(2013) 11 KAR CK 0027

In the Karnataka High Court

Case No : Writ Petition No. 27487 of 2012 (GM-RES)

Sical Iron Ore Terminal (Mangalore) Limited APPELLANT

Vs

Board of Trustees for the New Mangalore Port Trust RESPONDENT

Date of Decision : 26-11-2013

Acts Referred:

Citation : (2013) 11 KAR CK 0027

Hon'ble Judges : A.N. Venugopala Gowda, J

Bench : Single Bench

Advocate : Amarchand, for the Appellant; R. Subramanya, for M/s. Ashok Haranahalli Associates, for the Respondent

Judgement

A.N. Venugopala Gowda, J.—Respondent invited applications, on 08.09.2005, from interested parties, in accordance with the Request for Qualification, to shortlist competent parties to bid for setting up of mechanized iron ore handling facilities at New Mangalore Port, on build, operate and transfer basis, through private sector participation. In response to the said invitation, the petitioner submitted its application. Respondent having evaluated the proposals, on 23.09.2009, accepted the bid submitted by the petitioner and communicated its acceptance to the petitioner, by issuing a letter of intent for award. A Concession Agreement was executed on 19.10.2009, in pursuance of the said letter of intent between the petitioner and the respondent. 13.06.2010 was declared as a day of award of Concession Agreement. Petitioner has obtained term loan facilities for a sum of Rs. 2 billion from Yes Bank. On 10.02.2010, petitioner provided a performance bank guarantee, in favour of the respondent for Rs. 138,600,000/-. The bank guarantee having been extended from time to time, was in force till 19.01.2013. The bank guarantee so extended has been subsequently renewed/ extended and is valid up to 19.01.2014. Petitioner sent letters bringing to the notice of the respondent the ban imposed by the Government of Karnataka, which in turn, impaired its ability to perform its obligation under the Concession Agreement. The respondent in turn intimated that the current state of affairs which triggered the force majeure event as provided under 14.3(b) of the Concession Agreement. The petitioner has expressed its financial hardship in proceeding with the project due to the imposition of the ban by the Government of Karnataka.

2. On 16.12.2010, the petitioner sought to be excused under Article 14.8 of the Concession Agreement for a duration till the aforesaid event continues and extension of time under Article 14.9(b) of the Concession Agreement, till resolution of the uncertainty of issue of ban on the export of iron ore. Petitioner expressed its willingness once again to commence the construction and accordingly complete the project with the permission of the respondent in accordance with the terms and conditions of the Concession Agreement.

3. The petitioner served notice on the respondent under Articles 15.3 and 15.4 of the Concession Agreement and the respondent was intimated about the force majeure event as required under Articles 14.1 & 14.3 of the Concession Agreement. According to the petitioner, Nit reiterated its commitment towards the project vide letter dated 18.02.2011. Petitioner has suggested certain alternatives for an amicable settlement in view of the force majeure event having occurred and the consequential delay in implementation of the project. Respondent having acknowledged the alternatives suggested, convened a meeting to arrive at an amicable settlement.

4. The petitioner, apprehending that there may be unilateral decision by the respondent to terminate the Concession Agreement vide Annexure-B, filed this writ petition on 08.08.2012. Sri R. Subramanya, learned advocate for the respondent submitted that even after filing of the writ petition, the respondent convened meetings to consider the alternatives suggested by the petitioner in the matter of completion of the project work. Learned counsel submitted that no unilateral decision would be taken to terminate the Concession Agreement, as at Annexure-B.

In view of the submission made by Sri R. Subramanya, noticed supra and the meetings between the parties to consider the alternatives suggested by the petitioner, the apprehension of the petitioner that the respondent may take a unilateral decision to terminate the Concession Agreement, as at Annexure-B, being not well founded, the writ petition is disposed of as follows:

Respondent is directed not to terminate the Concession Agreement entered into on 19.10.2009 unilaterally. If action is required to be taken to terminate the said agreement, the respondent shall put the petitioner on notice in terms of the covenants contained in the agreement and then proceed further, if any, in accordance with law.

Ordered accordingly.

