



2025:DHC:4226-DB



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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ LPA 342/2025

NATIONAL HIGHWAYS AUTHORITY OF INDIA...Appellant

Through: Ms. Tanu Priya Gupta, Advocate
with Ms. Khushi Sharma,
Advocate.

versus

ATLANTA LIMITED

...Respondent

Through: Mr. Chirag M. Shroff, AOR with
Ms. Mahima Shroff, Advocate.

Date of Decision: 21st May, 2025

CORAM:

HON'BLE THE CHIEF JUSTICE

HON'BLE MR. JUSTICE TUSHAR RAO GEDELA

JUDGEMENT

TUSHAR RAO GEDELA, J : (ORAL)

CM APPL. 31183/2025 (Condonation of delay in filing the appeal)

1. Cause shown is sufficient. Accordingly, the application is allowed. Delay of 3 days in filing the appeal is condoned.
2. The application stands disposed of.

CAV 199/2025

3. Since the caveators have entered appearance, the caveat stands discharged.

LPA 342/2025 & CM APPL. 31181-82/2025

4. Present Letters Patent Appeal has been filed assailing the judgment dated 24.03.2025 passed in the underlying writ petition



bearing W.P.(C) 6646/2010 filed by the respondent, whereby the learned Single Judge set aside the appellant/NHAI's decision to reject the respondent's bid as non-responsive and also directed the appellant/NHAI to refund Rs.48.50 lakhs (on account of forfeiture of 5% bid security) to the respondent alongwith 6% simple interest.

5. On 29.10.2009, NHAI had invited Request for Qualification (hereafter referred to as '*RFQ*') for the two-laning with paved shoulder of Dindigul-Theni section km. 2.750 to km. 73.400 of NH-45 (Extn.) and Theni-Kumili section from km. 215.500 to km 273.600 of NH-220 in the state of Tamil Nadu under NHDP Phase III Project. In terms of Clause 1.2.1 (Brief Description of the Bidding Process) of the RFQ, the NHAI adopted a two-stage bidding process. The first stage involved the interested parties submitting request applications for qualification whereafter the appellant would announce list of pre-qualified applicants. The second stage involved bidding process comprising of Request for Proposal (hereafter referred to as '*RFP*').

6. The respondent was declared a pre-qualified applicant on 05.03.2010, and accordingly, the respondent submitted its RFP on 23.04.2010. The respondent's bid was opened on 23.04.2010 and examined by the Independent Financial Consultants appointed by the NHAI, who identified the following deficiencies, (i) The Power of Attorney submitted in Appendix-III was executed by Mr. Rajhoo Barot, but no Board Resolution authorizing him to execute the Power of Attorney was submitted; and (ii) Notes to Appendix-III required submission of supporting documents such as charter documents or board/shareholder resolutions verifying the authority of the signatory.



7. It is the case of the appellant/NHAI that despite being fully aware of the mandatory nature of this requirement under Clause 2.2.6 of the RFP, the respondent failed to submit any Board Resolution authorizing Mr. Rajhoo Barot, Managing Director (MD) to execute the Power of Attorney in favour of Mr. Ulhas N. Bhole, who in turn signed and submitted the bid on behalf of the respondent. It is stated that this omission was not a mere procedural lapse but a substantive legal deficiency, rendering the bid incomplete, unauthorized and non-responsive, not only in terms of the express stipulations of the RFP but also under the Company Law. It is further stated that as per Clause 2.20.7 of the RFP, submission of a non-responsive bid is one of the grounds for forfeiture and appropriation of 5% of the bid security as pre-estimated damages. Accordingly, by letter dated 13.05.2010, the appellant requested the respondent to deposit Rs. 48.50 lakhs (5% of the Bid Security amount) within 7 days, failing which partial encashment of the Bank Guarantee was indicated.

8. Thereafter, the respondent, *vide* its letter dated 19.05.2010, categorically contended that its bid was not non-responsive, however, the appellant, through its letter dated 03.06.2010, rejected the said contention and reiterated its demand for deposit of Rs. 48.50 lakhs, being 5% of the bid security amount. It is further stated that after affording a personal hearing to the respondent on 01.07.2010 and after due consideration of its oral and written submissions as well as all relevant correspondences, the appellant issued a letter dated 20.07.2010 wherein it was communicated that the respondent's bid had been adjudged as non-responsive and accordingly, the appellant once again



called upon the respondent to deposit the aforesaid sum of Rs. 48.50 lakhs. In accordance with Clause 2.20.7(a) of the RFP, which provides for forfeiture of bid security in the event of material misrepresentation or incomplete submission, the appellants appropriated 5% of the bid security as liquidated damages. The amount, restricted to Rs. 48.5 lakhs, was deposited by the respondent without prejudice.

9. Aggrieved by the said rejection and forfeiture, the respondent filed the underlying writ petition seeking quashing of the NHAI's rejection letters dated 13.05.2010, 03.06.2010 and 20.07.2010 and a refund of the forfeited amount. The learned Single Judge, however, proceeded to allow the writ petition in favour of the respondent *vide* impugned judgement dated 24.03.2025 and granted reliefs including refund of Rs. 48.50 lakhs with 6% simple interest. Aggrieved thereof, the present appeal has been filed by the NHAI.

10. Ms. Tanu Priya Gupta, learned counsel for the appellant/NHAI submits that the forfeiture of bid security was neither arbitrary nor *mala fide*, but a consequence of the respondent's own failure to comply with a critical tender requirement. She explains that the respondent's bid was non-responsive due to the absence of a Board Resolution as mandated under Clause 2.1.9 read with Appendix III of the RFP, which required the submission of a valid Board Resolution authorizing the person executing the bid to bind the company.

11. Learned counsel further submits that the respondent submitted Power of Attorneys (POAs) at the RFQ and RFP stages. However, no Board Resolution was submitted at the RFP stage to validate the second POA. On this, learned counsel submits that allowing a bidder to rely on



documents from the RFQ stage to cure deficiencies in the RFP stage, sets a damaging precedent. Thus, it is contended that submission of a bid through an unauthorised signatory i.e., without a Board-authorized Power of Attorney results in a defect that goes to the root of the bid, and is not a minor technical defect or irregularity that can be overlooked by the NHAI.

12. It is further submitted that at no point during the pendency of the writ petition did the respondent amend its prayers to include any claim for interest or litigation costs. Remarkably, after a lapse of more than 11 years, the respondent filed an additional application in 2022, belatedly seeking interest amounting to Rs.53.02 lakhs and litigation costs of Rs.9.4 lakhs. It is stated that the appellants opposed the application, submitting that such a prayer was neither part of the original pleadings nor maintainable at such a late stage, especially when the claim was not even reserved in the original petition. However, the impugned judgment not only exceeded the reliefs originally prayed for in the writ petition but also bypassed the binding provisions of the RFP, especially Clause 2.20.7, which represents a mutually agreed pre-estimate of liquidated damages.

13. Learned counsel additionally contends that the tender in question was issued for a high-value public infrastructure project, and relaxed enforcement of bidding norms in such cases would defeat the objectives of fiscal prudence, fair competition, and equal treatment under Article 14 of the Constitution of India.

14. Learned counsel further submits that *vide* impugned judgement, the learned Single Judge held that the rejection of the bid was absurd



and irrational, based primarily on the judgments in *MSK Projects India Ltd. vs. NHAI, (2019) SCC Online Del 6569* and *Gayatri-DLF Consortium vs. NHAI, (2011) SCC Online Del 1247* and equated the factual matrix to the cases cited, despite clear differences in context and contractual terms.

15. Having heard Ms. Tanu Priya Gupta, learned counsel for the NHAI, we find that there is no clause or term or a condition of the RFP which provides that submission of Board Resolution in favour of the person executing a Power of Attorney who will be authorized to execute all documents or sign contracts and other incidental and ancillary documents, is mandatory. Nor has the learned counsel been able to indicate any such clause which requires filing of the Board Resolution as a mandatory eligibility condition in the absence whereof, the bid would be treated as ‘non-responsive’. Equally, learned counsel is unable to show even a single condition of the RFP which would empower or entitle the appellant to declare a bidder as non-responsive for lack of a Board Resolution and would be an infraction of a nature where the appellant would be empowered to forfeit the bid security.

16. Ms. Gupta has drawn attention to Clause 2.1.9 of the Instructions to the Bidders in the RFP, in support of the issues noted in the aforesaid paragraph. Clause 2.1.9 reads thus:

“2.1.9 The Bidder should submit a Power of Attorney as per the format at Appendix-III, authorising the signatory of the Bid to commit the Bidder.”

It is clear from a plain and literal reading of the aforesaid clause that the bidder is to submit a Power of Attorney as per the format at



Appendix-III authorizing the signatory of the bid to commit the bidder. Other than that, there is no reference, even remotely to the requirement of submission of a Board Resolution of the bidding company. Though, learned counsel was at pains to submit that according to the provisions of the Companies Act, unless the Power of Attorney is supported by a valid Board Resolution, the Power of Attorney as a standalone document would have no legal sanctity, yet, we find that unless any condition or a term stipulates mandatory submission of Board Resolution, the appellant on its own volition cannot read any mandatory character to submit such Board Resolution. Thus, the submission on this aspect is unmerited and unpersuasive.

17. The reference by Ms. Gupta to the format at Appendix-III in particular to para 2 of the Notes appended to the said Appendix, to submit that the said note mandates the bidder to submit for verification the extract of the charter document and documents such as a Board or Shareholder's Resolution/Power of Attorney in favour of the person executing the Power of Attorney for delegation of power, is untenable. This is for the reason that para 2 of the Notes to the said Appendix commences with the word "*wherever required*", meaning thereby, the mandatory character of the note may be construed only in such instances where the term or a condition of the RFP mandates it. There being no such term or a condition in the RFP, we cannot read any mandatory character in such note. That being the position, the submission on this aspect also is without any merit and is rejected.

18. That apart, learned Single Judge has also relied upon the judgment of this Court in ***MSK Projects India Ltd.*** (*supra*) where the



same argument was repelled and held that the requirement of the bid being accompanied by an additional Power of Attorney along with Board Resolution was not a term of the Instructions to Bidders, let alone an essential term. We could fathom a situation where the Power of Attorney, which may be an essential requirement, is not submitted along with the bid and consequently, such bid may be held to be non-responsive. What cannot be countenanced is the fact that the essential requirement being submission of the Power of Attorney, was in fact submitted and yet, not only was the bid of the respondent declared as non-responsive, it was also deemed to have empowered the appellant to invoke the conditions of Clause 2.20.7 whereunder, the appellant could forfeit the bid security to the extent of 5% of its value. This is impermissible keeping in view the fact that submission of Board Resolution was not a mandatory condition of the RFP.

19. It is also pertinent to note that the respondent had in fact submitted the Board Resolution along with the RFQ. On a query, learned counsel for the appellant does not dispute the fact that such Board Resolution was in fact submitted at the time of RFQ and also admits that the said Board Resolution actually conferred authorisation on the person in favour of whom the Power of Attorney was executed, which document was submitted along with the bid in response to the RFP. The contention that the said Board Resolution was not submitted in response to the RFP and thus violating conditions of the RFP are not borne out from the records. In that view of the matter, this submission too is unmerited and is rejected.



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20. The resistance of the appellant to the imposition of interest too cannot be countenanced. It is not disputed that the respondent had filed an application in the underlying writ petition seeking 9% interest on the amount so forfeited. We find from the records that learned Single Judge has awarded a very reasonable and simple interest of 6% on Rs.48.50 lakhs directed to be refunded to the respondent. The power and jurisdiction of a Court to grant interest cannot be questioned, more so for the reason that the Courts are empowered under the provisions of the Interest Act, 1978. Thus, in suitable cases, a Court can grant reasonable interest. We find no reason, much less any cogent reason to interfere with the direction to pay interest.

21. In view of the above, the appeal is bereft of any merits and is dismissed.

TUSHAR RAO GEDELA, J

DEVENDRA KUMAR UPADHYAYA, CJ

MAY 21, 2025/yrj/rl