(2018) 02 P&H CK 0001

In the Punjab And Haryana At Chandigarh

Case No : 24283 of 2017

M/s Hornbill Consultants — APPELLANT

Vs

State of Punjab and others — RESPONDENT

Date of Decision : 16-02-2018

Acts Referred:

Citation : (2018) 02 P&H CK 0001

Hon'ble Judges : S.J. Vazifdar, Avneesh Jhingan

Bench : Division Bench

Advocate : Gurminder Singh, H.S. Deol, P.S. Bajwa

Final Decision : Disposed off

Judgement

1. The petitioner is a sole proprietory concern of one Dilawar Singh Sandhu. Respondent Nos.2, 3 and 4 are the Director Mining, the State

Geologist and the General Manager-cum-Mining Officer of the District Industries Centre, Amritsar, Punjab.

2. The petitioner originally sought a writ of certiorari to quash an order dated 03.10.2017 and a consequent order dated 10.10.2017 rejecting their

representation made pursuant to an order of this Court 25.09.2017 in CWP No.21865 of 2017, forfeiting the earnest money and cancelling a

provisional acceptance granted to the petitioner with respect to the Rurewala Mine, District Amritsar. The petitioner has also sought a writ of

certiorari to quash a letter dated 20.09.2017 informing it that on account of non deposit of the first instalment and the security amount within the

stipulated time approval had not been granted to the petitioner. The petitioner has further sought a writ of mandamus directing respondent No.2 to

grant it approval with respect to mining the Rurewala Mine. Lastly, the petitioner has sought a writ of mandamus directing the respondents to

refund the earnest money and security deposited by it in case the approval to mine the said mine is denied. The main prayer, therefore, is to

enforce the petitioner''s right to carry on mining operations. The refund was sought in the alternative. Today, however, the petitioner has

abandoned his claim to carry on the mining operations and has only sought the refund of the earnest money and the security deposit deposited by

him with the respondents.

3. An e-auction notice dated 13.06.2017 was issued in respect of certain mines. The petitioner submitted a bid for the Rurewala Mine. The

auction was held on 05.07.2017. The petitioner''s bid of about Rs.1.85 crores being the highest was accepted and the petitioner was informed

about the same by the respondents'' letter dated 06.07.2017. Clauses 6, 7, 24 and 25 of the e-auction notice are relevant and read as under:-

6. The prospective bidder shall deposit the Earnest money, processing fee through a designated bank account which should be in his name (or

Company/firm). The detail of this designated bank account should be as per the performa given at Annexure-A of this notice and should be

uploaded on the e-procurement website. In case, the detail is not uploaded as per Annexure-A or prospective bidder uploads the detail without

bank attestation or without his signatures, then he will not be allowed to participate in the e-auction.

7. If prospective bidder deposits EMD, processing fee from the bank accounts other than his designated bank account, then he will not be allowed

to participate in the e-auction. After completion of e-auction, the payment of 1st installment and security amount should be paid by the successful

bidder only through this designated bank account and he will not be able to deposit the amount from any other bank account.

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24. The provisional acceptance shall be issued by the Government in the name of the successful bidder within 2 days. In the case of contracts

where the annual amount of contract money is not more than Rs.10,00,000/- the entire balance amount for the first year shall be deposited by the

contractor within two working days of issue of provisional acceptance of bid. In the case of contracts where the annual contract amount exceeds

Rs. 10,00,000/- the Contractor shall deposit 25% as first installment within two days from the date of issuance of provisional acceptance in the

bank account of concerned mining officer. If the successful bidder does not deposit the requisite amount within the stipulated time (within two days,

upto 5:00 PM after issuance of provisional acceptance) then the earnest money deposited by him will be forfeited.

25. The successful bidder shall deposit security amount @ 25% of the annual contract amount along with quarterly compensation of land owner

shown in column No. 9 of the table of mines as security in the Axis bank account of concerned mining officer along with the contract amount

instalment. In case the successful bidders fails to deposit this amount (within 2 days, upto 5.00 pm after issuance of provisional acceptance) the

Earnest money deposited shall be forfeited. The Mining officer shall deposit above stated contract amount and security in the district treasury.

4. There is no dispute that the petitioner deposited the amounts beyond the stipulated period, albeit by a delay of only one day. The petitioner''s

case, however, is that he was not responsible for the delay in any manner whatsoever and that the delay was on account of the difficulties faced by

his banker. The facts relied upon by the petitioner in this regard are as follows. The provisional acceptance was issued on 05.07.2017 and under

the terms and conditions the amounts were to be deposited by 5. 00 P.M. on 10.07.2017 (the weekend had intervened as a result whereof the

stipulated period of two days was extended up to 10.07.2017). The amounts were to be deposited in a designated account of the respondents at

the Axis Bank. This was notified by a corrigendum dated 15.06.2017. The details regarding the account were also sent through the provisional

acceptance dated 05.07.2017. Two separate transactions of Rs.28.75 lakhs and Rs.9.60 lakhs were to be executed by way of transfers into the

designated bank account of the petitioner from his other account. However, due to server problems in his bank, the transfers could not take place.

The transfers could not take place even on 08.07.2017 and 09.07.2017 as the banks were closed on account of 8th July, 2017 being a second

Saturday of the month and 09.07.2017 being a Sunday. The last date for deposit was 10.07.2017. On 10.07.2017, the said amounts of Rs.28.75

lakhs and Rs.9.60 lakhs were credited into the petitioner''s account at 3.40 P.M. and 4.20 P.M., respectively. The cut off time for RTGS transfers was 3.30 P.M. and for NEFT was 4.30 P.M. Thus, the amounts could not be transferred to the respondents'' designated account by 5.00 P.M.

on 10.07.2017. The petitioner took permission on the telephone from the office of respondent No.2 for depositing the amounts by a demand draft.

Accordingly, a demand draft of Rs.68,46,002/- was obtained by the petitioner in favour of the respondent concerned. The petitioner''s bank has

confirmed that the difficulty was on its part and not on the petitioner''s part. This was recorded by the petitioner''s e-mail dated 10.07.2017. The

petitioner took the demand draft to respondent No.2 on 10.07.2017 but beyond the office hours. He, therefore, took it again to the respondents

on 11.07.2017. The respondents retained the demand draft for three months.

5. By the impugned order dated 03.10.2017, the Director Mining held that the timeline was known to the parties well in advance and they ought,

therefore, to have made arrangements for payment in advance. It was further held that the technical issues were faced by the petitioner at his end.

There was no default on the part of the respondents. The respondents are not concerned with the same. The Director Mining, therefore, forfeited

the said amount as per condition Nos.24 and 25.

6. If the facts, as stated by the petitioner, are true, this is an unfortunate case for the petitioner as well as for the respondents. We are informed

that, upon termination of the contract, the respondents re-auctioned the mine and have suffered an enormous loss. The bids at the re-auction

resulted in a loss of about Rs.10 crores which would include interest on the royalty paid per annum. The petitioner had bid an amount of about

Rs.1.85 crores per annum, whereas, on re-auction the respondents have received a bid of only Rs.45 lakhs per annum. On taking instructions, Mr.

Gurminder Singh, the learned senior counsel appearing on behalf of the petitioner, stated that the petitioner was no longer interested in carrying out

the mining operations. This is obviously on account of the bid being much less today. Even if, it is ultimately held that the petitioner was not at fault,

the petitioner has saved himself from a huge loss on account of the reduced value of the mining rights.

7. There are several aspects which require further consideration. The respondents would, for instance, have to ascertain as to why and in what

circumstances they took the decision to reject the offer to deposit the amount assuming that the same was tendered on 10.07.2017 itself. The

respondents have themselves suffered a huge loss. Granting the petitioner the relief claimed would pre-judge the respondents'' claim to damages if

made. The respondents were admittedly not to blame for the delay. The petitioner''s difficulties were on account of his bank''s difficulties. The

contractual rights would have to be ascertained and adjudicated upon keeping these and several other factors in mind. We are, therefore, of the

opinion that the petitioner must be relegated to appropriate proceedings for the recovery of these amounts.

8. The petition is, therefore, disposed of with liberty to the petitioner to file a suit or take any other appropriate action for recovery of the amounts.

