

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 5048 OF 2003

HINDUSTAN URBAN INFRASTRUCTURE LTD. ...Appellant(s)
Versus

ASSISTANT COMMISSIONER, ...Respondent(s)
ERNAKULAM & ORS.

O R D E R

1. Interim Application No. 3 of 2014 on behalf of the appellant-company for the change of name of the said appellant-company is allowed.

2. The appellant in this appeal primarily calls in question the orders passed by the Division Bench of the High Court of Kerala at Ernakulam in Review Petition No.191 of 2003, dated 21.03.2003. The said review petition was against the order of the High Court in M.F.A. No.1394 of 2002, dated 11.02.2003.

3. The learned counsels appearing for the parties to the *lis* have argued on several issues. In our considered view, for the disposal of this appeal, we need not have to consider all those submissions and this appeal can be disposed of on a short ground alone.

4. M/s. Premier Cable Company Ltd. was ordered to be wound up by the Company Judge for the default committed under Section 433F of the Companies Act, 1956 (for short, "the Act"). After the passing of the order of winding up of the said company, the official liquidator took control of the said company in liquidation in exercise of his powers under Section 448 of the Act. In order to settle the liabilities of the company in liquidation, the official liquidator, with the prior permission of the Court, issued a notice inviting tenders in respect of sale of the assets of the said company in

liquidation. In this appeal, we are concerned only with Items 1-2 as found in the said notice inviting tenders. The properties which are mentioned against the aforesaid items are machineries and electrical installations with connected cables and accessories.

5. Pursuant to the notice inviting tenders, the appellant-company, by letter dated 18.12.2001, offered its tender. The letter of the appellant-company is relevant for the purpose of disposal of this appeal. Therefore, the same is extracted *in toto* and it reads as under:

" F. 2003/HVP/MLB
The Official Liquidator,
High Court of Kerala,
Carmel Buildings,
Banerji Road, Ernakulam,
Cochin- 682 018.

Dear Sir,

Re : Tender in respect of Sale of
Assets of M/s Premier Cable Company Ltd
(In liquidation)

With reference to your public notice inviting sealed tender in respect of sale of assets of the above company, we are pleased to submit our offer for purchase of Lt No. 1-2 consisting of Plant and Machinery and Electrical Installations with connected Cables and accessories having assessed value of Rs. 7.33 crores as per list enclosed for total amount of Rs. 5,76,00,000 (Rupees Five Crores Seventy Six Lacs only).

The above price is inclusive of all statutory levies such as Sales Tax, Central Sales Tax, Excise Duty etc. if any, as may be applicable.

We are enclosing herewith Demand Draft No. 206533 dated 18.12.2001 for Rs. 20,00,000/- (Rupees Twenty Lacs only) drawn in your favour on Canara Bank, Ernakulam towards Earnest Money Deposit.

General terms and conditions detailed in para 7 (a) to 7 (o) of your tender hosted on website are enclosed in separate sheet duly accepted and the same be treated as part of this tender offer.

Please consider our tender on merit.

Thanking you,

yours faithfully,
For Hindustan Vidyut Products Ltd.

(M.L. Birmiwala)
SECRETARY

Encl : As Above "

6. A reading of the aforesaid offer made by the appellant-company would clearly indicate that the said appellant-company had offered to purchase Lot No. 1-2 for a sum of Rs.5,76,00,000/- (Rupees Five Crores and Seventy Six Lacs only). Further, the offer made would specifically indicate that the aforesaid sum is inclusive of all statutory levies such as Sales Tax, Central Sales Tax, Excise Duty etc, if any, as may be applicable.

7. The said offer made was brought to the notice of the Company Judge for further orders. The Company Judge had accepted the offer made by the appellant-company herein.

8. Thereafter, the appellant-company, in order to move the given properties beyond the boundaries of the State of Kerala, had requested the official liquidator of the company in liquidation to indicate their sales tax registration number in the sales tax

certificate, which request of the said appellant-company was rejected by the official liquidator.

9. In the instant case, the official liquidator in order to effect the sale of the assets of the company in liquidation had issued a tender notice. Pursuant to the notice so issued, the appellant had offered his highest bid which was inclusive of all the taxes payable under the Kerala General Sales Tax Act, 1963 and the Central Sales Tax Act, 1956 and also the dues payable under other statutory levies. The offer so made was accepted by the official liquidator.

10. In view of the above, we are of the considered opinion that there is a concluded contract between the official liquidator and the appellant-company herein. We reiterate that while making the offer, the appellant-company had specifically indicated to the official liquidator of the company in

liquidation that the offer made by him is inclusive of all statutory levies. In view of that, the liability to pay taxes cannot be imposed the appellant-company herein.

11. In view of the above, without going into the other details of the case, we dispose of this appeal and discharge the appellant from payment of any demands from either the official liquidator or from the sales tax department of the State in respect of the sale of Items 1-2 of the tender notice dated 26.11.2001.

12. The appeal is allowed accordingly.

13. It appears that the appellant-company had offered a bank guarantee in view of interim order passed by this Court, dated 06.05.2003. Since we have allowed the appeal in favour of the said appellant-company, the respondent(s) shall return

the bank guarantee offered by the appellant-company within a month's time from the date of receipt of copy of this order.

Ordered accordingly.

.....J.
[H.L. DATTU]

.....J.
[S.A. BOBDE]

NEW DELHI,
SEPTEMBER 04, 2014.

ITEM NO.101

COURT NO.2

SECTION IIIA

S U P R E M E C O U R T O F I N D I A
R E C O R D O F P R O C E E D I N G S

Civil Appeal No. 5048/2003

HINDUSTAN URBAN INFRASTRUCTURE LTD.

Appellant(s)

VERSUS

ASST. COMMNR. ERNAKULAM & ORS.

Respondent(s)

(With appln. for change of name of appellant and office report)

WITH

SLP(C) No. 7939-7940/2004

(With Interim Relief and Office Report)

Date : 04/09/2014 This appeal/SLP were called on
for hearing today.

CORAM :

HON'BLE MR. JUSTICE H.L. DATTU

HON'BLE MR. JUSTICE S.A. BOBDE

For Appellant(s) Mr. S.K. Bagaria, Sr. Adv.
In CA 5048/03 & Mr. B. Mohan, Adv.
rr. In SLPs. Mr. Shant Kumar Jain, Adv.
7939-40/04

For Petitioner(s) Mr. Jogya Scaria, Adv.
in SLPs.7939-40/04 Mr. Mohammad Sadiq, Adv.
& rr.1 in CA

For Respondent(s) Mr. Anupam Lal Das, Adv.
rr.4

rr.3 Mr. E. M. S. Anam, Adv.

rr.2 Mr. C.S. Rajan, Sr. Adv.
Mr.M.T. George, Adv.

rr.5 Ms. Meera Mathur, Adv.

UPON hearing the counsel the Court made the following
O R D E R

SLP(C) Nos. 7939-7940 of 2004

Arguments concluded.

Judgment reserved.

C.A. No. 5048 of 2003

I.A. No. 3 for change of name of the appellant-company is allowed.

The appeal is allowed in terms of the signed order.

[Charanjeet Kaur]
Court Master
Registrar

[Vinod Kulvi]
Asstt.

[Signed order is placed on the file]