IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO. 494 OF 2024

1. GCDL-SMBIPL (JV), Through its Attorney Holder, Mr. Mahesh Shah
2. M/s. Giriraj Civil Developers Ltd. a Company registered under the Companies Act, 1956
3. M/s. Shree Mangalam Buildcom (I) Pvt. Ltd, a Company incorporated under the Companies Act, 1956 ... *Petitioners*

: Versus :

1. Mumbai Railways Vikas Corporation Ltd. represented through its Executive Director (Civil)
2. M/s. Saidutt Real Infra Pvt. Ltd.
3. M/s. Sai Projects (Mumbai) Pvt. Ltd. .... ***Respondents***

Mr. Bernardo Reis *with Mr. Pratik Dixit i/b Dr. Prem S. Motiramani for Petitioners.*

Ms. Asha M. Bhambwani *for Respondent No.1.*

Mr. S.B. Shetye *with Mr. Akshay Pansare and Mr. Nipun Sawane for Respondent Nos.2 and 3.*

CORAM : ALOK ARADHE, CJ. &
SANDEEP V. MARNE, J.

DATED : 11 JUNE 2025.

ORDER : (*Per: Sandeep V. Marne J.*)

1) Petitioner is aggrieved by rejection of its bid in the tender for improvement of four stations of the Western Railway floated by Respondent-Mumbai Railway Vikas Corporation Ltd (**MRVCL**). It has also challenged the Letters of Acceptance issued in favour of Respondent No.3 for Lot No. I and Respondent No.2 for Lot No. II of the subject tender.

2) Briefly stated, facts of the case are that Respondent-MRVCL floated Tender Notice dated 7 June 2023 for improvement of four suburban stations of the Western Railways through two lots. The improvement work included provision of FOBs, elevated decks, inter-connections between Deck/FOBs, skywalks, relocation of service buildings, stalls, kiosks, improving entry/exit, improving circulating areas, provision of green spaces, etc. A Consortium was formed by Giriraj Civil Developers Pvt. Ltd. and Shree Mangalam Buildcon (I) Pvt. Ltd under the name *'M/s. GCDL-SMBIPL (JV)' (Petitioner)* vide Consortium Agreement dated 13 July 2023. The Consortium (JV) submitted two bids on 2 August 2023 for Lot Nos.I and II. An email dated 30 October 2023 was received by the Petitioner-JV communicating that on evaluation of its technical bids, the same were found to be non-responsive to meet the requirement of Clause 3.3.1(i) i.e. financial capabilities prescribed in the Eligibility and Qualification Criteria (**EQC)**. It was therefore intimated that the financial part of offer for both lots would not be opened on 6 November 2023. This is how Petitioner's technical bid was rejected. By letter dated 1 November 2023, Petitioner contested the decision of MRVCL. Petitioner has filed the present petition challenging the decision of MRVCL vide email dated 30 October 2023 rejecting its bid.

3) By order dated 7 November 2023, this Court directed that work order issued in pursuance of the tender in question would be subject to further orders that would be passed in the present petition. During pendency of the present petition, financial bids of other bidders were opened and MRVCL has proceeded to issue Letter of Acceptance dated 24 January 2024 in favour of Respondent No.3 in respect of Lot No. I of the subject tender. Similarly, a separate Letter of Acceptance dated 24 January 2024 has been issued in favour of Respondent No.2 for Lot No. II of the subject tender. Petitioner has amended the petition by challenging Letters of Acceptance dated 24 January 2024 by impleading Respondent Nos.2 and 3 to the Petition.

4) Mr. Reis, the learned counsel appearing for the Petitioner would submit that MRVCL has arbitrarily rejected Petitioner's technical bid ignoring the position that it fulfills the criteria of cash flow and financial capabilities. He would submit that the criteria of cash flow and financial capabilities for Lot No. I was Rs.15 crores and Lot No. II was Rs.10 crores aggregating to Rs.25 crores. That the cash flow of Consortium Member-GCDL is Rs.8.55 crores whereas the cash flow of Consortium Member-SMBIPL is Rs.79.45 crores. He would therefore submit that the total cash flow and financial capabilities of the Consortium is Rs.87.99 crores as against eligibility criteria of Rs.25 crores. He would submit that the technical bid has been erroneously rejected only on the presumption that Petitioner would not be able to perform in absence of concrete material for arriving at such conclusion. He would submit that Petitioner's financial bid was the lowest and instead of awarding the work to L-1 bidder, the MRVCL has erroneously proceeded to award contract to Respondent Nos. 2 and 3 whose financial bids for both the Lots was Rs. 212.58 crores as against the financial bid of the Petitioner for both the Lots at Rs.182.14 crores. That if Petitioner was to be held eligible and awarded contract, there would have been total saving of Rs.30.43 crores for MRVCL. He would thus submit that the decision to reject Petitioner's bid is totally irrational and liable to be set aside. That though the scope of interference in tender matters is in narrow compass, the Courts can set aside irrational and arbitrary decision of the tendering authority. He would also take us through the supporting documents for establishing the financial capabilities of the Petitioner. He would contest the contentions raised by Respondent-MRVCL in its reply for not considering the various document showing financial capabilities of the Petitioner. He would demonstrate as to how the decision of Respondent-MRVCL in not considering the concrete evidence for financial capabilities of the Petitioner is erroneous. He would rely upon judgment of the Apex Court in ***Banshidhar Construction Pvt. Ltd. Versus. Bharat Coking Coal Ltd. & Ors.***[1] and of Division Bench of this Court in ***Konkan Railway Corporation Ltd. Versus. Union of India***[2]. He would pray for setting aside the decision of Respondent-MRVCL and for awarding the contract to the Petitioner.

5) The petition is opposed by Ms. Bhamwani, the learned counsel appearing for Respondent No.1-MRVCL. She would submit that Petitioner has failed to meet the mandatory eligibility criteria stipulated under Clause 3.3.1(i) regarding financial capabilities. That MRVCL had constituted Technical Evaluation Committee which evaluated the technical bid of the Petitioner and concluded that JV failed to

1 2024 SCC ONLINE SC 2700
2 2025 SCC ONLINE BOM 612

demonstrate and establish the criteria of cash flow and financial capabilities prescribed under Clause 3.3.1(i) of EQC. She would take me through the Affidavit-in-Reply filed on behalf of Respondent No.1 to demonstrate as to how the Petitioner has failed to qualify the criteria of financial capabilities. She would submit that the decision of the Technical Evaluation Committee has been accepted by the Competent Authority and that the decision does not suffer from either perversity, irrationality or arbitrariness. She would therefore pray for dismissal of the petition.

6) We have also heard Mr. Shetye, the learned counsel appearing for Respondent Nos.2 and 3 who would adopt the submissions canvassed on behalf of the tendering authority. Additionally, he would submit that Respondent Nos.2 and 3 have taken further steps in pursuance of Letters of Acceptance dated 24 January 2024 allotting the wok in their favour. That they have submitted performance security, as well as performance guarantees and thereafter contract agreements have been executed by MRVCL with Respondent Nos.2 and 3. That MRVCL thereafter issued notices dated 13 March 2024 directing Respondent Nos.2 and 3 to commence execution of the work. That accordingly the tender work has been commenced by Respondent Nos.2 and 3 from 28 and 29 March 2024. He would submit that there is substantial progress of the work and that therefore it is too late in a day to interfere in the work allotted to Respondent Nos.2 and 3 at this stage.

7) Rival contentions of the parties now fall for our consideration.

8) Petitioner's technical bid has been rejected on the ground of non-fulfillment of eligibility criteria prescribed in Clause 3.3.1(i) of the EQC. The decision to reject the technical bid came to be communicated to the Petitioner vide email dated 30 October 2023, in which it was stated that evaluation of technical parts of the tender was completed and the tender was found non-responsive to meet Clause 3.3.1(i)- Financial Capabilities of the EQC and that therefore Petitioner's financial part would not be opened.

9) Since Petitioner's technical bid is rejected on the ground of non-fulfillment of Clause 3.3.1(i) of the EQC, it would be relevant to reproduce the same. Clause 3.3.1(i) of the EQC reads thus:

> 3.3.1 **Financial Capabilities**
> (i) The Tenderer shall demonstrate that it has access to, or has available liquid assets, unencumbered real assets, lines of credit and other financial means (independent of any contractual advance payment) sufficient to meet the construction cash flow requirements estimated as under :

LOT NO.	REQUIREMENT (IN MILLIONS) (INR)
I	150
II	100

10) Thus, there was mandatory requirement in the notice inviting tender that the bidders must demonstrate availability or accessibility to liquid assets, unencumbered real assets, lines of credit and other financial means sufficient to meet the construction cash flow requirements which was estimated at Rs.15 crores for Lot No. I and Rs.10 crores for Lot No. II. Petitioner claims that it submitted documents demonstrating cash flow of JV member Giriraj Civil Developers Pvt. Ltd. comprising of working capital of Rs.5.54 crores and cash flow of Rs.3 crores (*total Rs.8.54 crores*). The other JV partner-Shree

Mangalam Buildcom (I) Pvt. Ltd produced documents evidencing working capital of Rs.54.52 crores and other financial resources of Rs.24.93 crores, total Rs.79.45 crores. Thus, according to the Petitioner, the aggregate financial capabilities of both JV members was Rs.87.99 cores as against the requirement of Rs.25 crores for both the Lots.

11) Respondent-MRVCL has contested the above claim and its Technical Evaluation Committee has not accepted the contention that the combined financial capabilities of the two JV members is Rs.87.99 crores. Respondent-MRVCL has analysed the documents submitted by both the JV members in support of claim of financial capabilities in paras-18.5 to 18.9 of its Affidavit-in-Reply. It would be apposite to reproduce the same :

> 18.5) The Petitioner submitted the following documents in support of EQC requirement 3.3.1(i).
>
> **Giriraj Civil Developers Limited (70%)**
> Form 3.3.3 of Giriraj certified by C.A. with UDIN No. 23049614GTPBJ5953 reads (page 1076 of the Petition)
> a) Working Capital - 5.54 Crore
> b) Yes Bank Cash Credit Facility – 3.00 Crore
>
> **Shree Mangalam Buildcon (I) Pvt. Ltd. (30%)**
> Form 3.3.3 of SMBP certified by C.A. with UDIN No. 23135131BGWEUN4008 (However, the copy uploaded with offer is not signed by C.A. reads (page 1077 of the Petition)
> a) Working Capital - 54.52 Crore
> b) Other Financial Resources
> i Cash Credit facility Punjab National Bank - Rs 3.00 Cr
> ii Cash Credit facility Kalupur Bank - Rs 1.00 Cr
> iii Overdraft Punjab National Bank - Rs 11.235 Cr
> iv Overdraft- Kalupur Bank - Rs. 9.70 Cr
> v Bank Guarantee Facility Punjab National Bank - Rs 75 Cr
> vi Bank Guarantee Facility Kalaupur Bank - Rs 42 Crore
> However, when the said certificate when verified from site of The Institute of Charted Accountants of India, it is observed that only

Working Capital and CC facility of PNB is only mentioned in the certificate. Hereto annexed and marked as **"Exhibit A'** is the copy of certificate downloaded from site of The Institute of Charted Accountants of India.

18.6) On perusal of the documents submitted by the Petitioner following discrepancies are noticed. :-

18.6.1) Renewal cum enhancement letter issued by Punjab National Bank (PNB) in favour of Shree Mangalam Buildcon (I) Pvt. Ltd.(SMBP) for cash credit of 3 Crores and Bank Guarantee of 75 Crores (page 1105 of the petition) :
The letter is dated 23.09.2022. The validity period of cash Credit facility is 1 year only, i.e. up to 22-09-2023 (page 1111 of Petition)
The sanction letter is not specific to the subject work. Hence, cannot be considered.
Further Bank Guarantee (BG) limit sanctioned by bank cannot be considered as liquid assets.
Hence, cannot be considered as valid document meeting requirement of 3.3.1 (i) for this work.
Further as per Additional stipulations -C (1)(a) of the letter for issuance of BG on behalf of JV, Shree Mangalam Buildcon (I) Pvt. Ltd shall have at least 51% share in the JV. (page 1105 of the petition).
In the instant case, the share of Shree Mangalam Buildcon (I) Pvt. Ltd is only 30%.
Further as per Additional stipulations -C (1)(c) of the letter maximum amount of BG that can be earmarked on behalf of JV shall be 50% of the overall BG Limit.

18.6.2) Cash Credit (CC) (of Rs. 1 Crore) sanction letter in favour of M/s. Shree Mangalam Buildcon (I) Pvt. Ltd. (SMBP) by The Kalupur Commercial Co. Op. Bank Ltd. Ahmedabad (PNB) (page 1127,1129 of the petition)
The letter is dated 31-03-2022 with validity till 26.02.2023.
The facility was prima facie not valid on the date of submission of document i.e. 02-08-2023
Further, it is not specific to the subject work. Hence, cannot be considered.
Further as per other condition on page 5& 6 of the letter, prior permission of the Bank in writing is required for undertake/guarantee obligation on behalf of any other borrower, group firms/companies.
Hence, cannot be considered as valid document in support of fulfilling EQC requirement under 3.3.(i) for the subject work.

18.6.3) Over draft (OD) facility of Rs. 11.235 Crore against FDR to M/s. Shree Mangalam Buildcon (I) Pvt. Ltd. (SMBP) by Punjab National Bank page 1132 of the petition)
The letter is issued on 21.02.2023.
Facility is sanctioned prior to publication of the tender notice for subject work and not specific to subject tender

18.6.4) No document is support of OD facility of Rs 9.70 Crore by Kalupur Bank is submitted by the firm.

18.6.5) All above, instruments are sanctioned prior to publication of the tender notice for subject work and not specific to subject tender except Yes Bank CC facility of Rs. 3 Crore in favour of Giriraj. Hence no other source is considered to be valid for EQC requirement of 3.3.1(i).

18.8) As per Form FIN-3.3.4: Current Contract Commitments/ Works in Progress submitted by the Petitioner with their offer, status of total work in hand by each firm is as under:-

18.8.1) Giriraj has the balance work in hand is Rs. 226.35 Crore as a single entity and more than Rs. 85 Crore under various JV firms.

18.8.2) SMBP has the balance work in hand is Rs. 970 Crore. Out of which work of value of Rs. 580 Crore is scheduled for completion in next one year.

18.8.3) A conservative estimate places SMBPL's monthly cash requirement towards these works at ₹40 Crore at the very least. Considering this fact, the access to requisite liquidity under the subject tender as shown in the company's bid may not be established clearly. The respondent will refer and rely on the Form FIN-3.3.4: submitted by the Petitioner along with their offer.

18.9) The Respondent states that having analysed the documents submitted by the Petitioner, Tender Evaluation Committee observed that offer of M/s. Giriraj Civil Developers Limited in JV with M/s. Shree Mangalam Buildcon (I) Pvt. Ltd. i.e. the Petitioner herein did not meet the EQC requirement 3.3.1(i).

12) Thus, after detailed analysis of the documents submitted by the Petitioner-JV, MRVCL's Technical Evaluation Committee, comprising of experts, has arrived at a conclusion that Petitioner did not satisfy the criteria of financial capabilities. It is true that Petitioner has filed a detailed Affidavit-in-Rejoinder dealing with the above analysis of documents made by Respondent-MRVCL. Mr. Reis has taken the pains of demonstrating before us as to how analysis of documents made by MRVCL is erroneous. However, considering the limited scope of jurisdiction of this Court in examining the correctness of the decision of the tendering authority, we are afraid, this Court cannot sit in Appeal over the analysis made by the Technical Evaluation Committee of the Respondent-MRVCL. It would be beyond the scope of power of judicial review of this Court to substitute the findings of the Committee with its own conclusions by undertaking the exercise of reanalyzing Petitioner's documents of eligibility towards financial capabilities.

13) The Tendering Authority has prescribed the criteria of possession of necessary financial capabilities considering the vast scope of work of improvement of railway stations in Mumbai City. Suburban Railway system being the lifeline of Mumbai City, any disruption or delay on account of financial incapability of Contractor would completely disturb the traffic movement of the entire city. Therefore, once the Technical Evaluation Committee of the Respondent-MRVCL has arrived at a conclusion that Petitioner-JV does not fulfill the criteria of financial capabilities, it would be outside the scope of power of judicial review of this Court to sit in Appeal over the decision of the Technical Evaluation Committee and to substitute its own conclusions for the decision of the Committee. The recommendations of the Committee have been accepted by the Competent Authority. We are unable to find any element of perversity, irrationality or arbitrariness in the decision of the Technical Evaluation Committee or the decision of the Competent Authority in rejecting Petitioner's technical bid.

14) The contention that the Petitioner was Lot-I and that Respondent-MRVCL could have saved amount of Rs.30 crores by awarding contract to the Petitioner does not cut any ice. Merely because the Petitioner is L-1, the same cannot be the sole criteria for awarding contract to the Petitioner. The Tendering Authority has to ultimately satisfy itself that the bidder is financially capable of executing the work. The work is of large magnitude running into Rs.212.58 crores. Additionally, execution of the work is in respect of railway stations forming part of Mumbai's suburban railway network. Therefore, timely execution of the work is the key and considering this position, the Tendering Authority has concluded that the Petitioner could not demonstrate possession of requisite financial capabilities and therefore its financial bid cannot be opened. Such a decision cannot be termed as irrational or arbitrary for this Court to interfere in extraordinary jurisdiction under Article 226 of the Constitution of India.

15) Mr. Reis has relied upon judgment of the Apex Court in ***Banshidhar Construction Pvt. Ltd.*** (supra). The issue before the Apex Court was entirely different. The Appellant therein had questioned award of contract to Respondent No.8 therein on the ground that Respondent No.8 did not possess the necessary qualification criteria prescribed in Clause-10 of the NIT. The judgment is rendered in peculiar facts of that case were Respondent No.8 had failed to submit scanned copies of annual audit reports for three financial years, which was the mandatory requirement of the NIT. It was also found that the bid of the Appellant therein was rejected on the ground of non-compliance with Clause-10 of the NIT on account of failure to submit other important documents like Power of Attorney. The Apex Court held that a discriminating treatment was given to the Appellant as the bid of Respondent No.8 was accepted though he had failed to comply with the submission of mandatory documents alongwith its bid. In our view, the judgment in ***Banshidhar Construction Pvt. Ltd.*** rendered in the peculiar facts of that case would not assist the case of the Petitioner.

16) Mr. Reis has also relied upon judgment of Division Bench of this Court in ***Konkan Railway Corporation Ltd.*** (supra). The issue before this Court was about interpretation of the expression '*present value of contract*' contained in Clause 2.2.2.1 of the tender document. The Respondent therein had interpreted the expression therein to mean the value of qualifying contract when the word '*qualifying*' was not found in the relevant clause of the NIT. The judgment has thus been rendered in the peculiar facts of that case and the same would not assist the case of the Petitioner.

17) It must also be noted that the Respondent Nos. 2 and 3 have commenced the work in March 2024 and after passage of 15 long months and substantial progress of the work, it would not be prudent to interfere in the decision of MRCVL in awarding the work to Respondent Nos. 2 and 3.

18) After considering the overall conspectus of the case, we are unable to interfere in the impugned decision of Respondent-MRCVL in rejecting the technical bid of the Petitioner. The Writ Petition accordingly fails and is **dismissed** with no order as to costs.

[SANDEEP V. MARNE, J.] **[CHIEF JUSTICE]**

NEETA SHAILESH SAWANT

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