

OD-10

IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE JURISDICTION
ORIGINAL SIDE

APOT/35/2025
IA NO: GA/1/2025

CHINAR STEEL SEGMENTS CENTRE PRIVATE LIMITED
VS.
STEEL AUTHORITY OF INDIA LIMITED

BEFORE :

THE HON'BLE THE CHIEF JUSTICE T.S. SIVAGNANAM
And
THE HON'BLE JUSTICE CHAITALI CHATTERJEE (DAS)
Date : 14th February, 2025

Appearance :
Mr. Mainak Bose, Sr. Adv.
Mr. Rishabh Karnani, Adv.
Mr. Anurag Bagaria, Adv.
...for Appellant
Mr. Laxmi Gupta, Sr. Adv.
Mr. Chayan Gupta, Adv.
...for Respondent

The Court : This intra-court appeal by the appellant is directed against the order dated February 5, 2025 passed in WPO No. 68 of 2025.

The appellant had participated in an e-tender invited by the Steel Authority of India Limited (respondent) for dismantling of underground foundations and overground structure in the expansion site at IISCO Steel Plant – Burnpur (Phase-II).

The issue which falls for consideration in this appeal as well as which was considered in the writ petition lies in a narrow compass namely, as to whether the rejection of the Techno Commercial Bid of the appellant was justified and in

accordance with the terms and conditions of the Notice Inviting Tender. Learned Single Bench on perusal of the reasons assigned by the respondent namely, the Tender Inviting authority, held that there is a clear bar in terms of Section 11.2.5 for indicating the price anywhere in the document that has to be uploaded as part of the Techno Commercial Bid. Accordingly, the writ petition was dismissed.

We have elaborately heard Mr. Mainak Bose, learned senior advocate appearing for the appellant and Mr. Laxmi Gupta, learned senior advocate appearing for the respondent.

At the outset, we need to point out that the courts exercising power under Article 226 of the Constitution of India are not equipped or shall not interpret the terms and conditions of the tender in a manner to suit the conclusion of the court as it is for the Tender inviting committee to give an explanation or meaning to the various clauses. It is not in dispute that the appellant participated in the tender fully knowing well about the terms and conditions of the tender. Therefore, it would be too late for the appellant to wriggle out of the obligations and conditions mentioned in the Notice Inviting Tender [NIT]. The sheet anchor of the argument of the learned senior advocate for the appellant is that after the bid document was submitted online, the same was verified and email was sent to the appellant on 8.1.2025 pointing out six deficiencies and the appellant was granted opportunity to rectify the deficiencies, which the appellant had done and thereafter, the bid was taken up for evaluation and the bid was found to be technically qualified. However, with regard to whether the bid was commercially qualified, respondent held that the same is not qualified and rejected the bid as

the appellant had indicated the price while uploading the Techno Commercial Bid.

According to the learned senior advocate of the appellant, the respondent having afforded an opportunity to rectify the defects by email dated 8.1.2025, the respondent ought to have also permitted the appellant to rectify this defect and that would have been fair and reasonable on the part of the respondent, which is a public sector undertaking. The subsidiary argument is that since the price bid is to be finalized by reverse auction mechanism even assuming that the price was indicated at the techno commercial stage, it cannot impact on the price fixation and, therefore, it is not an essential condition of the tender. To examine this, we have carefully gone through the terms and conditions of the NIT. In the details of the document as contained in page 4 of the bid document in clause 13, it has been stated that unpriced copy of the price bid if submitted with the word 'where price is to be quoted in enclosure 1'. This condition clearly states that the word 'quoted' has to be used wherefrom price is quoted in enclosure 1, which would go to mean that the appellant should not indicate the price. Clause 11.2 deals with part – 2 : Techno Commercial Bid in accordance with instructions to bidders stated in NIT. Clause 11.2 states that there shall be no indication of the price anywhere in any document that has to be uploaded as part of the Techno Commercial Bid. If prices are indicated in any document (that has been uploaded), such offers are liable to be rejected. In terms of clause 11.3.9 the bidders were considered commercially eligible shall only be considered for price disclosure. Clause 38 deals with rejection and use of the expression 'shall'. The bid shall be rejected under certain conditions mentioned

in clause 38 and in terms of clause (vii) bids containing filled-up price in Techno Commercial Part (Part 2) shall be rejected. Thus, the terms and conditions of the tender have clearly enumerated this condition which is an essential and there is no discretion left with the tender inviting committee, more particularly when the expression 'shall' has been used in not only one place but in many places in the terms and conditions of the tender. Thus, the appellant having participated in the tender accepting the terms and conditions, as such, the question of now wriggling out of the obligation is impressible.

Therefore, we find no reason to interfere with the order passed by the learned Single Bench.

Accordingly, the appeal fails and is dismissed.

The stay application is also stands dismissed.

(T.S. SIVAGNANAM, C.J.)

(CHAITALI CHATTERJEE (DAS), J.)