conditions or ask respondent No.1 to modify the conditions of tender to suit the convenience of the petitioner-Company. If the petitioner-Company is not able to comply with the tender conditions, the petitioner-Company would be ineligible to apply.

7. The writ petition is accordingly dismissed with costs quantified at Rs.1,00,000/-, which shall be paid by the petitioner-Company to the Maharashtra Legal Services Authority within

three days from today and the receipt showing acknowledgment of the payment of costs shall be produced before the Associate of this Court.

[KAMAL KHATA, J.] **[R. D. DHANUKA, J.]**