(2016) 07 DEL CK 0175

In the Delhi High Court

Case No : O.M.P. (I) (COMM) 299 of 2016

Rahee Infra Tech Limited APPELLANT

Vs

GMR Infrastructure Limited RESPONDENT

Date of Decision : 23-07-2016

Acts Referred:
Constitution of India, 1950 — Article 226

Citation : (2016) 232 DLT 7

Hon'ble Judges : Manmohan Singh, J.

Bench : Single Bench

Advocate : Mr. Dayan Krishnan, Senior Advocate with Mr. Nishant Das and Ms. Vishakha Gupta, Advocates, for the Petitioner; None, for the Respondent

Final Decision : Disposed Off

Judgement

Manmohan Singh, J.(Oral)—By order dated 18th July, 2016 notice was issued to the respondent. Since learned Senior counsel for the petitioner pressed for an ex-parte ad-interim order therefore after hearing and considering the documents, the same was granted. On that date in view of the busy schedule, the detailed order could not be passed. The same is being passed today.

2. The brief facts are that on 3rd October, 2015 the respondent company issued a tender notice inviting bids for construction of Yamuna Bridge in New Karchana Station to New Bhaupur Station of Eastern Dedicated Freight Corridor project package 201 and package 202 in the State of Uttar Pradesh, India. On 19th October, 2015 the petitioner company made a bid in terms of the Tender Notice and deposited earnest money deposit by Bank Guarantee No.0115415IFG000126. On 9th December, 2015, the respondent issued the Letter of Intent, communicating their acceptance of the petitioner company bid. On 31st December, 2015, the petitioner mobilised their personnel at the project site and communicated the said fact vide email dated 31st December, 2015. The petitioner submitted additional details of bridge works executed by the petitioner company to the respondent company by email dated 1st January, 2016.

3. On 11th January, 2016, the respondent company thereafter issued a Letter of Award. On 14th January, 2016, the respondent company requested the petitioner company for additional details of the works executed by the petitioner company similar to the work awarded. The petitioner company responded to the respondent''s email by email dated 14th January, 2016. Petitioner by email dated 15th January, 2016 mentioned that the Annexures in the Letter of Award dated 15th January, 2016 were not attached. On 19th January, 2016 the petitioner Company furnished Performance Bank Guarantee bearing no. 0115416IPG000006\\dated 19th January, 2016 for a sum of Rs.3,12,50,150/-. On 21st January, 2016, the respondent company issued another Letter of Award along with the Annexures. On 25th January, 2016, the petitioner company by letter dated 25th January, 2016 furnished six advance bank guarantees for a sum of Rs.3,12,50,150/- in terms of the Letter of Award. On 1st February, 2016, the petitioner company informed the respondent company that they were in the process of mobilising Resources. On 27th February, 2016, the petitioner informed the respondent that they had already mobilised staff, manpower material, crane and other equipment. On 1st June, 2016, the petitioner again informed the respondent about the same. On 15th June, 2016, the respondent sent letter dated 15th June, 2016 terminating the Letter of Award dated 21st January, 2016. On 1st July, 2016, the petitioner company responded to the letter of termination dated 15th June, 2016. On 6th July, 2016, the respondent company responded to the letter dated 1st July, 2016 of the petitioner company. On 11th July, 2016, the petitioner company wrote another letter submitting a statement of accounts indicating an expenditure of Rs.3,02,29,830/- and sought 7 days time to collect and compile further documents.

4. Counsel for the petitioner states that petitioner company apprehends that the respondent company shall invoke the Mobilization Advance Bank Guarantees equivalent to an amount of Rs. 3,12,50,150/- collectively and also the Performance Bank Guarantee of sum of Rs. 3,12,50,150/-.

5. The argument of the learned counsel for the petitioner is that the action of the respondent company to invoke the bank guarantee would tantamount to a egregious fraud played upon the petitioner as the petitioner was unable to perform its obligations of executing the construction works at the project site due to failure of the respondent company to take the approval from DFCCIL (Employer) of the petitioner company as sub-contractor despite of having the knowledge that it is a prerequisite qualification of a sub-contractor for the project. He further argued that in case the letter dated 15th June, 2016 is read, it indicates that there is no failure on the part of the respondent company in performing its obligations in terms of the letter of award dated 21st January, 2016. Even in the letter dated 15th June, 2016 whereby the respondent terminated the letter of award dated 21st January, 2016, the respondent has admitted that employer did not grant the approval about the petitioner company as a sub-contractor. The contents of the said letter are reproduced as under:

"Your attention is drawn to the submission of your credentials to our Employer and the Employer?s refusal to approve you as Subcontractor for the Subject works. Hence under clause 21.4 of above LOA we are hereby terminating the LOA of work (construction of Yamuna Bridge).

You will be eligible for payment as per clause 21.5 of the LOA, on submission of details of works completed till date.

You are hereby advised to return the mobilisation advance paid to you and collect the bank guarantees submitted by you, immediately.

Please confirm receipt of this letter and confirm action taken in this regard."

6. Counsel for the petitioner submits that despite of prerequisite qualification, the respondent time and again did not attach the said document in order to show that the approval from the employer i.e. DFCCIL was required and the petitioner was kept in dark in this regard despite of the fact that the petitioner is spending huge amount in the project. The said approval was prerequisite qualification at the time of letter of award. However, despite of refusal by the employer, the respondent is trying to fasten all liabilities to the petitioner without any valid reason and it was also informed that after termination the same work of the employer is under process by the third party.

7. Learned Senior counsel states that as far as petitioner is concerned, the petitioner took all the steps as per the letter of award but it is the respondent who has played fraud upon the petitioner and did not comply with the terms of the letter of award dated 21st January, 2016.

8. Without expressing any opinion on merit at this stage, prima facie this Court finds that it is a fit case where the petitioner is entitled for ex-parte ad-interim order in view of the averments made in the petition and documents placed on record. Under these circumstances, this Court has already passed the interim order dated 18th July, 2016.

9. List the matter on 8th August, 2016, the date already fixed.

