

**IN THE HIGH COURT AT CALCUTTA
ORDINARY ORIGINAL CIVIL JURISDICTION
ORIGINAL SIDE**

Present:

The Hon'ble Justice Sugato Majumdar

CS/182/2007

KHAITAN WINDING WIRE (P) LIMITED
VS
STEEL AUTHORITY OF INDIA LIMITED

For the Plaintiff : Mr. Arindam Guha, Adv.
Mr. Shuvasish Sengupta, Adv.
Ms. Arpita Dey, Adv.

Hearing concluded on : 04.09.2023

Judgment on : 13.09.2023

Sugato Majumdar, J.:

The instant suit is filed by the Plaintiff praying for decree of declaration, delivery of documents and perpetual injunction along with other reliefs.

The Plaintiff is a private limited company registered under the Companies Act, 1956, having its registered office at Indian Exchange Place, Kolkata – 700001 within jurisdiction of this Court. The Defendant is a public limited company registered under the Companies Act, 1956, carrying on business at 13, Camac Street, Kolkata – 700017 within jurisdiction of this Court.

The Defendant is a public sector undertaking having various steel plants throughout the country. The Plaintiff is a registered vendor of the Defendant for its Bokaro Steel Plant.

In the month of July, 2005 the Defendant floated tender dated 04.07.2005 for supply of enamelled round head high conductivity annealed untinned polyester resin coated copper winding wire of various dimensions and quantity. The tender was floated for various registered vendors of the Defendant. Due date of tender was 27.07.2005 and delivery was to commence from 31.08.2005. The bid would remain open for acceptance for 90 days. The Plaintiff submitted its bid. Tender was opened on 27.07.2005. The bid of the Plaintiff was the lowest one. The plaintiff case is that instead of accepting the offer/bid submitted by the Plaintiff, the Defendant decided to hold price negotiation with the Plaintiff before finalizing acceptance of the offer. By and under a facsimile message dated 26.08.2005, issued by the Defendant from Bokaro outside the jurisdiction, the Defendant sent a counter-offer to the plaintiff for bringing down the quoted price which, according to the Defendant is on higher side. No finality of contract reached between the parties. By facsimile message sent by the Defendant dated 20.10.2005 and 22.10.2005, the Plaintiff was requested to extend the validity of the offer which was to expire on 24.10.2005, for a period of another 30 days, upto 25.11.2005.

The counter-offer of the Defendant for reduction of price was rejected by the Plaintiff under a cover letter dated 24.10.2005 issued at 11:30 hours, at Kolkata. Thus the validity of the offer of the Plaintiff expired on 24.10.2005 and the offer stood revoked.

After expiry of the offer, or revocation of the offer, the Defendant, by a cover letter dated 25.10.2005 alleged that on 24.10.2005, the later provisionally placed a purchase order and transmitted the same to the Plaintiff. According to the Plaintiff, the said purchase orders do not constitute a contract between the parties. In terms of two letters dated 10.06.2006 and 09.11.2006, the Plaintiff intimated the Defendant that there was no concluded contract between the parties herein in respect of the tender in question. But the Defendant in terms of letter dated 28.10.2006 and 29.10.2006 alleged that the later had made a risk purchase in respect of the purported contract between the Plaintiff and the Defendant for procuring materials from other sources. On 15th/16th June 2007, the Plaintiff received a letter from the Defendant demanding a sum of Rs. 63,95,490.82p on account of risk purchase instead of Rs. 90,79,366.86p as demanded earlier. The Defendant asked the Plaintiff to deposit the said demanded amount within 15 days in case of failure of which, the said amount would be recovered and realized from other bills of the Plaintiff.

In this conspectus of facts, as averred in the plaint, the Plaintiff instituted the instant suit praying for declaration that the documents contained in Annexure 'A', 'C', 'D' and 'E' to the plaint be declared null and void; decree for delivery of 'A', 'C', 'D' and 'E'; perpetual injunction restraining the Defendant, its men, servants and/or agents from giving effect and/or further effect to the said documents along with other prayers.

Summons of the suit was served upon the Defendant on 03.12.2007 but the Defendant did not appear to contest the suit as appears from the report of the Registry dated 13.02.2023. Hence the suit was treated as undefended suit.

Mr. Ajit Kumar Khaitan, one of the directors of the Plaintiff Company deposed in this case as P.W. 1 and filed various documents which were marked and exhibited.

Oral as well as documentary evidences, adduced by the Plaintiff, remained unchallenged. Ext. D is a letter dated 23.07.2005, bearing number KWN/2005 – 2006/Q – 1 - 063/495 in terms of which the Plaintiff submitted competitive offer as techno-commercial bid. Price negotiation was offered by the Defendant in terms of FAX message dated 26.08.2005 (Ext. F) with reference to Ext. D; in terms of FAX dated 20.10.2005 (Ext. G) Defendant requested the Plaintiff with extension of validity of the offer till 25.11.2005. In terms of letter dated 24.10.2005 (Ext. I) the Plaintiff refused to extend time and refused to attend price negotiation meeting to be held on 25.10.2005. Ext. J collectively shows that order was placed by Defendant through purchase order dated 24.10.2005 by FAX dated 25.10.2005 (Ext. K). The letter dated 10th June, 2006 (Ext. N) shows that the Plaintiff denied contractual obligation for alleged provisional purchase order.

Documentary as well as oral evidences shows that the Plaintiff submitted offer with specific quotation which was not accepted immediately; rather counter-offer of price negotiation was made on behalf of the Defendant that was kept open and price negotiation was scheduled to be held on 09.09.2005. That date was fixed again on 25.10.2005 at 03:00 p.m. As is evident from Ext. G until 25.10.2005 up to 03.00 p.m. there was no concluded contract since counter offer was till not accepted by the Plaintiff. Ext.I shows that neither Plaintiff attended the meeting on 25.10.2005 nor extended the time for keeping the offer alive. Therefore, the counter-offer was refused in terms of Ext.I. Refusal of the counter offer was made from the jurisdiction of this Court giving rise to part of cause of action. Since

counter-offer was not accepted there was no agreement or contract. In view of that the purchase orders contained in Ext. J, did not give rise to any valid contract. Therefore, there is no valid contract came into force between the Plaintiff and the Defendant in respect of the purchase orders marked collectively as Ext. J. Consequently the Defendant cannot make any claim or exert any right, title and interest in respect of a non-existing contract.

On appreciation of the materials evidences, unopposed and unchallenged, this Court is of opinion that the Plaintiff is able to establish its case and is entitled to suitable judgment and decree to safeguard his right and protect his interest.

Therefore, it is declared that no contract came into being between the Plaintiff and the Defendant in respect of purchase orders contained in Annexure 'A' of the Plaint (Ext. J). Defendant, its men, servants and agents are permanently restrained from giving effect to or exerting any right, title, claim or interest in respect of the purchase orders contained in Annexure 'A' of the plaint (Ext. J).

On application and on furnishing authenticated copies, the original documents may be returned to the Plaintiff on undertaking to furnish the same as and when required. Documents will be returned after appeal period is over.

The instant suit is accordingly disposed of. Decree may be drawn up accordingly.

(Sugato Majumdar, J.)