IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP-16923-2024(O&M)
Date of decision: 22.08.2024

M/s Barjora Mining Private Limited
… Petitioner

Versus

Haryana Power Generation Corporation Limited (HPGCL) and another
… Respondents

CORAM: HON'BLE MR. JUSTICE ARUN PALLI
HON'BLE MR. JUSTICE VIKRAM AGGARWAL

Present: Mr. Rajiv Atma Ram, Senior Advocate, with
Mr. Arjun Pratap Atma Ram, Advocate, and
Mr. Sumbhav Parmar, Advocate,
for the petitioner.

Mr. Chetan Mittal, Senior Advocate, with
Mr. Kunal Mulwani, Mr. Udit Garg, and
Ms. Shifali Goyal, Advocates,
for respondent No.1.
Mr. Anil Mehta, Advocate,
Mr. Sumeet Jain, Advocate, and
Ms. Sukriti Kaur, Advocate, for respondent No.2.
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ARUN PALLI, J. (Oral)

On July 22, 2024, this Court had passed the following order:

> **"Contends that vide notice dated June 5, 2024, Haryana Power Generation Corporation Limited (HPGCL) had invited bids for selection of Mine Developer and Operator (MDO) for exploration, planning, development and operation of Kalyanpur-Badalpara Coal Block (3MTPA), District Dumka (Jharkhand). Accordingly, it is submitted that petitioner (M/s Barjora Mining Private Limited), which is a Kolkata based Joint Venture Company (JVC), with three shareholders, i.e., M/s Ambey Mining Private Limited (48%), M/s Godavari Commodities Limited (26%) and M/s Maheshwari Mining Private Limited (26%), submitted its bid. However, vide impugned e-mails dated July 16, 2024 (P-**

6) & (P-7), the constituted Committee declared the petitioner non-responsive/non-compliant. For, it did not meet the terms and conditions of the Tender.

Learned Senior counsel for the petitioner submits that while the process of technical evaluation was in progress, the authorities, vide emails dated July 1, 2024 (P-4) and July 2, 2024 (P-4/A), had sought certain clarifications/documents from the petitioner. And vide a detailed response, dated July 5, 2024 (P-5), the clarifications that were sought were rendered and the required documents were also furnished. However, he submits, in essence, the matter in issue is regarding the clarification the authorities had sought, as to the Company that was the petitioner's "Direct Holding Company", per Clause C (at page 11, RFP) and Clause 6.4 (at page 14, RFP) of the Notice Inviting Bid (NIB).

He asserts that since, as indicated above, all the three shareholders/promoters had 26% or more equity in the Joint Venture, thus, in terms of Clause 4 of NIB, "Direct Holding Requirement" has no bearing or application to the case in hand:

> **"4.0 Joint Venture (JV) Company:**
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> **If the Bidder is a Joint Venture Company and the Qualifying Requirement (QR) is met by one of the Promoter or jointly by more than one Promoter, then each Promoter on the basis of whom, the Joint Venture Company gets qualified shall have a minimum of 26% equity in the JV Company and such promoter(s) shall give an undertaking to hold the said equity for a period till the mine achieves 85% of the contracted capacity of the**
>
> **Project ("Contracted Capacity" means 3.00 million Tons of Coal per annum).**
>
> **In such a case, the bidder shall submit the Notarized copy of their Joint Venture agreement entered into between the promoters and copy of the certificate of incorporation of the JV Company.**

Accordingly, he asserts that petitioner being a Joint Venture Company had submitted the valid supporting documents of all the three promoters each having 26% or more equity in the JV Company and, thus, it meets the qualifying criterion.

Further, he asserts that impugned e-mails, vide which the petitioner was held to be non-compliant/non-responsive, are bereft of any reason. Therefore, the action of the respondent-authorities is apparently arbitrary, irrational and unjust. In this regard, reliance is placed upon a decision of the Division Bench of this Court in Bikramjeet Singh v. Union of India and another, 2013(4) RCR (Civil) 98. Not just that, he submits that petitioner had submitted a bid at Rs.1386/- per metric ton, and its bid was the lowest. And the next lowest tenderer, who was declared technically compliant, had submitted a bid at Rs.1558/- per metric ton. Therefore, the difference between the rates offered by the petitioner and the next lowest bidder is nearly 11.4%, which would work out to Rs.1740/- crores (approx.). Hence, he asserts that decision of the respondent-authorities would have a serious financial ramification.

Notice of motion.

Notice re: stay as well.

Served with the advance copy of the petition, Mr. Ankur Mittal, learned Additional Advocate General, Haryana is present in Court and accepts notice on behalf of the respondent. He prays for a short accommodation to seek instructions and/or submits response.

May do so, a week prior to the adjourned date with an advance copy to the learned counsel for the petitioner.

Adjourned to 08.08.2024.

Although the respondent-authorities shall be at liberty to proceed with the tender process, but the same shall not be finalized till the adjourned date. However, it would be the discretion of the authorities to provisionally permit the

petitioner, in terms of Clause 8 & 9 of the NIB, to participate in the negotiation process.”

The respondent-HPGCL has submitted the written statement, to which a replication has also been filed by the petitioner.

We had heard learned Senior counsel for the parties at length, when during the course of hearing, they have reached a consensus that in the wake of the issues that are sought to be raised by the petitioner, it would rather be expedient, if, in the first instance, those are dealt with by the Tender Evaluation Committee (TEC).

Accordingly, they submit that let the petition be disposed of, at this stage, to enable the TEC to examine the concerns/grievances of the petitioner and pass necessary orders, in accordance with law. Further, before any such orders are passed, the petitioner as also respondent No.2 (AMR India Limited), which has been adjudged L1, would be heard. And, in this regard, they, through their authorized representatives, would appear before the TEC (HPGCL, Urja Bhawan, Sector 6, Panchkula) on August 27, 2024, at 11:00 AM. Hence, the orders dated July 16, 2024 (P-6) & (P-7) be deemed to have been withdrawn/recalled.

In the wake of the position sketched out above, as also the statement made by learned counsel for the parties, the petition is accordingly disposed of. Needless to assert that it is pursuant to the consensus that has been reached between the parties, the respondent authorities have consented to withdraw/recall the impugned orders, without prejudice to their stand set out in the written statement. And, particularly, as the TEC would examine the concerns/grievances of the petitioner and pass the necessary orders, as indicated above.

This Court is sanguine that the TEC would examine the matter in the right earnest, and pass the appropriate orders, assigning reasons in support thereof.

(Arun Palli)
Judge

(Vikram Aggarwal)
Judge

22.08.2024
Rajan/AK Sharma

Whether speaking / reasoned: YES/NO
Whether Reportable: YES/NO