



O.A.Nos.73, 74, 86 and 88 of 2024

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C.SARAVANAN, J.

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Heard the learned Senior Counsel for the applicant and the learned Additional Solicitor General for the respondent.

2. The contracts that were awarded to the applicant by the respondent have been terminated. The respondent has blacklisted the applicant for a period of one year from participating in fresh tender. The respondent has also floated fresh tenders. The last date for receiving the bids in the cases covered in O.A.Nos.86 and 88 of 2024 are expiring today i.e., on 14.02.2024 and the last date for opening and evaluating the technical bid will expire tomorrow i.e., on 15.02.2024.

3. As far as the last date for accepting the bid in respect of item in O.A.Nos.73 and 74 of 2024 are concerned, they are on 22.02.2024 and 19.02.2024.

4. The Agreements under which the work was awarded to the



applicant contemplate a two-tier method for resolving the disputes.

Arbitration Clauses 24 and 25 read identically in all the four contracts

which were awarded to the applicant. They are reproduced below:-

"24. Disputes:

If the Contractor believes that a decision taken by the Employer's Engineer or Nodal Officer was either outside the authority given to the Employer's Engineer or Nodal Officer by the Contract or that the decision was wrongly taken, the decision shall be referred to the Conciliator within 28 days of the notification of the Employer's Engineer or Nodal Officer decision. Employer's decision will be final and binding on the contract.

25. Settlement of Disputes:

25.1 If a dispute of any kind whatsoever arises between the Employer and the Contractor in connection with, or arising out of, the Contract or the execution of the Works, whether during the execution of the Works or after their completion and whether before or after repudiation or after termination of the Contract, including any disagreement by either party with any action, inaction, opinion, instruction, determination, certificate or valuation of the Employer's Engineer or Nodal Officer, the disputes will firstly be settled by the Conciliator, failing which any party may invoke arbitration clause.

Unless the Contract has already been repudiated or terminated or frustrated, the Contractor shall in every case, continue to proceed with the Works with all due diligence and the Contractor and Employer shall give effect forthwith to every decision of the Nodal Officer or his



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nominee unless and until the same shall be revised, as hereinafter provided, by the Conciliator or in Arbitral Award.

25.2 Decision by Conciliator

i) The Conciliator shall give a decision in writing within 28 days of receipt of a notification of a dispute.

ii) Conciliator shall be paid daily at the rate specified in the Contract Data together with reimbursable expenses of the types specified in the Contract Data and the cost shall be divided equally between the Employer and the Contractor, whatever decision is reached by the conciliator. Either party may refer a decision of the conciliator within 28 days of the conciliator's written decision. If neither party refers the disputes to arbitration within 28 days, the Conciliator's decision will be final and binding.

25.3 Arbitration

Any dispute in respect of contracts where party is dissatisfied by the Conciliator's decision shall be decided by arbitration as set forth below:

i) A dispute with Dispute Review Expert shall be finally settled by arbitration in accordance with the Indian Arbitration and Conciliation Act, 1996, or any statutory amendment thereof. The arbitral tribunal shall consist of 3 arbitrators, one each to be appointed by the Employer and the Contractor, and the third to be appointed by the mutual consent of both the arbitrators, failing which by making a reference to CIDC-SIAC Arbitration Center from their panel.

ii) Neither party shall be limited in the proceedings before such arbitrators to the evidence or arguments already put before the Nodal Officer or Employer's Engineer or the Board, as the case



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may be, for the purpose of obtaining said recommendations/decision. No such recommendations/decision shall disqualify the Employer's Engineer or Nodal Officer or any of the members of the Board, as the case may be, from being called as a witness and giving evidence before the arbitrators or any matter whatsoever relevant to the dispute.

iii) The reference to arbitration shall proceed notwithstanding that the works shall not then be or be alleged to be complete, provided always that the obligations of the Employer, the Employer's Engineer or Nodal Officer and the Contractor shall not be altered by reason of the arbitration being conducted during the progress of the works. Neither party shall be entitled to suspend the works to which the dispute relates, and payment to the Contractor shall be continued to be made as provided by the contract.

iv) If one of the parties fails to appoint its arbitrators in pursuance of sub-clause (i), within 14 days after receipt of the notice of the appointment of its arbitrator by the other party, then Chairman of the nominated Institution shall appoint arbitrator within 14 days of the receipt of the request by the nominated institution. A certified copy of the Chairman's order, making such an appointment shall be furnished to both the parties.

v) Arbitration proceedings shall be held at, and the language of the arbitration proceedings and that of all documents and communications between the parties shall be 'English'.

vi) The Arbitration shall be conducted by the experts from the panel of CIDC-SIAC Arbitration Center.

vii) The decision of the majority of arbitrators



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shall be final and binding upon the parties. The expenses of the arbitrators as determined by the arbitrators shall be shared equally by the Employer and the Contractor. However, the expenses incurred by each party in connection with the preparation, presentation, etc. of its case prior to, during and after the arbitration proceedings shall be borne by each party itself.

viii) All arbitration awards shall be in writing and shall state the reasons for the award.

ix) Performance under the contract shall continue during the arbitration proceedings and payments due to the contractor by the Employer shall not be withheld, unless they are subject matter of the arbitration proceedings."

5. Clause 25 of all the Contracts/Agreements contemplates that unless the contracts have been already repudiated or terminated or frustrated, the contractor shall in every case, continue to proceed with the works with all due diligence and the contractor and employer shall give effect forthwith to every decision of the Nodal Officer or his nominee unless and until the same shall be revised, as hereinafter provided, by the conciliator or in Arbitral Award.

6. Thus, the applicant cannot continue with the contract. The applicant also cannot impede with the decision of the respondent to float a fresh tender for awarding the contracts. The only window



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opportunity that is available to the applicant is in respect of the Contract No.05 of 2022 and Contract No.10 of 2022 covered by O.A.Nos.73 and 74 of 2024 are concerned, the last dates as mentioned above for accepting the bid will expire on 22.02.2024 and 19.02.2024. The respondent shall therefore nominate an Conciliator to decide on the fate of contract covered by O.A.Nos.73 and 74 of 2023.

7. The awarding of the contract pursuant to the tender floated will be therefore subject to the decision of the Conciliator in respect of the contracts covered by O.A.Nos.73 and 74 of 2024.

8. As far as O.A.Nos.86 and 88 of 2024 are concerned, the last date has already expired.

9. In O.A.Nos.73 and 74 of 2024, the respondent Chennai Port Authority is directed to nominate a Conciliator for conciliation of dispute between the applicant and the respondent. The first sitting of



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the Conciliation shall be held on 17.02.2024. Awards of contracts pursuant to the tender floated in respect of the work covered by O.A.Nos.73 and 74 of 2024 will be subject to the decision of the Conciliator.

10. O.A.Nos.73 and 74 of 2024 are disposed of with the above observations. O.A.Nos.86 and 88 are dismissed as infructuous.

14.02.2024

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14.02.2024