

(2023) 12 GAU CK 0032

In the Gauhati High Court

Case No : Writ Petition (Civil) No. 5110 Of 2013

M/S Anmol India Ltd. And 3 Ors

APPELLANT

Vs

North Eastern Coalfields Limited And 3 Ors

RESPONDENT

Date of Decision : 21-12-2023

Acts Referred:

Indian Contract Act, 1872 — Section 73

Citation : (2023) 12 GAU CK 0032

Hon'ble Judges : Devashis Baruah, J

Bench : Single Bench

Advocate : B. Goyal, M. Z. Ahmed

Final Decision : Disposed Of

Judgement

1. The four petitioners in the instant writ petition have conjointly challenged the Spot e-Auction Scheme, 2007 and more particularly Clause 9.1 and 10 by way of the instant writ petition. Individually, the Petitioner No.1 has sought for compensation from the Respondents in respect to non-delivery of coal in spite of receipt of the coal value deposit in relation to e-Auctions held on 12.03.2013 and 28.06.2013.

2. At the outset, it is relevant to take note of that the Spot e-Auction Scheme, 2007 as on date have been replaced by the e-Auction Scheme, 2022 which has been made effective from 01.03.2023 onwards. Under such circumstances, the question of any adjudication in respect to a scheme which is no longer in existence does not arise. However, the question remains as to whether the Petitioner No.1 would be entitled to compensation for non-delivery of coal in spite of the deposit of the coal value pursuant to the e-Auctions held on 12.03.2013 and 28.06.2013.

3. For a better understanding, it is relevant to take note of the Spot e-Auction Scheme, 2007 under which Scheme coal distribution through e-Auction was introduced. From a perusal of the Spot e-Auction Scheme, 2007 (for short "the

Scheme”), it is mandated in Clause-2 that a prospective buyer is required to get himself registered with M/s MSTC Ltd. and M/s MJunction Services Ltd. for Road and Rail dispatches respectively who have been appointed by the Respondent No.1. It is relevant to take note of that for the purpose of registration, various formalities are required to be complied with as stated in Clause 2.1, 2.2, 2.3 and 2.4. Clause 2.5 stipulates that all buyers having been registered with the service providers shall also have to furnish a non-interest bearing Earnest Money Deposit (EMD) @ Rs.500/- per tonne for coal having GCV more than 4300 Kcal/Kg and @ Rs.400/- per tonne for coal having GCV of 4300 Kcal/Kg. The manner in which the bidding process have to be carried out is stipulated in Clause-4. It is relevant to take note of that as per Clause 4.1, the registered Bidders shall be required to record their acceptance after login to the terms and conditions of the e-Auction before participation in the actual Bidding Process. Clause 4.2 mandates that before participating in an e-Auction, the bidders are to satisfy themselves with the quality of coal being offered from source. The manner in which the bid is to be submitted has been further stipulated in Clause 4.3, 4.4, 4.5, 4.6 and 4.7. Clause 4.8 and 4.9 stipulates that as to how the bidding process shall be conducted.

4. Clause-5 stipulates the post e-Auction process. In terms with Clause 5.1, each successful bidder would be intimated through e-mail/SMS by M/s MSTC Ltd. and M/s MJunction Services Ltd. on the same date after the closure of the e-Auction. However, it shall be the responsibility of the buyer/bidder to personally see and download results displayed on the website on the same date after the close of the e-Auction. Clause 5.2 is of significance taking into account the issue involved. In terms with Clause 5.2, the successful bidders after e-Auction would be required to deposit the coal value at the respective offices mentioned in the said Clause within a period of 7 (seven) days after the date of closing of the e-Auction. Clause 5.3 mandates that the equivalent of the EMD of the successful bidder corresponding to the successful bid quantity shall be blocked and would be transferred to the Respondent No.1 by the M/s MSTC Ltd. and M/s MJunction Services Ltd. along with the bid sheet in respect of the successful bidders.

5. Clause-6 stipulates the terms of payment. In terms with Clause 6.1, the coal value is to be deposited in advance by the successful bidders and while computing the 100% of the coal value to be deposited, the EMD already deposited shall be taken into consideration or in other words, the bidders has to pay the remaining portion of the coal value after adjusting with the EMD. Clause 6.6 stipulates that there are two options by which the bidders can deposit the coal value i.e. either by way of 100% Bank Guarantee or by payment through demand draft/pay order drawn in favour of the Respondents. Clause 6.6 and 6.7 are very pertinent for the purpose of the instant dispute and as such the same are quoted hereinbelow:

“6.6. In case of rail borne supplies, there shall be two options available. While submitting program, the bidder at his option can deposit 100% BG on the

prescribed format from the buyers own account or else may deposit 100% amount through demand draft/pay order, drawn in favour of Coal India Limited, payable at Margherita/Guwahati in any Scheduled/Nationalized bank along with the debit advice, issued by the bank certifying that the DD/pay order has been issued by debiting the account of the concerned Buyer.

6.7. In case of Buyers who have booked their rail programme through BG, a notice for deposition of coal value by way of DD/Pay order, will be displayed on the notice board of all the offices of North Eastern Coalfields, at least three working days in advance before the expected date of offer to the Railways for allotment. The Buyer will be accordingly required to deposit DD/Pay Order along with the debit advice to the tune of BG involved in the programme, within 48 hours of such notice.

In the event of non-deposition of 100% coal value by the Bidder in terms of Clause-6.7 above, the consent given against rake programme will be withdrawn by North Eastern Coalfields and EMD as per e-Auction scheme will be forfeited."

6. From a perusal of the said two Clauses quoted above, it would be seen that in the event of not depositing 100% of the coal value by the bidder, the consent given against the rake program would be withdrawn by the Respondent No.1 and the EMD as per the e-Auction Scheme would be forfeited. These Clauses therefore imposes an obligation upon the successful bidder to deposit the coal value minus the EMD failing which the successful bidder runs a risk of forfeiture of the EMD.

7. Clause 7 relates to the procedure of coal delivery. Taking into consideration that the instant case pertains to delivery by rail, it is pertinent to mention that as per Clause 7.3, procedure for delivery of coal in case of rail borne supplies shall be guided by the seniority list as provided by the service provider based on the buyer's bids. In terms with Clause 7.7, the validity period for seeking allotment of rake in case of rail supplies shall be 45 days from the date of issue of the consent by the Respondent No.1. It is stipulated that once the rake is allotted, it shall remain valid for the supply of coal as per the prevailing railway rules. Clause 8 stipulates the refund of EMD for unsuccessful bidders and it is also mandated that the EMD shall be refunded at the bidders request or if there is no request, then the same would be retained for participation in the e-Auction in future. Clause 9 stipulates the forfeiture of the EMD. A perusal of various Sub-Clauses of Clause 9 and more particularly Clause 9.1 shows that if the successful bidder fails to make payment for the coal value including all other charges within the stipulated time, the proportionate EMD equivalent to the failed quantity shall be forfeited subject to the provisions of Clause 6.4 and/or 6.5 of the Scheme.

8. Clause 10 stipulates when a coal value would be refunded. It is mandated therein that the balance coal value of the unlifted quantity after the expiry of the validity period for the supply of coal and completion of required commercial formalities shall be refunded subject to the forfeiture of EMD if required in terms

with the forfeiture Clause. Clause 11 stipulates the General Terms and Conditions. Pertinent herein to mention that Clause 11.2 stipulates that all terms and conditions of the Scheme are subject to force majeure conditions as applicable. Clause 11.7 stipulates that the quantity mentioned in the notice are only indicative and may undergo a change depending on the factors like actual production of coal, bottlenecks in coal transportation etc. Clause 11.12 mandates that if there is any dispute, the bidder/the buyer is required to represent in writing to the Chief General Manager of the Respondent No.1 who would deal with the same within a period of one month from the said representation and thereafter if required, the matter be determined by the Director of In-Charge of the North East Coalfields. Further to that, the said Clause 11.12 mandates that all disputes arising out of the Scheme or in relation thereto in any form whatsoever shall be dealt exclusively by way of arbitration in terms with Arbitration and Conciliation Act, 1996. If the dispute is with the Coal India Ltd. i.e. the Respondent No.3, the place of arbitration is to be conducted at Calcutta and if the dispute is with the Respondent No.1 the place of arbitration and the nomination of arbitration would be chosen by the Respondent No.1

9. In the backdrop of the above, let this Court therefore take note of the facts involved.

10. The records reveals that the Petitioner No.1 participated in the e-Auction held on 12.03.2013 and 28.06.2013. In the case of the e-Auction held on 12.03.2013, the Petitioner No.1 was one of the successful bidders and was informed to deposit the coal value on or before 20.03.2013. The Petitioner No.1 accordingly deposited the said coal value on 20.03.2023. The validity period for the said e-Auction which was for 45 days ended on 04.05.2013. Admittedly, the said coal could not be delivered to the Petitioner No.1 and it is the case of the Respondents that it was due to heavy rainfall during the month of April, 2013. Under such circumstances, the amount was refunded on or before 21.05.2013 without deduction of any EMD. Similarly, in respect to the e-Auction held on 28.06.2013, the Petitioner No.1 was one of the successful bidders and was directed to deposit the said coal value on or before the 06.07.2013. The Petitioner No.1 accordingly deposited the said amount of the coal value on 06.07.2013. The validity period ended on 20.08.2013. Thereafter as within the validity period, the Respondent Authorities could not deliver the coal, the entire coal value was refunded on 30.08.2013. It is therefore on account of the non-delivery of coal in spite of receipt of a coal value, the Petitioner No.1 has sought for compensation.

11. Before moving forward, this Court also finds it relevant to take note of that as regards the other Petitioners who have not been allotted coal in spite of the deposit of the coal value, it has been averred in the affidavit-in-opposition supported by the documents enclosed therewith that the said Petitioners have sought for adjustment. This Court also finds it relevant to take note of that there is no affidavit-in-reply filed by the Petitioner to the affidavit-in-opposition filed by

the Respondents.

12. This Court had duly heard the learned counsels for the parties and has also taken note of the pleadings and the documents on record.

13. There is no denial to the fact that the Petitioner No.1 was one of the successful bidders in respect to the e-Auction held on 12.03.2013 and 28.06.2013. There is also no denial to the fact that the Petitioner No.1 duly deposited the coal value within the time stipulated and it is an admitted fact that the Petitioner No.1 was not delivered the coal for which the coal value was refunded after the validity period was over. This Court cannot also be unmindful of the fact that it is the specific case of the Respondents that the coal could not be delivered on account of force majeure conditions which was due to incessant rainfall during that period and consequently, the production of coal going down. It is also pertinent to mention that there is no reply filed to the said affidavit-in-opposition denying the contents or explaining anything.

14. Now the question arises as to whether the Respondents can be saddled with the liability to pay compensation @ Rs.500/- per metric tonne of the allotted quantity as claimed by the Petitioners and more particularly the Petitioner No.1 as compensation. It is the opinion of this Court that as the Scheme in question did not specify any amount in the form of compensation, if the Respondent Authorities failed to deliver the coal then in such circumstances, in terms with Section 73 of the Indian Contract Act, 1872, the compensation can only be paid on the basis of loss sustained. However, for the purpose of ascertaining the said, as to how much loss was sustained on account of the breach so committed by the Respondent Authorities, the proper proceedings would have been as mandated under Clause 11.12 of the Scheme i.e. by taking recourse to the Arbitration and Conciliation Act, 1996. Under such circumstances, this Court is of the opinion that the question of granting any compensation that too to the tune of @ Rs.500/- per metric tonne for the undelivered coal for which the Petitioner No.1 claims that it had suffered loss cannot be granted by way of the instant proceedings.

15. Adding to the above, this Court also finds it relevant to observe that the Respondents have taken specific plea that on account of impossibility which was due to reasons beyond its control, the delivery could not be effected. This aspect of the matter has also not been denied by the Petitioners by filing any rejoinder. Under such circumstances, the question of payment of compensation @ Rs.500/- per metric tonne or such other amount on account of non-delivery of the allotted quantity cannot be granted by this Court

16. Moving forward, the next question arises as to whether the Petitioners herein would be entitled to interest on the amount of the coal value deposited for the period from the date of deposit till the date of refund. This Court had duly perused the Scheme which does not forbid the payment of interest on the refund of the coal value. On the other hand, a perusal of Clause 2.4 shows that the EMD

so deposited would be interest free and the EMD would be refunded at the request or retained against future auctions. Further to that, it is also seen from the Scheme that once the intimation is given about the result of the e-Auction, the coal value has to be deposited within a period of 7 (seven) days and in doing so, the EMD shall be adjusted against the coal value. It is also seen from the Scheme that non-deposit of the coal value within the 7 (seven) days would entail serious consequences of forfeiture of EMD to the extent of unlifted quantity. Under such circumstances, the Petitioner No.1 herein was under compulsion to make the coal value deposit within the stipulated time.

17. Though as held above, the Petitioner No.1 would not be entitled to the compensation in the instant proceedings for the purpose of non-delivery of the coal @ Rs.500/- per MT of undelivered coal as claimed but it is also the opinion of this Court that the Petitioner would be entitled to interest from the date of deposit of the coal value till the date of refund. It is the further opinion this court that taking into account that these were commercial transactions, the Petitioner No.1 would be entitled to interest @ 7.5% per annum on the coal value deposits made in respect to the e-Auction dated 12.03.2013 and 28.06.2013 from the date of deposits till the date of refund. It is also made clear that taking into account that the EMD is interest free, the entitlement of the Petitioner to the interest would be only on the amount i.e. so much of the coal value deposited after the issuance of the sale letters. The Respondents more particularly the Respondent No.1 shall disburse the said amount to the Petitioner No.1 within 6 (six) weeks from the date of submission of the certified copy of the instant judgment to the Respondent No.2.

18. With above observations and directions, the instant writ petition stands disposed of.