

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICITON

CIVIL APPEAL NO(s).6643 OF 2013  
(Arising out of SLP (C) No.16430 of 2013)

M/S KONARK INFRASTRUCTURE LTD.

Appellant(s)

VERSUS

M/S MEP INFRASTRUCTURE DEV.PVT.LTD.& ORS

Respondent(s)

With

Civil Appeal No.6644 Of 2013

(Arising out of SLP(C)No.18577 of 2013)

O R D E R

Leave granted.

These appeals arise out of a common order dated 12th/16th April, 2013 passed by a Division Bench of the High Court at Calcutta whereby A.S.T. No.321 of 2012 and M.A.T. No.1899 of 2012 have been dismissed with the modification that the contract for collection of toll from those using Vidyasagar Setu on the Hooghly River in Calcutta shall be allotted to the respondent-M/s. MEP Infrastructure Developers Pvt. Ltd. for a total sum of Rs.245 crores as against Rs.244 crores ordered by a learned Single Judge of that Court.

The factual matrix in which the controversy arose before the High Court has been set out in the orders passed by that Court and need not be recapitulated in full. All that we need say is that a tender notice for allotment of a contract for collection of toll was issued by Hooghly River Bridge Commissioners ("Commissioners", for short) in March, 2011, inviting bids from eligible persons. The NIT fixed a reserve price of Rs.45 crores per annum equivalent to total of Rs.225 crores for a period of five years over which the contract was to remain valid. The tender notice it appears was cancelled as none of the parties who responded could match the reserve price fixed by the Commissioners. The first tender was followed by two other tenders in April 2012 and in May 2012 which too did not result in the allotment of any contract, the amount offered by the parties concerned having fallen below the reserve price fixed by the Commissioners.

A fourth tender notice was eventually floated by the Commissioners on 10th July, 2012, in response to which three parties including the appellant-M/s Konark Infrastructure Ltd. and respondent-M/s. MEP Infrastructure Developers Pvt. Ltd. submitted their tenders. The appellant-M/s Konark Infrastructure Ltd. offered Rs.236.25 crores for a period of five years which worked out to Rs.47.25 crores per annum. The respondent-M/s. MEP Infrastructure Developers Pvt. Ltd. on the other hand submitted a tender in which it offered Rs.243 crores which worked out to Rs.48.60 crores per annum. There was, it appears, some error in the tender submitted by the respondent-M/s. MEP Infrastructure Developers Pvt. Ltd. inasmuch as instead of Rs.48.60 crores per annum the tender mentioned Rs.46.80 crores in words although the annual amount offered was correctly mentioned to be Rs.48.60 in figures. The total amount offered for a period of five years was also correctly mentioned at Rs.243 crores both in words and figures. The discrepancy in the annual amount was considered by the Commissioners to be fatal to the validity of the tender offered by the respondent-M/s. MEP Infrastructure Developers Pvt. Ltd, resulting in the rejection of the same. Once the higher tender offered by the respondent-M/s. MEP Infrastructure Developers Pvt. Ltd. was turned down, the appellant-M/s Konark Infrastructure Ltd. emerged as the highest bidder having offered Rs.236.25 crores for a period of five years. The Commissioners appear to have persuaded the appellant-M/s Konark Infrastructure Ltd. to raise its bid from Rs.236.25 crores to 243 crores, the amount offered by respondent-M/s. MEP Infrastructure Developers Pvt. Ltd. An allotment order was, on that

basis, issued in favour of the appellant-M/s Konark Infrastructure Ltd. who took charge of the bridge for collection of toll on 1st September, 2012 and started making the collection at the rates stipulated by the Commissioners.

Aggrieved by the rejection of its tender and the allotment of the contract in favour of the appellant-M/s Konark Infrastructure Ltd., the respondent-M/s. MEP Infrastructure Developers Pvt. Ltd. filed Writ Petition No.19889(W) of 2012 before the High Court at Calcutta inter alia assailing the view taken by the Commissioners about the validity of the tender made by the Commissioners as also alleging malafides against the Commissioners. According to respondent-M/s. MEP Infrastructure Developers Pvt. Ltd. the tender submitted by it was a valid tender as the discrepancy referred to above was wholly inconsequential besides being inadvertent and typographical in nature.

A learned Single Judge of the High Court at Calcutta found favour with the grounds urged on behalf of the respondent-M/s. MEP Infrastructure Developers Pvt. Ltd. and accordingly quashed the allotment in favour of the appellant-M/s Konark Infrastructure Ltd. with a direction that the contract in question be allotted in favour of the respondent-M/s. MEP Infrastructure Developers Pvt. Ltd. subject to the said company raising the bid amount from Rs.243 crores to 244 crores for a period of five years. The respondent-M/s. MEP Infrastructure Developers Pvt. Ltd. did not grudge or find fault with that addition and remained content with the order passed by the learned Single Judge. The appellant-M/s Konark Infrastructure Ltd., however, appealed to the Division Bench of the High Court at Calcutta. The Division Bench after examining several aspects urged before it concurred with the view taken by the learned Single Judge and dismissed the appeal. The respondent-M/s. MEP Infrastructure Developers Pvt. Ltd. appears to have raised the bid amount of Rs.244 crores by a further amount of Rs.1 crore to take the gross amount for a period of five years to Rs.245 crores before the High Court. The Division Bench did not disturb the observations made by the learned Single Judge suggesting malafides against the Commissioners in having allotted the work/tender in favour of the appellant-M/s Konark Infrastructure Ltd. The present appeals have been filed against the common order passed by the Division Bench challenging the said orders including the observations which the learned Single Judge has made as to the bonafides of the action taken by the Commissioners.

When these appeals initially came up for hearing before us on 26th April, 2013 Mr. C.A. Sundram, learned senior counsel for the appellant-M/s Konark Infrastructure Ltd., on instructions unconditionally raised the amount of bid offered by him from Rs.243 crores to Rs.250 crores for a period of five years. When the matter came up again on 3rd May, 2013 Mr. Sundram raised the bid amount further to Rs.261 crores for a period of five years. What is interesting is that the respondent-M/s. MEP Infrastructure Developers Pvt. Ltd. also raised the bid offered by them to Rs.261 crores. It was at that stage that Mr. K.K. Venugopal, learned senior counsel appearing for the Commissioners, suggested that before any order on the subject is passed, each one of the rival claimants could be asked to deposit the upfront amount equivalent to 1/5th of the bid offered by the two parties and a bank guarantee to cover the balance 4/5th. The matter was accordingly adjourned by this Court with a direction to both the companies to deposit 1/5th of the amount of the revised bids offered by them and to furnish a bank guarantee for the balance.

On 8th May, 2013 when the matter came up once again both the parties resiled from the offers made by them and wanted the matter to be decided on merits. Mr. Sundram appearing for the appellant-M/s Konark Infrastructure Ltd., however, offered to deposit a sum of Rs.52 crores over and above the amount which the appellant-company had already paid in order that the interim arrangement made by this Court could be continued pending hearing of the appeals.

On 16th July, 2013, the date fixed for hearing of the appeals, there was a somersault once again in which the higher bid offered by the respondent-M/s. MEP Infrastructure Developers Pvt. Ltd. was renewed by the said company. This renewal was noticed by this Court with a direction to the respondent-M/s. MEP Infrastructure Developers Pvt. Ltd. to deposit 1/5th of the amount of Rs.261 crores and to furnish an undertaking to the effect that in case the contract is eventually allotted in its favour it would furnish a bank guarantee for the balance of the revised bid amount within four weeks from the date of the allotment. Mr. Sundram appearing

for the appellant-M/s Konark Infrastructure Ltd. was unable to make any definite statement whether the appellant was also ready to renew its revised bid and sought time to take instructions. Subsequent order dated 24th July, 2013 only records that the respondent-M/s. MEP Infrastructure Developers Pvt. Ltd had complied with the said direction and furnished an undertaking.

When the matter came up today for final hearing and disposal Mr. Sundram, counsel appearing for the appellant-M/s Konark Infrastructure Ltd. argued that his client was unable to match the bid offered by the respondent-M/s. MEP Infrastructure Developers Pvt. Ltd. He urged that although the respondent company offered a higher amount for the contract in question this court ought to ignore the same having regard to the fact that the respondent was monopolistic in its approach. The higher bid was, according to the learned counsel, intended to disqualify and exclude the appellant from competition not only for the contract at hand but also similar such contracts elsewhere in the country. It was also contended by Mr. Sundram that the higher bid amount offered by the respondent was not viable having regard to the experience which the appellant had with the collection of toll for the past nearly one year and that the only assumption on which such an unrealistic bid amount had been offered by MEP was that the Commissioners shall be persuaded to revise the toll rates thereby placing an unreasonably heavy burden upon the commuters using the bridge. This, according to Mr. Sundram, rendered the entire exercise unfair and prejudicial to public interest.

Mr. Mukul Rohtagi and Dr. Abhishek Manu Singhvi, learned senior counsel appearing for the respondent-M/s. MEP Infrastructure Developers Pvt. Ltd. strongly refuted the suggestions made by Mr. Sundram and submitted that having been given a fair and reasonable opportunity to match the bid which the respondent-company has offered and having failed to do so, the appellant-M/s Konark Infrastructure Ltd. was not justified in making baseless allegations about the bid offered by the respondent-M/s. MEP Infrastructure Developers Pvt. Ltd being unfair, unrealistic or actuated by any considerations other than the fact that the contract was actually worth the amount which was being offered by the respondent-company. It was submitted that the terms and conditions contained in the NIT providing for revision of the toll rates were common to all those who intended to offer their bids and that it was open even to the appellant-M/s Konark Infrastructure Ltd. to go for a revision in the toll rates in accordance with the applicable parameters. According to M/s Rohtagi and Dr. Singhvi, the appellant was simply beating about the bush and raising issues that were wholly irrelevant to the allotment of a contract, the race for which it had lost hands down.

On behalf of the Hooghly River Bridge Commissioners and others (appellants in C.A. No.6644 of 2013 arising out of SLP (C)No.18577 of 2013) Mr. K.K. Venugopal, learned senior counsel, submitted that although the appellant-Commissioners have filed an appeal, the same was in essence intended to assail the observations made by the learned Single Judge suggesting malafides against the appellant-Commissioners in the making of the allotment of the contract in favour of the appellant-M/s Konark Infrastructure Ltd. Mr. Venugopal submitted that insofar as higher amount offered by the respondent-M/s. MEP Infrastructure Developers Pvt. Ltd was concerned the Commissioners had no difficulty in accepting the said amount nor do they have any objection to the allotment of the contract to the respondent-M/s. MEP Infrastructure Developers Pvt. Ltd. in consideration of the amount offered in the revised bid.

Mr. Venugopal appearing for the Commissioners submitted that the observations made by the learned Single Judge regarding the bonafides of the exercise undertaken by the appellant-Commissioners and the allotment of the contract were neither necessary for the adjudication of the issues that fell for consideration nor was the High Court otherwise justified in making those observations. In response to that submission M/s Rohtagi and Dr. Singhvi, submitted that they had no objection to the deletion of the adverse observations made against the appellant-Commissioners, as to the bonafides of their action of making an allotment in favour of the appellant-M/s Konark Infrastructure Ltd.

In the circumstances, therefore, and keeping in view the fact that the appellant-M/s Konark Infrastructure Ltd. has not been able to offer anything beyond Rs.250 crores which is much less than Rs.261 crores offered by respondent-M/s. MEP Infrastructure Developers Pvt. Ltd. and also keeping

in view the fact that the Commissioners are themselves agreeable to the allotment of the contract at the higher amount offered by the respondent-M/s. MEP Infrastructure Developers Pvt. Ltd., we see no reason to interfere with the order passed by the High Court. Even on merits the High Court was, in our opinion, justified in holding that the higher bid made by the respondent-M/s. MEP Infrastructure Developers Pvt. Ltd. need not have been ignored simply because there was some discrepancy in the annual amount mentioned by it in words and figures. So long as the gross amount offered for the contract for a period of five years was correctly indicated both in words and figures by the respondent-M/s. MEP Infrastructure Developers Pvt. Ltd. there should have been no doubt about the bonafides of the bidder nor could the discrepancy of an inconsequential nature be a good basis for rejecting the higher bid. So also we are of the view that the observations made by the High Court suggesting malafides were not justified. At any rate, the respondent-M/s. MEP Infrastructure Developers Pvt. Ltd. having expressed their no objection to the deletion of the said observations, we see no reason why we should not do so. We accordingly expunge all such adverse observations made by the High Court; and allow the appeal filed by the Commissioners to that extent.

That leaves us with two incidental questions viz., what should be the amount payable by the appellant-M/s Konark Infrastructure Ltd. for the interregnum and how much time need be given to the appellant to hand over the bridge for collection of toll who is a successful bidder. Mr. Sundram submitted that the appellant-M/s Konark Infrastructure Ltd. has been collecting the toll for the past nearly one year now and keeping in view the fact that it has made the necessary arrangements for doing so it would require at least three weeks' time to wind up the entire show and hand over the bridge to the Commissioners. That prayer was opposed by Mr. Rohtagi and Dr. Singhvi. According to them the bridge could be handed over to them within a week's time for collection of toll. In the facts and circumstances of the case, however, we are inclined to grant time to the appellant-M/s Konark Infrastructure Ltd. for managing the bridge and collection till 31st August, 2013 and to hand over the bridge to the Commissioners by the forenoon of 1st September, 2013. The appellant-M/s Konark Infrastructure Ltd. shall pay for the entire period from 3rd May, 2013 till 31st August, 2013 an amount proportionate to contractual amount of Rs.261 crores for a period of five years. The appellant-M/s Konark Infrastructure Ltd. claims to have made certain payments pursuant to the orders passed by this Court. We are not inclined to either determine or go into the details of the said payment or the amount that remains due to or from the Commissioners. We leave it to the Commissioners to recover/adjust/refund the payment as the case may be to the appellant-M/s Konark Infrastructure Ltd. and raise a demand against the appellant, if any, within a period of ten days.

Needless to say that in terms of our order dated 16.07.2013 the respondent-M/s. MEP Infrastructure Developers Pvt. Ltd. shall furnish the bank guarantee for the balance 4/5th of the contractual amount within a period of one month from the date of a formal award of the contract made in its favour.

The appeals are, with the above observations and directions, disposed of. No costs.

.....J.  
(T.S. THAKUR)

.....J.  
(VIKRAMAJIT SEN)

NEW DELHI  
DATED 7th August, 2013

ITEM NO.14                      COURT NO.7                      SECTION XVI

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

Petition(s) for Special Leave to Appeal (Civil) No(s).16430/2013

(From the judgement and order dated 12/04/2013 in AST No.321/2012 dated 16/04/2013 in AST No.321/2012 of The HIGH COURT OF CALCUTTA)

M/S KONARK INFRASTRUCTURE LTD.

Petitioner(s)

VERSUS

M/S MEP INFRASTRUCTURE DEV.PVT.LTD.& ORS

Respondent(s)

(With appln(s) for withdrawal of slp and prayer for interim relief and office report)  
(For Final Disposal)

WITH SLP(C) NO. 18577 of 2013

(With appl.(s) for permission to file SLP without C/Copy s well as plain copy of impugned order and exemption from filing C/copy as well as plain copy of the impugned order and with prayer for interim relief and office report)

Date: 07/08/2013 These Petitions were called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE T.S. THAKUR  
HON'BLE MR. JUSTICE VIKRAMAJIT SEN

For Petitioner(s) Mr. C.A. Sundram,Sr.Adv.  
Mr. Mohit Paul,Adv.  
Ms. Shagun Matta,Adv.  
Mr. D.K. Rostagi,Adv.  
Mr. Anip Sachthey,Adv.

Mr. K.K. Venugopal,Sr.Adv.  
Mr. Anand,Adv.  
Mr. Dibyadyuti Banerjee,Adv.  
Mr. Abhijit Sengupta

For Respondent(s) Mr. Mukul Rohtagi,Sr.Adv.  
Dr. Abhishek M. Singhvi,Sr.Adv.  
Mr. Mohd. Waquas,Adv.  
Mr. Tapeshe Kumar Singh,Adv.

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

Leave granted.

The appeals are disposed of in terms of the signed order.  
No costs.

|(Mahabir Singh)  
| Court Master

| (Veena Khara)  
| Court Master

(signed order is placed on the file)