

(2013) 08 BOM CK 0043

In the Bombay High Court

Case No : Writ Petition (Lodg) No. 1800 of 2013

Knowledge Infrastructure Systems Pvt. Ltd. and Shri Vipin Mahajan

APPELLANT

Vs

Maharashtra Power Generation Company Ltd. and Adani Enterprises Limited

RESPONDENT

Date of Decision : 08-08-2013

Acts Referred:

Citation : (2013) 5 ABR 1134 : (2013) 5 BomCR 742

Hon'ble Judges : S.J. Vazifdar, J;M.S. Sonak, J

Bench : Division Bench

Advocate : Mukul Rohatgi, Mr. Janak Dwarkadas, Mr. Shyam Mehta, Mr. C.D. Mehta, Mr. Ninad Laud, Mr. Bhavik C. Mehta, Mr. Lalan Gupta, Mr. Harshmit Trivedi and Ms. Karishma Pandya instructed by Dhruve Liladhar and Co, for the Appellant; Birendra Saraf, Ameya Gokhale, Ms. Anisha Chand instructed by Khaitan and Co., Mr. Ravi M. Kadam, Mr. Amit Vyas, Abhileen Chaturvedi and Ms. Aanchal Vawani instructed by Mr. Naresh Thacker for the Respondent No. 2, for the Respondent

Final Decision : Disposed Off

Judgement

S.J. Vazifdar, J.—Rule. Rule is made returnable forthwith and heard finally. Respondent No. 1 is a public sector undertaking engaged in power generation and supply of electricity in the State of Maharashtra. Respondent No. 2 is Adani Enterprises Limited. The petitioner and respondent No. 2 are competitive bidders.

2. The interpretation of clause 20(c) of the tender documents falls for consideration. It provides that the offers would be evaluated considering, inter-alia, the "Exchange rate as per RBI reference rate indicative on date of opening of bid"

(emphasis supplied).

Respondent No. 1 by the decision impugned in this petition considered the date of opening of the price bid as the date of opening of the bid for the purpose of

clause 20(c) of the General Terms and Conditions. The petitioner, however, contended that the relevant date for the purpose of clause 20(c) ought to be the date of opening the techno-commercial bid i.e. 16th May, 2013. If 16th May, 2013, is considered to be the correct date, the petitioner's bid would be the lowest, whereas if 23rd May, 2013, is taken to be the correct date, the second respondent's bid would be the lowest.

We have accepted the petitioner's contention that the relevant date ought to be the date of opening the techno-commercial bids. This interpretation is supported by the tender documents and is consistent with the stand taken by the petitioner and respondent No. 1 in the correspondence between them. The interpretation suggested by the respondents is not only contrary to the tender documents and the correspondence, but is not even discernible from the same. Moreover, the petitioner's interpretation provides certainty and clarity. The respondents interpretation introduces speculation without even a suggested reason or justification for compelling bidders to speculate.

The tender documents fixed the date of the opening of the techno-commercial bid but left the date of the opening of the price bid open. There was certainty, therefore, regarding the exchange rate on the date of opening the techno-commercial bid which was on the same day that the bids were to be submitted. There was uncertainty regarding the exchange rate on the date of opening of the price bid as that date was not fixed. This exchange rate is only for evaluating the tenders and has no financial implication on respondent No. 1. There is no reason, therefore, and no reason was even suggested by the respondents for compelling the bidders to speculate regarding the exchange rate.

3. Respondent No. 1, by a notice dated 18th April, 2013, invited bids for the supply of 2.992 million metric tonnes non-coking (steam) coal of foreign origin for its power stations at Bhusawal, Khaparkheda and Chandrapur Thermal Power Stations. This petition is concerned only with the bid in respect of the supply of coal to the Thermal Power Station at Chandrapur. The bids were to be submitted in the two-bid system i.e. technical/commercial bid (hereinafter referred to as the techno-commercial bid) and the price bid. By a Corrigendum dated 8th May, 2013, the "Due date for on-line and physical opening of techno-commercial bids" was 16th May, 2013.

4. The bid specification was divided into parts A to D viz. (A) Notification of Invitation of Bids, (B) Section-I Instructions of Bidders, (C) Section-II General Terms and Conditions of Contract and (D) Annexures.

5. The relevant clauses under Part-B i.e. Section-I INSTRUCTIONS TO BIDDERS are as under:-

3.2 Documents comprising the Bid:

Documents set out in Clause 13 shall constitute the documents comprising the Bid

7.0 BID SECURITY (EMD):

7.1 The bidder shall submit the Bid security i.e. unconditional EMD of amounts equal to Rs. 10 Cr./MMT, separate for each items specified quantity, offered along with its bid.

7.2 Bid security can be submitted in one of the following forms:

a. Crossed Demand Draft in the name of Maharashtra State Power Generation Co. Ltd. payable at Mumbai drawn on any scheduled bank.

b. A Bank Guarantee strictly as per the proforma specified in Annexure-I (enclosed) issued by any Scheduled Commercial Bank notified by Reserve Bank of India in favour of Maharashtra State Power Generation Co. Ltd. on behalf of bidder OR Lead member of the consortium (if the bidder is a consortium) payable at Mumbai branch only.

7.3 The validity of the bank guarantee against Bid security shall be at least for 120 days from the date of Bid opening and the same shall be extended as may be required. Bid security for shorter value and period shall make the Bid liable for rejection.

8.0 VALIDITY OF BIDS:

Offers/bids should be valid for a period of at least 90 days from the date of their opening. Bids with shorter validity shall be liable for rejection at the discretion of the purchaser.

13.0 DOCUMENTS COMPRISING THE BID:

The techno-commercial Bid, the price Bid and the Physical Support Documents;

14.0 OPENING OF BIDS

a. The techno-commercial Bid opening will be at the specified time in the NIT.

d. The price Bids for only those bidders which meet the qualifying requirements and also which are technically and commercially acceptable, shall be opened at the notified time and date in the presence of the qualified bidders who choose to be present.

20.0 EVALUATION:

The offers shall be evaluated considering the following components of price bid Annexure-VI to V3:

.....

(c) Exchange rate as per RBI reference rate indicative on date of opening of bid.

6. The relevant provision of Part-C i.e. Section-II: GENERAL CONDITIONS OF CONTRACT is as under:-

1.0 DEFINITIONS:

1.3 "Bid" shall mean the bid submitted by the Seller in response to bid specification no. MAHAGENCO/CE/FMC/IMP.COAL/2013-14/T-01 issued by the Purchaser.

7. As provided in the tender notice the bidders submitted their bids on 16th May, 2013. On the same day, the techno-commercial bids were opened. The date of opening the techno-commercial bid was specified in the notice and the bid documents themselves. However, no date was stipulated for opening the price bids. The price bids were opened on 23rd May, 2013.

8. The question that falls for consideration, therefore, is whether the date of opening of the techno-commercial bids or the date of opening of the price bids is the relevant date for the purpose of evaluation of the bids under clause 20.0(c) of the General Terms and Conditions.

We would not have interfered with the respondent's interpretation if two views were possible. As, according to us, only one view is possible, it is necessary to exercise our powers under Article 226 to interfere with the impugned decision of respondent No. 1. Moreover, we find that even the correspondence between the parties supports, to a greater extent, this view.

In Reliance Energy Limited and Another Vs. Maharashtra State Road Development Corporation Ltd. and Others, , the Supreme Court reiterated the following observation in Union of India (UOI) and Another Vs. International Trading Co. and Another, :-

37.... Actions are amenable, in the panorama of judicial review only to the extent that the State must act validly for a discernible reason, not whimsically for any ulterior purpose. The meaning and true import and concept of arbitrariness is more easily visualised than precisely defined. A question whether the impugned action is arbitrary or not is to be ultimately answered on the facts and circumstances of a given case. A basic and obvious test to apply in such cases is to see whether there is any discernible principle emerging from the impugned action and if so, does it really satisfy the test of reasonableness.

There is no discernible reason for taking the date of the opening of the price bid for as the relevant date under clause 20(c). On the other hand, the date of opening the techno-commercial bid is not only logical, rational, but would make the process of evaluation fair and open and obviate arbitrary action.

9. It is necessary to note three things at the outset while construing the relevant clauses. Firstly, the date of opening of the techno-commercial bids was fixed under the bid documents viz. 16th May, 2013. Secondly, no date was fixed for opening the price bids. Lastly, the determination of the relevant date is relevant only for the purpose of evaluating the bids inter-se the bidders and has no financial implications for the respondent No. 1. In other words, the date stipulated in clause 20(c) for evaluating the bids is not relevant while

determining the price that is payable by the respondent to the bidder/supplier of the coal. As this was admitted by the parties, it is not necessary to refer to clause 4.4 of the General Terms and Conditions of the contract, which indicates the same.

10. It is necessary, in the first instance, to construe the terms and conditions of the bid documents. Clause 20 itself does not specify whether the exchange is to be considered on the date of the opening of the techno-commercial bid or the price bid. The question, therefore, is which date is contemplated by the words "date of opening of bid" in clause 20(c). Even clause 1 of the General Terms and Conditions does not contain a definition of this phrase. It merely defines the term "bid" which is of no assistance.

11. We find Mr. Rohatgi's reliance upon clause 7 to be of considerable assistance in this regard. The words "the date of bid opening" in clause 7.3 convey the same meaning as the words "date of opening of bid" in clause 20(c). The mere interchange of the words "bid" and "opening" in the two clauses makes no difference.

12. Clearly, the words "date of bid opening" in clause 7.3 refer to the date of opening of the techno-commercial bid. It cannot be the date of the opening of the price bid. As we noted earlier, the bid documents only specify the date of opening of the techno-commercial bid viz. 16th May, 2013. The notice inviting tenders itself specifies the due date for opening of techno-commercial bids to be 16th May, 2013 at 16:00 Hours. Contrast this, with clause 14(d) which provides that the price bid would be opened "at the notified time and date". The bid documents, therefore, did not specify the date of opening of the price bid. Clause 7.3 requires the validity of the bank guarantee against bid security to be at least 120 days from the date of the bid opening. A bidder can furnish a guarantee effective for any specified duration - in this case 120 days - only if he knows the date from which the period is to commence. The bidders in this case knew only the date of opening of the techno-commercial bid and, therefore, were in a position to furnish a guarantee valid for at least 120 days commencing from the date specified for the opening of the techno-commercial bid. They were not informed of the date of opening of the price bid and, therefore, could not have been in a position to furnish a guarantee valid for 120 days as the date of commencement itself was not specified.

13. The guarantee had to be furnished along with other bid documents. There is no doubt that the validity of the bank guarantee was to commence from the date on which it is furnished to the respondent. Any other construction would be not only illogical, but unworkable. The first respondent was entitled to open the price bid at any time it desired. That it chose to do so within 120 days of the date of opening of the techno-commercial bids is irrelevant. It was entitled to open the price bids even after the period of 120 days. If it did so, it would render the guarantee liable for rejection under clause 7.3. There is no doubt, therefore, that the words "the date of bid opening" in clause 7.3 refer to the date of the opening

of the techno-commercial bid.

14. Admittedly, all the bidders furnished a guarantee commencing from the date on which the price bids were to be opened. The respondent, therefore, also accepted this construction of clause 7.

15. We mentioned earlier that the words "the date of bid opening" in clause 7.3 convey the same meaning as the words "date of opening of bid" in clause 20(c). We see no reason to ascribe to these expressions, different meanings. The bid documents, read as a whole, in fact, necessitate their being given the same meaning.

16. It must be presumed that the intention of a party inviting offers/tenders is to ascribe to the terms and conditions stipulated by it and not uncertainty. It is also reasonable to presume that a party inviting tenders, especially the State and its agencies, stipulates conditions that would avoid an arbitrary, unfair, irrational or unreasonable exercise of power in evaluating the bids.

17. Certainty in the case of the present documents would arise only upon the construction put upon them on behalf of the petitioner and not otherwise. When a party quotes a foreign exchange component, absent anything else, it takes into consideration the rate prevalent on the relevant date. In the present case, the only date on which the parties could have been certain of the foreign exchange rate was the date of opening of the techno-commercial bid for that was stipulated. At the cost of repetition, the date of opening of the price bids was not stipulated. There is no warrant for presuming that respondent No. 1 intended the bidders to speculate without cause or reason. There is no discernible reason why respondent No. 1 would have wanted bidders to speculate in this regard. We use the words "without cause or reason" consciously for there may be cases where the party inviting the bids leaves the risk of foreign exchange fluctuations upon the bidders, thereby protecting itself against any adverse fluctuation in the exchange rate. This is why we mentioned earlier that it is important to note that in the present case the exchange rate is relevant only for the purpose of evaluating the rival bids and that the same does not impose any financial burden upon the respondent in view of clause 4.4 of the General Terms and Conditions which provide for the currency of payment and applicable exchange rate.

18. Mr. Rohatgi's submission that a view to the contrary would be arbitrary is also well founded in view of the fact that the exchange rate on the date of the opening of the price bids had no financial implication to the price payable by the first respondent to the bidders/suppliers of coal. If the only relevance of the exchange rate was to decide the inter-se merit between the bidders an indeterminate date for the same would be arbitrary and unreasonable. Even if the first respondent has not acted arbitrarily it would enable it to do so by opening the bids at any time that may be advantageous to a particular bidder. We do not suggest that the first respondent has, in fact, done so in this case. It is sufficient only to note that arbitrariness in action is possible upon an

interpretation that the date of opening of the price bids is the relevant date. An interpretation that eschews arbitrariness and furnishes certainty ought to be preferred.

19. Neither Dr. Saraf, the learned counsel appearing on behalf of the first respondent nor Mr. Kadam, the learned senior counsel appearing on behalf of the second respondent were able to suggest any reason why the respondent would have left the parties to speculate upon the exchange rate. Such speculation serves no purpose either for the respondent or the bidders. If the exchange rate was to be frozen on the date of the opening of the price bids for the benefit of the respondent, it would have been a different matter altogether. The respondent would then have been entitled to insist upon the exchange rate being considered as on the date of the opening of the price bid. That, however, is not the case here.

20. If two views were possible, we may not have been entitled in exercise of our writ jurisdiction to substitute our view for that of the respondent. We, however, find the view contended on behalf of the petitioner to be the only possible view.

The judgment of a Division Bench of this Court in the case of Shapoorji Pallonji vs. Maharashtra State, (2009) 5 Bom. C.R. 658 is therefore, of no assistance to the respondents. The Division Bench held that if two interpretations of such a clause are possible, the interpretation given by the author of the clause would normally be accepted unless the same was opposed to public policy or law or is patently absurd. We have come to the conclusion that the petitioners' interpretation is the only possible interpretation.

For the same reason, the judgment of the Supreme Court in BECIL Vs. Arraycom India Ltd. and Others, is also of no assistance to the petitioners.

21. Dr. Saraf contended that clause 7.3 ought to be read with clause 8. Clause 8 requires a bid to be valid for a period of at least 90 days from the date of opening. He submitted that the entire purpose was to enable respondent No. 1 to open the bids within the period of 90 days stipulated in clause 8 and, therefore, required the guarantee to be for a period of 120 days. It is difficult to see how this helps in the interpretation of clause 20(c). Clause 8 merely provides for the validity period of the bid. It does not compel the respondent to open the bid within the period of 90 days. The only consequence of the respondent failing to open the price bid within 90 days is that the bids would no longer be valid thereafter. This, of course, would be at the bidders option. Clause 8, therefore, does not make the bidders any wiser in interpreting clause 20(c).

22. Dr. Saraf's reliance upon clause 3.2 and clause 13 is also of no assistance. These clauses merely mention the documents comprising the bid viz. techno-commercial bid, the price bid and the physical support documents. They are of no assistance in determining the meaning of the words "date of opening of bid" in clause 20(c). These clauses do not deal with the issue of opening of bids at all.

23. Nor is the respondent's reliance upon clauses 2.3 and 2.4 of Part B - Section-I-Instructions to Bidders-of any assistance. These clauses read as under:-

2.3 The bidder shall carefully examine the Bid Specification and fully inform and satisfy itself as to all the conditions and matters which may in any way affect to work or cost thereof. Failure to furnish all information required by the Bid Specification or to submit a bid not substantially responsive to the Bid Specification in every respect will be at bidder's risk and may result in the rejection of the bid. Should a bidder find any discrepancies or omissions in the Bid Specifications or have any queries with respect to any provision of the Bid Specifications, he should at once notify to the purchaser at below mentioned address:

2.4 Clarification of Bid Specification:

Any prospective bidder (subject to having paid the vendor registration and tender fees) who requires any clarification in respect of the Bid Specification may notify the purchaser in writing or by fax enclosing therewith copy of money receipt against tender fee at the purchaser's contact details given above 1 (one) day prior to the dead line for the pre-bid meeting. The clarifications received after pre-bid meeting shall not be entertained. The purchaser's response (including an explanation of the query but without identifying the source of enquiry) shall be published by way of revision of the Bid Specification on website <http://mbspcl.abcpurchase.com>. The bidders in their own interest may inform the purchaser in written about the payment of tender fee by them and their detailed correspondence address with name of contact person, telephone/fax nos., e-mail address etc. so that such clarifications can be sent to them by fax/e-mail as may be possible. However, purchaser's responsibility is restricted to only publishing such clarifications on above mentioned website.

These clauses merely entitled the bidders to seek any clarification. If our interpretation of the above clauses is correct and if we are right in our conclusion that only one interpretation is possible, there was no question of the petitioner seeking any clarification.

24. Faced with this, the respondents contended that the petitioners themselves always understood the relevant date to be the date of the opening of the price bid. In this regard, they relied upon the correspondence between respondent No. 1 and the petitioner and respondent No. 1 and respondent No. 2. Dr. Saraf also relied upon the petitioner's conduct in support of his submission that the petitioner itself construed the bid documents to mean that the relevant date for the purpose of clause 20(c) was the date of the opening of the price bid.

25. In this regard Dr. Saraf relied upon clause 6 of the General Terms and Conditions. Dr. Saraf submitted that the petitioner had secured benefit under another tender on account of the exchange rate being taken as on the date of opening of the price bid. Under that tender, the exchange rate on the date of the opening of the techno- commercial bid was higher than the rate on the date of

the opening of the price bid. The petitioner furnished the bank guarantee taking into consideration the value of foreign exchange as on the date of the opening of the price bid and not as on the date of the opening of the techno - commercial bid. Thus the value of the guarantee was less than it would have been, had the rate been taken as on the date of the opening of the techno-commercial bid.

26. The reliance upon the said bank guarantee is entirely unfounded. That was not a guarantee under clause 7 towards bid security but a performance guarantee bond. Such a guarantee is also provided under clause 6 of the bid documents. In the present case, the very first sentence provides that the seller shall provide a Security-cum-Performance Guarantee Bond for an amount equivalent to ten (10%) percent of the total, contract value ("Security Amount"). It further provides that the total contract value shall be computed by multiplying the Contract Price (calculated by considering C.I.F. value per MT as quoted in the Bid) with the total quantity of coal to be supplied under the Contract. Such a guarantee is furnished after the price bid is opened and not before. The reliance upon a performance guarantee is entirely misplaced.

27. Dr. Saraf relied upon another instance of the petitioner's conduct. In respect of supply of coal for Khaparkheda Thermal Power Unit, there was a similar evaluation clause in the bid document. He relied upon a letter dated 3rd December, 2012 addressed by respondent No. 1 to the petitioners. The subject referred to the contract and that the techno-commercial bids were opened on 20th September, 2012 and the price bids were opened on 21st September, 2012. He then relied upon a schedule for destination price for supply of coal under that contract, item 6 whereof contained the following particulars: "Exchange rate as per RBI reference rate indicative on dated 21.09.2012". Based on this, it was contended that the petitioner was aware that respondent No. 1 had interpreted clause 20(c) to mean that the exchange rate would be as on the date of the opening of the price bid.

28. The respondents are really straining for an answer to the correct interpretation of the bid document. The schedule indicated the date 21st September, 2012. The question regarding the relevant date was not in issue for whichever date was taken into consideration viz. 20th September, 2012 or 21st September, 2012, the petitioner was the successful bidder. There was no occasion for the petitioner to raise a dispute. Even in the case of that contract, there was no financial implication on account of the relevant date for the purpose of the bid value. In the circumstances, we are not inclined to either accept the respondents' interpretation of the contract or to hold that the petitioners were conscious of respondent No. 1's interpretation of clause 20(c) to be as contended before us.

29. This brings us to the correspondence relied upon by the petitioner and the respondents in support of their rival contentions. The respondents contended that the correspondence established that the petitioner was aware that the first respondent's contention was that the relevant date for the purpose of the bid

evaluation was the exchange rate on the date of the opening of the price bid. The petitioner, on the other hand, relied upon the correspondence in support of their averments in paragraph 7(H) of the petition that respondent No. 1 repeatedly called upon the petitioner for negotiations for more than one plant.

30. As we noted earlier, the notice inviting tenders was in respect of three plants, Khaparkheda, Bhusawal and the plant in question in this petition viz. Chandrapur. The petitioner had already been awarded the contract for the Bhusawal plant and respondent No. 2 had been awarded the contract for the Khaparkheda plant. Mr. Rohatgi relied upon the fact that each of these letters refers to the bids for all three plants.

31. However, Dr. Saraf pointed out that the reference to all the three bids was only in the subject/reference to the correspondence which was merely descriptive of the bids. The description was in accordance with the notice inviting tenders. While it is true that the subject of each of these letters refers to all three plants, it is pertinent to note that in the body of the letters, there is nothing to suggest that the negotiations were in respect only of the Bhusawal plant. For instance in its letter dated 5th June, 2013, the petitioner stated that respondent No. 1 had invited it to negotiate the prices "to more than one plant". Respondent No. 1 did not respond denying the same.

32. Dr. Saraf on the other hand, referred to an e-mail dated 11th June, 2013, from respondent No. 1 to the petitioner calling upon the petitioner to submit its "best reduced offer for Bhusawal TPS". He relied upon the fact that Chandrapur plant was not mentioned therein.

33. This e-mail is of no assistance whatsoever. Even if it suggests anything, it pales into insignificance when the entire correspondence is considered and especially the next e-mail.

34. The petitioner by its e-mail dated 13th June, 2013 addressed to respondent No. 1 stated: "Please be advised that this discount is being offered to you not only for Bhusawal TPS (Unit 4 & 5) but for all the plants that we are L1 in, amongst the bids that were opened on 16.05.2013. You will agree that for the plant we are not L1, we are not required or eligible to give you a discount."

It is important to note two things. Firstly, the petitioner did not refer to merely one plant i.e. the Bhusawal plant but to "all the plants", in respect whereof it was L1. The petitioner therefore clearly referred to the Chandrapur plant as well as the Bhusawal plant. The respondents did not respond stating that the petitioner was L1 in respect only of the Bhusawal plant. To put it differently, the first respondent did not state that there was no question of the petitioners offer being considered for the Khaparkheda plant, as it was not L1 in respect thereof.

Secondly, it is of considerable importance that the petitioner also stated that it was L1 for all plants amongst the bids that were opened on 16th May, 2013 i.e. the date on which the techno-commercial bids were opened. Thus, the petitioner

clearly indicated that the relevant date was the date of the opening of the techno-commercial bid. Had the first respondent, in fact, been of the view that the relevant date was the date on which the price bids were opened, it would certainly have responded stating that there was no question of the petitioner being considered L1 on 16th May, 2013, when the techno-commercial bids were opened.

This communication and the first respondent's silence in respect thereof not only supports the petitioner's interpretation of the terms and conditions, but also belies the first respondent's contention that it understood the same to be otherwise.

35. By a further letter dated 3rd July, 2013, the petitioner again enclosed copies of its offers for all three plants and stated that the same were valid for 90 days from the date of the opening of the bid, as required in the tender specifications.

36. The correspondence therefore, predominantly indicates that the negotiations were in respect not merely of the Bhusawal plant but also in respect of other plants and that the petitioner considered itself to be L1 not merely in respect of the Bhusawal plant. The first respondent never controverted the same. It is only that by the solitary e-mail dated 11th June, 2013 that the first respondent called upon the petitioner to submit its best reduced offer for Bhusawal plant, but did not make any reference to the other plants. We are not inclined on the basis of this solitary e-mail to come to the conclusion that the petitioner knew that the relevant date for the purpose of clause 20(c) was the date of the opening of the price bid or that the petitioner had reason to believe that the first respondent considered the date of the opening price bid to be the relevant date for the purpose of clause 20(c).

37. Dr. Saraf then relied upon the contents of the internal correspondence of respondent No. 1. Dr. Saraf relied upon an office note of respondent No. 1 dated 14th June, 2013, which stated that respondent No. 2 was L1 bidder for Chandrapur TPS as well whereas the petitioner was the L1 bidder for Bhusawal TPS and that they were called for negotiations. Dr. Saraf also relied upon an e-mail from respondent No. 1 calling upon respondent No. 2 to submit its best reduced offer for Khaparkheda TPS and Chandrapur TPS. Dr. Saraf contended that this note was in accordance with the first respondent's said e-mail dated 11th June, 2013, addressed to the petitioner which referred only to the Bhusawal TPS.

38. We are not inclined to interpret the provisions of the bid documents on the basis of the first respondent's internal correspondence especially in view of our conclusion regarding the true interpretation of the provisions of the bid documents and the admitted correspondence between the parties.

39. In the circumstances, in our view, the relevant date for the purpose of clause 20(c) is the date of the opening of the techno-commercial bid.

40. It is however, clarified that this judgment and order ought not to be considered as our having directed respondent No. 1 to award the contract to the petitioner. The petitioner would be entitled to be awarded the contract only if the present tender process is carried through. If the first respondent does not wish to go ahead with this tender process, it is an entirely different matter, with which we are not concerned in the present writ petition. If respondent No. 1 does not do so, the parties must adopt appropriate proceedings, if they are aggrieved thereby.

41. At the request of respondent No. 2, respondent No. 1 shall not award the contract for supply to the Chandrapur Thermal Power Station upto and including 27th August, 2013. The contracts with respect to the Bhusawal and Khaparkheda plants remains unaffected by this order. The Writ Petition is, accordingly, disposed of. There shall be no order as to costs.