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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 29.04.2022

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THE HONOURABLE MR.JUSTICE V.BHARATHIDASAN

W.P.NO.1281 OF 2018

AND

WMP.NOS. 1603 & 1604 OF 2018

Erode Infrastructures Pvt. Ltd.,
represented by Director,
M.Jagannathan,
S/o. R.Masilamani,
4/337, Srinivas Athathampalayam,
Vallipurathampalayam Post,
Erode 638 112

... Petitioner

Vs

1. Rail Land Development Authority,
(A Statutory authority under Ministry of Railways),
represented by its General Manager (Projects),
Moti Bagh-1,
Near Safdargung Railway Station,
New Delhi 110 021.
2. Rail land Development Authority,
(A Statutory authority under Ministry of Railways),
represented by its Deputy General Manager/Land-1,
Moti Bagh-1,
Near Safdargung Railway Station,
New Delhi 110 021.
3. The Deputy General Manager (Projects-1),
Rail Land Development Authority,
Moti Bagh-1,
Near Safdargung Railway Station,
New Delhi 110 021.

... Respondents

PRAYER :

Writ Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorarified Mandamus calling for the records relating to the impugned order made in



No.RLDA/ 2017/ Project/ MFC/ LA/ ErodeJn./274, dated 03.01.2018 passed by the 2nd respondent, quash the same and consequently direct the respondents to execute the lease agreement so as to enable the petitioner to complete the project as contemplated under the Regulation and Guidance issued by the respondents.

For Petitioner : Mr.KMD.Muhilan

For Respondents : Mr. Siddarth Bahety
Standing Counsel

O R D E R

This writ petition has been filed challenging the order passed by the second respondent, dated 03.01.2018 cancelling the Letter Of Acceptance and forfeiting the bid security amount.

2. The facts leading to file the writ petition are that, the respondents/Railway proposed to construct and maintain a railway land for commercial development and called for tenders for development of Multi-Functional Complexes at Erode Junction Railway Station. Pursuant to the same, the petitioner submitted the tender and his bid amount for Rs.3,08,27,800/- has been accepted for the lease period of 45 years and a Letter of Acceptance was also issued. As per the Letter of Acceptance, the petitioner was directed to pay 40% of the lease premium, along with taxes, within a period of 60 days from the date of issuance of Letter of Acceptance as first installment and the second installment of 30% should be paid on or before the first anniversary date of payment of first installment, and the third installment of 30% should be paid on or before the second anniversary date of payment of first installment. The petitioner has paid the first installment with a delay of 52 days. Even though he was ready and willing to pay the second installment, he was not permitted to pay the same on the ground of delay in payment of first installment. Subsequently, the impugned order has been passed cancelling the Letter of Acceptance and also forfeiting the bid security amount. Challenging the same, the present writ petition has been filed.

3. The learned counsel for the petitioner submitted that, the petitioner has paid the first installment of Rs.1,23,31,120/- on 06.01.2018 and the amount is still with the respondents. Now, the petitioner is ready and willing to pay the remaining installments and carry out the work. But, the second respondent did not accept the same and cancelled the Letter of Acceptance. He further submitted that earlier, there is no clarity regarding the payment of GST for the bid amount, and that issue could not be resolved within 60 days, and finally, it has been held that GST need not be paid. Hence, there is a delay



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in making payment. The delay is neither willful nor wanton and it is only due to the dispute with regard to payment of GST and on that ground, the respondents cannot cancel the Letter of Acceptance. Now, the petitioner-Company has come forward with an undertaking that they will pay the remaining two installments on or before July 2022.

4. The learned counsel appearing for the respondents strongly opposed the said submission, and submitted that as per the Letter of Acceptance, the petitioner agreed to pay the bid amount in 3 installments within the stipulated time. Admittedly, he has failed to pay the amount in time, and paid the first installment with the delay of 52 days. Hence, as per the tender condition, he is not entitled to get the lease, and the respondent rightly cancelled the Letter of Acceptance and forfeited the Bid Security amount. In view of the pendency of the present writ petition, now the respondents are not in a position to use the property for the purpose it was intended.

5. I have considered the rival submissions and perused the materials available on records carefully.

6. Admittedly, the petitioner did not pay the first installment within the stipulated time. According to the petitioner, the delay was only due to the dispute regarding the payment of GST. From the perusal of the records, it is seen that there are so many communications between the parties regarding payment of GST. Later on, GST Council has decided that there is no need to pay GST in the contract of the present nature. Only thereafter, the petitioner paid the first installment of Rs.1,23,31,120/- which has been accepted by the respondent and for the past 4 years, the amount is lying with the respondents. The petitioner-company has also given an undertaking that they will pay the remaining two installments on or before July 2022.

7. Considering the submission that, the delay in payment of first installment is only bonafide, relating to dispute for payment of GST and now the first installment amount of Rs.1,23,31,120/- has been paid and it is with the respondents, and the petitioner-company has also given an undertaking that they will pay the remaining installments on or before July 2022, this Court is inclined to set aside the impugned order passed by the second respondent.

8. Accordingly, the impugned order passed by the second respondent is set aside. However, it is made clear that the petitioner should pay the remaining installments along with simple interest as stated in the tender condition on or before 29.06.2022. If the petitioner fails to deposit the amount, the

