(2015) 08 BOM CK 0012

In the Bombay High Court

Case No : Writ Petition No. 1296 of 2015

NG Tarmat Joint Venture and Others — APPELLANT

Vs

Maharashtra Industrial Development Corporation and Others — RESPONDENT

Date of Decision : 04-08-2015

Acts Referred:
Constitution of India, 1950 — Article 226

Citation : (2015) 08 BOM CK 0012

Hon'ble Judges : M.S. Shah, C.J;A.K. Menon, J

Bench : Division Bench

Advocate : Rohaan Cama and Rahul Jain, i/b RES Legal, for the Appellant; Shyamali Gadre, instructed by Little and Co., Advocates for the Respondent

Final Decision : Dismissed

Judgement

A.K. Menon, J—This writ petition seeks inter alia a mandamus writ directing respondent no. 1 Maharashtra Industrial Development Corporation (MIDC) to treat the petitioner''s bid as valid and duly qualified at the technical stage, to open the financial bid of the petitioner and if found eligible, award the road widening contract to the petitioner. In the interregnum the petitioner seeks a direction that the MIDC shall not award the tender to any other party.

2. The facts in brief are as follows :

Petitioner no. 1 is a Joint Venture firm consisting of NG Projects Ltd. and Tarmat Ltd. MIDC has vide their tender notice No. ETN No. 07 for 2014-15 dated 8 September 2014 invited bids for the DG Tarapur Industrial Area for widening of the Chillar- Boisar approach road into a four lane road. The petitioner''s bid was disqualified. According to the petitioner MIDC has arbitrarily sought to impose conditions which do not form part of the tender document and has thereby disqualified the petitioner based on non existing terms. According to the petitioner the terms and conditions forming part of the notice inviting tenders, general condition no. 1.4 and paragraph 1 of Annexure ''A'', mentions as follows :

"The lead partner of JV should have contractor registration in appropriate class as mentioned in NIT. Other partner/partners of JV shall also have registration, however, their share shall be limited upto the class of registration". According to the petitioner only the lead partner needs to have registration in the classes and departments mentioned in the NIT.

3. It is also the petitioner''s case that at some earlier point of time, in February 2014, a similar tender had been floated and the terms and conditions of the said 2014 tender were identical to the present tender. NG Projects had submitted its bid dated 21 March 2014 in response to said 2014 tender but it was disqualified on the basis that it does not have registration as contemplated in the NIT. Subsequently, the entire tender came to be recalled and as a result NG Projects was not required to pursue the same. The present tender is consequence of the aforesaid recall. The petitioner''s lead partner is admittedly Tarmat Ltd. the main contractor what is stated to be registered with Military Engineer Services (MES) and other partner NG Projects claims to hold registration with other States though not with the authorities notified in the NIT.

4. The petitioner submitted its bid on 22 October 2014 and made the payments required including earnest money deposit and security deposit as specified in the tender. On the same date a meeting is said to have been held at the office of respondent no. 3 - the Superintending Engineer wherein other bidders representatives were also present. At the meeting the officials scrutinised the documents of all bidders. Unfortunately the MIDC portal was not working properly and its officials were unable to operate the same without the support of technical team on 22 October 2014. In view of the ensuing holidays it was decided in the presence of all bidders that the bid should be opened on 27 October 2014. On 27 October 2014 after scrutiny MIDC informed the petitioner that it had not qualified on the ground of not having required registration. It was orally conveyed to the petitioner that NG Projects Ltd. one of the joint venture Partners does not have the necessary registration and hence the petitioner''s bid was disqualified. In addition to the petitioner, one other bidder was also disqualified. The petitioner has therefore approached this court challenging the action of the respondent in disqualifying the petitioner for the aforesaid reasons.

5. In an affidavit in reply on behalf of the MIDC, Mr. Ramakant, Panditrao Superintendent Engineer has contended that the process of tendering is an E-tendering process by which online forms are submitted. All the technical criteria as well as financial criteria are to be submitted online. However, at the time of opening of ''first envelope'' online the lead partner Tarmat Ltd. did not provide Form-F which was a basic qualifying criteria. It is contended that all partners of the J. V. must also have registration with bodies referred in the NIT and it is mandatory that all partners of the J.V. should ensure that other partner is duly qualified. It is further contended that scrutiny of the first envelope started on 22 October 2014 from 2 pm and continued till 11.30 pm however, there was a technical problem during the process and the MIDC could not resolve the

technical issues as a result of ensuing Diwali holidays and it was decided that tendering process would continue after Diwali holidays i.e. on 27 October 2014. All bidders were made aware of this and all agreed to attend to the completion of the process on 27 October 2014. The deponent has annexed to the affidavit confirmation of all bidders that they would attend bid opening on 27.10.2014. It has also annexed circular of 21 January 2014 which deals with post qualification of contractors and opening of tender, modification. On 27 October 2014 petitioner''s technical bid was scrutinised and it was informed that it is not eligible since the lead partner and joint venture did not possess necessary registration. The clause relating to the requirement of registration reads as follows :

"Joint Venture or Association of two or more contractors will be allowed. The joint venture shall be allowed for Plant and machinery and/or work experience. The lead partner of JV should have contractor registration in appropriate class as mentioned in NIT. Other partner/partners shall also have registration however their share shall be limited up to the class of registration."

6. Petitioner no. 2 has filed an affidavit in rejoinder. In paragraph 4 it is contended that both joint venture partners had not provided Form F and as such the petitioner does not qualify to be an eligible bidder. According to him the only eligibility criteria required was that of the lead partner Tarmat Ltd. needed to have registration with the specified agencies, in this case, the Military Engineering Services. According to the petitioner the other joint venture partner NG Projects Ltd. need not have same registration since it was registered with Class AA of PWD, Rajasthan State, Class AA of R&B Gujarat State and Class Road CAT-I of R&B, Gujarat State. According to the petitioner on 22 October 2014 the respondent MIDC had gone through all documents from 2 pm to 11 pm and disqualified one of the bidder and due to technical glitch all the qualified bidders were required postponement of plans and opening of official bids. The petitioner was not so disqualified.

7. In the order dated 19 December 2015, this Court expressed a prima facie, view finding substance in the petitioner''s contention that only the lead partner was required to submit attested copy of valid registration certificate in appropriate class issued by PWD (Government of Maharashtra) CIDCO etc. and that the other JV partner is required to submit valid registration certificate but not necessarily for PWD (Government of Maharashtra) etc. After expressing the above view, the Court directed respondent Corporation by the said interim order dated 19 December 2014 to open the price bids of all the parties including the petitioner but not to take any decision in the matter.

8. Subsequently, an affidavit in sur-rejoinder of Shri Ramakant Panditrao dated 30 December 2014 has been filed wherein MIDC reiterated that the petitioner did not submit required Form F. This can be seen from the form uploaded which is not of the lead partner Tarmat Ltd. but of NG Projects Ltd. who is admittedly not the lead partner. Another bidder Ravasa and Kalyan Toll Infrastructure Ltd. also a

JV was eligible to work only in State of Madhya Pradesh, hence the said bidder also was disqualified and it had been refunded the amount of earnest money deposit. The affidavit in sur-rejoinder in Exhibit-C colly. is clear evidence of the fact that the due date of the tender was 22.10.2014 and same was opened in or around 22.10.2014 at 2 pm. Form F submitted by the petitioner is clearly that of NG Projects Ltd. As regards the lead partner Tarmat Ltd. no Form F was submitted but apparently, the annual turnover certificate of Tarmat Ltd. was submitted as evidence. In fact from the documents attached to the said form it appears that the first document attached was the Chartered Accountant''s certificate as required by MIDC and the second document was the turnover certificate of Tarmat Ltd.

9. We must point out at this stage that the tender was thus likely to be awarded to one Bitcon India Infrastructure Developers Pvt. Ltd. a qualifying bidder who has intervened in the petition and had filed affidavit in reply pursuant to leave granted by this Court vide order dated 6 January 2005 to which one of us (The Chief Justice) was party. In the said affidavit, the intervenor questioned the locus of the petitioner to maintain petition. The intervenor Bitcon being qualified at the technical bid stage had offered to complete the project at an amount which was lower than the tender value by 16.92%. Despite knowledge that the intervenor would succeed in the bidding process, the petitioner had not joined the intervenor as a party to the petition. The affidavit sets out that the intervenor has successfully bid and would be vitally affected by the outcome of the petition. It is alleged that the lead partner of the petitioner is guilty of suppression of vital facts including the fact that the lead partner had filed an application before the Debt Recovery Tribunal under the SARFAESI Act since they were declared non performing asset by Vijaya Bank.

10. The petitioner has filed an affidavit in rejoinder contending that both partners of the JV fulfilled criteria in their individual capacities. He denied all allegations of Tarmat Ltd. being a wilful defaulter. It is contended that Tarmat Ltd. is in process of restructuring the debt of Vijaya Bank and that Tarmat Ltd. had assets far exceeding the amount of debt claimed. In the rejoinder an affirmative statement was made that Tarmat Ltd. also had submitted Form F. The statement is also couched in the negative by denying the contention of MIDC that Tarmat had not provided Form F.

11. In view of the contention that Form F had been provided by Tarmat and in order to throw light on the controversy of uploading the Form F of lead partner Tarmat Ltd. this Court had vide order dated 5 February 2014 to which one of us (Chief Justice) was a party had directed an expert committee to inspect first respondent''s servers to ascertain whether Form F of Tarmat Ltd. had indeed being uploaded along with the bid document envelope one. Accordingly a committee of three members consisting of Sarvashri Kiran Bobade, Deputy Registrar (IT), Amol Avinashe, Principal System Analyst, NIC-HC and Pradeep Samale was appointed to visit premises of the respondents and inspect servers

and activity log and make a report. In view of the fact the committee was appointed on 5 February 2015, the above petition was mentioned by the counsel for the Petitioner seeking recall of order since admittedly the Form F of the lead partner Tarmat Ltd. was not uploaded on website of MIDC.

12. Mr. Cama, learned counsel appearing on behalf of the petitioner submitted that MIDC had specified the documents which are required to be mandatorily uploaded in the envelope which did not include Form F. He submitted that clause 5 to Annexure A on page 319 only required that the lead partner satisfies the bid capacity requirement as per Form F. It is further submitted that the terms do not require both partners to submit Form F separately. According to Mr. Cama if indeed two Forms F were required to be submitted annexure A of the tender document would have clearly mentioned it. According to Mr. Cama according to the policy followed by the MIDC the parties may be required to furnish hard copies of the document if called upon to do so, for the purpose of clarification and Form F of both JV partners were not required to be submitted online. Mr. Cama then submitted that the petitioner had uploaded all the documents to satisfy bid capacity requirement of the lead partner. He submitted that after submission of all documents of the Petitioner and turnover certificate of the lead partner, the bid document and form relied upon by the Petitioner was marked as verified by MIDC as can be seen from box provided for verification on the first page of the form, a copy of which is annexed to the affidavit of Mr. Ramakant Panditrao of MIDC filed by way of Sur-rejoinder at Exhibit-C.

13. Mr. Cama then submitted that having fully satisfied the requirements including that of the turnover of the lead partner, the details of value of the work in hand as required in form B, bid capacity formula, and all other information required to be entered in Form F were already available with MIDC in different documents provided by the petitioner on behalf of the lead partner. According to Mr. Cama the respondent MIDC therefore had with them all information which was required to satisfy bid capacity and the petitioner was in compliance with the requirements. Mr. Cama therefore submitted that no separate Form F of the lead partner was required to be furnished in respect of the lead partner. According to Mr. Cama particulars provided in diverse documents is sufficient compliance. In other words, Mr. Cama''s submission is that all information required as per format was already available with the respondent MIDC and it was for the respondents to scrutinise the document and get information from the document provided and ensure compliance by Tarmat Ltd.

14. We see this as clear deviation from the requirement of the tender requirement since Annexure A to the bid document mentioned in no uncertain terms as follows :

"5. The financial norms shall have to be satisfied by the lead partner of joint venture firm in respect of bid capacity."

We will deal with this aspect in some more detail hereafter.

15. The learned counsel relied upon judgment of New Horizons Limited and Another Vs. Union of India (UOI) and Others, (1997) 89 CompCas 849 : (1995) 1 SCC 478 : (1994) 5 SCR 310 Supp and in particular the observation in paragraph 23.

"23. It could not be the purport of the requirement about experience that the experience of the company which has merged into the reorganised company cannot be taken into consideration because the tender has not been submitted in its name and has been submitted in the name of the reorganised company which does not have experience in its name.

Conversely there may be a split in a company and persons looking after a particular field of the business of the company form a new company after leaving it. The new company, though having persons with experience in the field, has no experience in its name while the original company having experience in its name lacks persons with experience. The requirement regarding experience does not mean that the offer of the original company must be considered because it has experience in its name though it does not have experienced persons with it and ignore the offer of the new company because it does not have experience in its name though it has persons having experience in the field.

While considering the requirement regarding experience it has to be borne in mind that the said requirement is contained in a document inviting offers for a commercial transaction. The terms and conditions of such a document have to be construed from the standpoint of a prudent businessman. When a businessman enters into a contract whereunder some work is to be performed he seeks to assure himself about the credentials of the person who is to be entrusted with the performance of the work. Such credentials are to be examined from a commercial point of view which means that if the contract is to be entered with a company he will look into the background of the company and the persons who are in control of the same and their capacity to execute the work."

16. He has then relied upon order of the Hon''ble Supreme Court in B.S.N. Joshi and Sons Ltd. Vs. Nair Coal Services Ltd. and Others, AIR 2007 SC 437 : (2006) 2 CTLJ 247 : (2006) 10 JT 131 : (2006) 11 SCALE 526 : (2006) 11 SCC 548 : (2006) 8 SCR 11 Supp and relied upon the observation of the Supreme Court in paragraph 61 and submitted that in case of M/s. Poddar Steel Corporation Vs. M/s. Ganesh Engineering Works and others, AIR 1991 SC 1579 : (1991) 2 ARBLR 94 : (1991) 2 CompLJ 275 : (1991) 2 JT 577 : (1991) 1 SCALE 928 : (1991) 3 SCC 273 : (1991) 2 SCR 696 : (1991) 2 UJ 181 the Supreme Court had observed that requirement of the tender notice can be classified into two categories - those which lay down the essential conditions of eligibility and the others which are merely ancillary or subsidiary with the main object to be achieved by the condition. In the first case the authority issuing the tender may be required to enforce them rigidly. In the other cases it must be open to the authority to deviate from and not insist upon the strict literal compliance with the condition in appropriate cases. He further submitted that on the basis of observations of the

Supreme Court in paragraph 66 (v) that when a decision is taken by the appropriate authority upon due consideration of the tender document submitted by all the tenderers on their own merits and if it is ultimately found that successful bidders had in fact substantially complied with the purport and object for which the essential conditions were laid down, the same may not ordinarily be interfered with. He submitted that in the present case the principle laid down in the earlier decisions of the Supreme Court were summarised in B.S.N. Joshi (supra) and in the present case there is substantial compliance with the purport and object of the essential conditions.

17. Mr. Cama further drew our attention to the observation in the judgments of the Supreme Court that when huge public money is involved, a public sector undertaking, keeping in view of the principles of good corporate governance, may accept such tenders that are economically beneficial to it. It may be true that essential terms of the contract were required to be fulfilled, but in cases where same conditions were not essential the power of relaxation must be exercised in favour of the applicant. He, therefore, exhorted us to invoke these powers of relaxation and decide the matter in favour of the petitioner.

18. Mr. Cama then relied upon the decision of the Division Bench in A 2 Z Maintenance and Engineering Services Ltd. Vs. Maharashtra State Electricity Distribution Company Ltd. and Anr. 2010 (5) Mh.L.J. 794 and relied upon paragraph 34 and 36 to which this Court relied upon the observations in B.S.N. Joshi (supra). In this manner Mr. Cama submitted that bid qualification criteria had been complied with by the petitioner.

19. On behalf of MIDC Ms. Gadre submitted that the tender notice clearly specified that in case of a joint venture it is necessary that two or more contractors may combine for a tender work provided that they drew up a joint venture constituting MoU and submitted it alongwith the document termed as "Form PQ". It was incumbent upon the petitioner to provide the formats for both partners and admittedly not having provided format in respect of Tarmat Ltd., the criteria has not been met. She further submitted that in detailed tender notice, it is specified that although Form F does not form part of list of documents required to be uploaded, the tender conditions provide and specifies that envelope no. 1 must contain PQ form and Form F itself is embodied in Form PQ. Thus, according to Ms. Gadre the respondent has admittedly failed to comply and has merely furnish bid capacity formula and submitted that all information is available in diverse documents filed with MIDC. According to Ms. Gadre this is not sufficient compliance with Pre-qualification criteria in the tender and as such the bid of the petitioner was rightly disqualified.

20. Mr. Kamdar, the learned senior counsel on behalf of the intervenor submitted that entire exercise of the petitioner was dishonest. According to him post qualification of the contractors and opening of tender was subject to circular no. 6 of 2014 of MIDC and said circular issued modified guidelines of pre-qualified contractors. He referred to applicability of pre-qualification provided in the said

circular and further submitted that in clause 3 of the circular beneficial norms has been provided thereby the turnover and bid capacity had to be got certified by the Chartered Accountant and in case the details are found to be misleading or fake, action could be taken against the Chartered Accountant by informing the Institute of Chartered Accountants.

21. According to Mr. Kamdar a modified Form PQ was enclosed in format PQ and in accordance with this modified Form PQ the petitioner was bound to provide Form F as part of form PQ and for both JV partners. He further submitted that Form F of the NG Projects Ltd. which was uploaded did not bear the signature of NG Projects Ltd. but merely the signature of the Chartered Accountant. This can be verified from Form F which appears at Page 335 of the compilation. The contents of the form read as follows :

FORM F FINANCIAL STATEMENT

22. It seems that information required in column 2 as to turnover was provided in a certificate issued by Hegde Associates, Chartered Accountant (see page 379). This is not signed by Tarmat Ltd. Thus, according to Mr. Kamdar even these basic requirements have not been complied with although it was mandatory that Form F be provided by lead partner of the JV. Further from page 366 it can be seen that only the Form F submitted by NG Projects Ltd. Furthermore, he submitted that Tarmat Ltd. The petitioner did not provide form F of the lead partner deliberately, in view of the precarious financial condition the lead partner Tarmat Ltd. it was evident from the fact that the Vijaya Bank had already declared Tarmat Ltd. as a non performing asset. He referred to the application before Debt Recovery Tribunal at Mumbai under SARFAESI and submitted that even the lead partner has failed to comply with the requirements. The turnover certificate of M/s. Tarmat Ltd. was deliberately not provided and what was provided was undated certificate of a Chartered Accountant. The copy of which appears at page 378 which form part of Exhibit-K. However, even this certificate was invalid inasmuch as this certificate was not submitted online.

23. Mr. Kamdar further submitted that even as far back details of progress are concerned, the statement of Tarmat of the petitioner which arbitrarily discloses 9 items with varying entitlements in terms of percentage. The entitlement of JV partners is not signed by the Chartered Accountant. The fact remains that the express provisions of the qualification format had not been complied with.

24. Having considered various aspects we are of the view that the facts of the case do not call for any interference under Article 226 of the Constitution of India. The petitioners were aware of the pre-qualification requirement of the bids and are seen to have indulged in skirting various requirements. The petitioner initially insisted that they had submitted their bid on 22 October 2014 alongwith all requisite annexures including Form F of both partners. This is seen from the affidavit of Mr. Prakash Shah in rejoinder dated 12 December 2014 wherein in paragraph 4, he states as follows :

"4. The Respondent has alleged that while opening the bid document, the lead partner of the Petitioner has not provided F-Form and as such Petitioner does not qualify to be an eligible bidder. I submit that the said allegation is frivolous and baseless, as a mere perusal of Exhibit-J at page 366 of the petition read with Exhibit-K at page 378-380 would clearly show that both the partners of the Joint Venture had submitted the said F-Form."

25. Thus, there an unequivocal statement that the lead partner for the petitioner Tarmat Ltd. had also provided Form-F as it now appears, is not a correct statement since after this Court appointed the committee to verify MIDC website to ascertain whether such form has been uploaded, the petitioner itself having realised significance of the exercise, admitted that Form F of Tarmat Ltd. was not so uploaded.

26. We must notice here that we are not impressed by Mr. Cama''s submission that Form F does not have to be furnished by both the partners and that providing Form F by one of JV partners is sufficient compliance. The contractor was bound to supply Form F of the lead partner, viz. Tarmat Ltd. Admittedly, this has not been done. Form F uploaded was that of NG Projects Ltd. which unfortunately lacked registration required with specified agencies. Tarmat Ltd. on the other hand was qualified as far as registration is concerned being registered with Military Engineer Services but Tarmat did not file Form F. The petitioner has proceeded on the basis that Form F of the lead partner was not required and the turnover certificate is sufficient. A reference to the contract, however, reveals that particulars of financial standing were to be provided for the lead partner as per Form F. Form F forms part of PQ format. Clause 1 (iii) of Form PQ provides as follows :

"1(iii) The main contractor shall furnish the notarised joint venture MoU along with other joint venture partner on Rs. 100 stamp paper along with PQ form in envelope No. 1 only without which they shall not be qualified."

Some of the other provisions of the tender document which are of relevance are reproduced below :

"FORM GENERAL 1.4

Clause, Condition and MOU for Joint Venture for works costing more than Rs. 300 Lakhs

Joint venture of Association of two or more contractors will be allowed. The Joint Venture shall be allowed for Plant and machinery and /or work experience. The lead partner of JV should have contractor registration in appropriate class as mentioned in NIT. Other partner/partners of JV shall also have registration; however, their share shall be limited upto the class of registration.

It should be noted that an agency shall be allowed to quote individually as well as in associations/JV. The post qualification of the agency will be decided as per norms mentioned in PQ form. The main contractor shall furnish the notarized joint venture MoU along with other joint venture partner on Rs. 100 stamp paper along with PQ form in envelope No. 1 only. Each joint venture partner is requested to give an undertaking on stamp paper of Rs. 100/- stating that he will make him as a joint venture along with main contractor only for this work and further he cannot make a joint venture partnership with other contractor/firm for this work. It is obligatory that the main contractor in the joint venture gets post qualified individually for financial criteria as per the norms of MIDC.

(emphasis supplied)

Annexure - A to the said Form General 1.4 (pg 318 of the paperbook) reads as under:

"Annexure A

Annexure ''A'' Joint Venture for works costing more than 300 Lakhs

1 (i)........

(ii).........

(iii) The main contractor shall furnish the notarised joint venture MoU along with other joint venture partner on Rs. 100 stamp paper along with PQ form in envelope No. 1 only without which they shall not be qualified.

(2) ....

(3) ....

(4) The information pertaining to class of Registration, Work experience and/or Plant & Machinery of JV partner in the respective forms duly signed by the Partner shall be submitted with the tender in envelope No. 1.

(5) The financial norms shall have to be satisfied by the lead partner of joint venture firm in respect of bid capacity as per Form ''F''."

27. Furthermore, at page 4 of the Detailed Tender Notice, item (iii) in the index to the tender document contains a note which reads as follows :

"1. Important Note : The information regarding the tender & PQ form (if applicable) & the facility to download it, will be available on MIDC E- tendering portal on website wwwmidcindia.org. The download & duly completed tender form shall be submitted (by eligible contractors only) without making any change in the script of tender document. If after submission of tender, it is noticed that the tender script is modified in any manner whatsoever, the tender will be summarily rejected. Contractors may upload their queries before expiry of query period. The replies to the queries received before the due date, will be published on the website which should be downloaded by the tenderer. The document of reply to the queries of the contractor will form part & parcel of the tender document & the clarifications given in the document will supercede the provisions of the tender. After the tender is accepted & offer letter is issued to the contractor, agreement shall be executed with the contractor on the tender copy prepared/printed by MIDC."

Although Mr. Cama has contended that the requirement of submitting Form-F for both JV partners is not specified in the list of documents to be uploaded along with envelope no. 1, it is evident that item (5) of the said list of documents contemplates issuance of PQ form duly completed and the note forming part of the detailed tender notice specifies that PQ form if applicable is to be provided. This provision is to be read with the Circular No. R- 6/2014 dated 23 January 2014 clearly sets out requirements and applicability of Form PQ in the clause 3 setting out financial norms which reads as follows :

"3. Financial Norms :

As per the previous practice the financial status such as Bid Capacity, Annual Turnover, Quick Ratio, Current Ratio, Net profit ratio. Net worth etc are verified. In some cases, the contractors meet Turnover, Bid capacity as well as technical competency, but do not meet any of the above ratios. In such cases either the proposals were processed for relaxation of financial/technical criteria of the tenderer was disqualified. This caused delay in decision of finalization of Post qualification, acceptance, rejection or re-invitation of tender.

In order to simplify the evaluation, only the details of Bid capacity to access the financial soundness of the contractor is to be demanded. The turnover and bid capacity has to be got certified from the Chartered Accountant (CA). In case these details are found misleading or fake, the action to intimate the name of CA to the Institute of Chartered Accountants of India for appropriate punitive action shall be initiated.

Modified Form ''F'' is enclosed in PQ Form."

(emphasis supplied)

28. We may also note that under Form General 1.3 appearing at page 325 of the petition, item 6 of the summary sheets read as under Page 326 :

If is therefore clear that post qualification of the joint venture for works costing more than Rs. 300 lakhs requires annual turnover to be certified by the Chartered Accountant vide Form-F. In the circumstances the contention of the petitioner that Form-F was required to be submitted by both JV partners cannot be accepted.

29. It is, therefore, clear from the aforesaid that the main contractor was found liable to provide the format PQ which includes Form F, in this case the main contractor was Tarmat Ltd. which did not comply with Form PQ. Even assuming that Mr. Cama is right in his submission that the terms did not require second partner to submit Form F but merely provide the financial particulars, even the requirement has not been properly complied with. The particulars required in Form F which form is said to have been furnished giving its financial details was

not uploaded online as required. The form appears at page 378. The financial statement as per format Form F of Tarmat Ltd. was not uploaded. Furthermore, the financial particulars of NG Projects Ltd. in Form F appearing at page 380 of the petition has not been signed by NG Projects Ltd.

30. There are far too many instances of non compliance in the petitioner''s case. The petitioner has also not been entirely honest in its contentions. Despite positive assertions on oath that Form F of Tarmat Ltd. had been uploaded when faced with the prospects of scrutiny of the MIDC website and anticipating a finding against it, the petitioner has backtracked and admitted that the form has not been uploaded. Even otherwise we are not satisfied with the petitioner''s contentions. This is not a case where it calls for interference under Article 226 and we are not persuaded to exercise our discretion in favour of the petitioner much less relax any conditions required to be complied with. and hence we pass the following order :

(a) The writ petition is dismissed.

(b) All interim orders stand vacated.

(c) No order as to costs.

After the judgment is pronounced, the learned counsel for the petitioners prays for extension of the ad-interim injunction granted earlier for sometime.

In the facts and circumstances we do not find any justification to continue the ad-interim injunction. The prayer is rejected.

