

AD-06
Ct No.09
06.12.2023
TN

WPA No. 27199 of 2023

Tirupati Minerals Private Limited and another
Vs.
Damodar Valley Corporation and others

Mr. Kishore Datta,
Mr. Abhratosh Majumder,
Mr. Arif Ali,
Mr. Probhat Kumar Srivastava

.... for the petitioners

Mr. Swarajit Dey,
Ms. Riddhi Jain

.... for the respondent nos.1 & 2

Mr. Anirban Pramanick,
Mr. P. Nath

.... for the respondent no.4

- 1.** The conspectus of the present challenge is very short. The petitioner no.1 participated in a tender floated by the Damodar Valley Corporation (DVC). As per Clause 7 of the said bid document, the earnest money (Account Payee/Demand Draft/Banker's Cheque or Bank Guarantee etc.) should be deposited along with the tender, if applicable, in envelope-I of the amount and currency as stipulated *before the date and time set for bid submission (uploading)*.
- 2.** Sub-clause (b) of Clause 7 enumerates that any bid, not accompanied by an *acceptable* bid security document in Envelope-I, shall be

rejected by the Employer (DVC) as being non responsive and the bid shall not be opened further.

- 3.** In the present case, the petitioners deposited a bank draft dated October 16, 2023 which was well within the contemplation of the said tender clauses. The bid was opened on November 2, 2023. However, in the meantime, the demand draft was not honoured by the concerned Bank due to some technical issues at the end of the Bank. The Bank, by a communication dated November 28, 2023, which was, of course, beyond the bid opening date, intimated the petitioners (with a copy to the DVC) that such dishonour was due to “some technical difficulty” at the Bank’s end.
- 4.** Subsequently, the petitioners, upon coming to know of such default, came up with a further bank draft dated November 23, 2023 which was deposited with the DVC. However, the DVC refused to accept the same on the premise of the clauses as indicated above.
- 5.** Learned senior counsel appearing for the petitioners contends that there was no fault on the part of the petitioners, since a valid demand draft was presented but the same was not

honoured due to technical issues at the end of the Bank. Hence, the petitioners ought to be considered to have submitted a valid bid on the technical count.

- 6.** The DVC, on the other hand, argues that it is bound by its own tender clauses and no special relaxation can be granted in the case of the petitioners.
- 7.** We have to consider whether the present predicament of the petitioners requires a special relaxation which would be contrary to the principles implicit in Article 14 of the Constitution of India, affecting the right of other bidders.
- 8.** Undoubtedly, if the petitioners had failed to submit a valid demand draft or failed to submit a demand draft at all which fulfilled the tender conditions before the date and time set for bid submission, the petitioners' arguments would have to be negated at the outset.
- 9.** In the present case, however, the petitioners presented a valid demand draft. The only issue is that the same was refused to be honoured by the Bank due to reasons utterly beyond the control of the petitioners. The Bank in its communication dated November 28, 2023 annexed at page-185 of

the writ petition states that it has issued the clarification as the previous demand draft was rejected under the clearing process due to “some technical difficulty at our end”.

- 10.** It is also reiterated by the Bank in the same communication that the above rejection was completely on the ground of technical issues at their end and it was not the fault of the petitioner no.1.
- 11.** In view of such specific stand, the petitioners’ bid could not have been rejected on the technical ground that the petitioners failed to comply with the tender conditions.
- 12.** Since the petitioners had actually complied with the tender conditions, the petitioners cannot be shut out at the outset by being held not to be eligible.
- 13.** In such view of the matter, the impugned rejection of the petitioners’ tender on technical ground is set aside.
- 14.** The respondent no.1 shall resume the tender process from the stage of technical bids insofar as the petitioner no.1 is concerned and thereafter go on to hold the financial bid opening on the premise that the petitioners had submitted a valid bid.

- 15.** However, the above direction shall operate subject to the petitioners depositing the demand draft with the DVC within forty-eight hours from now. In default of such deposit, the above order shall stand automatically recalled and the writ petition shall be treated to be dismissed.
- 16.** It is further clarified that in the event the petitioners are otherwise not eligible at subsequent stages of the tender process, it will be open to the DVC to take its own decision on such score in accordance with the tender document.
- 17.** WPA No. 27199 of 2023 is, accordingly, disposed of without any order as to costs.

Urgent photostat certified copies of this order, if applied for, be made available to the parties upon compliance with the requisite formalities.

(Sabyasachi Bhattacharyya, J.)