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ITEM NO.2

COURT NO.10

SECTION XVI

S U P R E M E C O U R T O F I N D I A  
RECORD OF PROCEEDINGS

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)

WITH SLP(C) NO. 18577 of 2013

(With appln(s) for permission to file SLP without c/copy as 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: 24/07/2013 These Petitions were called on for hearing today.

CORAM : HON'BLE MR. JUSTICE SUDHANSU JYOTI MUKHOPADHAYA  
HON'BLE MR. JUSTICE KURIAN JOSEPH

For Petitioner(s) Mr. Soli Sorabjee, Sr. Adv.  
Mr. C.A. Sundram, Sr. Adv.  
Mr. Anip Sachthey, Adv.  
Mr. Mohit Paul, Adv.  
Ms. Shagun Matta, Adv.  
Mr. Saakaar Sardana, Adv.  
Mr. D.K. Rustagi, Adv.

Mr. K.K. Venugopal, Sr. Adv.  
Mr. Abhijit Sengupta, Adv.  
Mr. Anand, Adv.  
Mr. D. Banerjee, Adv.  
Mr. Faisal M., Adv.

For Respondent(s) Mr. Gopal Subramaniam, Sr. Adv.  
Mr. A.M. Singhvi, Sr. Adv.  
Mr. Tapeshe Kumar Singh, Adv.  
Mr. Mohd. Waquas, Adv.

Contd. 2..

Mr. Soli Sorabjee, Sr. Adv.  
Mr. C.A. Sundram, Sr. Adv.  
Mr. Anip Sachthey, Adv.  
Mr. Mohit Paul, Adv.  
Ms. Shagun Matta, Adv.  
Mr. Saakaar Sardana, Adv.  
Mr. D.K. Rustagi, Adv.

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

Pursuant to this Court's order dated 16.07.2013 learned Senior Counsel for the respondent-MEP Infrastructure Developers Pvt. Ltd. has today handed over a Bank Draft for Rs. 52,20,00,000/- (Rs. Fifty two

crore twenty lakhs only)(bearing No. 079201 dated 23.07.2013 drawn on Union Bank) stated to be 1/5th of the bid amount of Rs. 261 crore to Mr. Abhijit Sengupta, learned counsel for the Hugli River Bridge Commissioners. Pursuant to the said order, an affidavit of undertaking is filed on behalf of the respondent-M/s MEP Infrastructure Developers Pvt. Ltd. with the following statement:

"4. That, in compliance of the last order dated 16.07.2013 above mentioned, besides tendering the first year's upfront lump-sum payment, being 1/5th of the total offer price, the Deponent on behalf of the Respondent No. 1 Company M/s MEP Infrastructure Developers Pvt. Ltd. hereby also undertakes to deposit within four weeks from the date of allotment of contract in its favour by this Hon'ble Court, Bank Guarantees, as per the requirement prescribed in the Tender Documents, for the rest of the amount, being 4/5th of the "Offer Price", favouring Hooghly River Bridge Commissioners, for collection of toll at Vidya Sagar Setu, Koltaka, notified on 10.07.2012 by the Petitioner vide Tender NIP No. HRBC/PL. & DN./06 of 2012-2013."

Learned counsel appearing on behalf of the petitioner- M/s Konark Infrastructure Ltd. contended that the first respondent sought to revive the bid at Rs. 261 crores only to eliminate the petitioner, the only genuine competitor left in the fray, which can never be in public interest in the long run. According to him, it is in the public domain that acceptance of unviable bid eventually passed on the public for which the first respondent shall have five years to manipulate. He has shown his inability to deposit 1/5th of the bid amount of Rs. 261 crore and not furnished any undertaking in terms of the earlier order dated 16.07.2013. A request was made to hear the case on merit. Such submission was opposed by learned counsel appearing on behalf of the first respondent.

In the facts and circumstances of the case and in view of the earlier order(s) passed by this Court, we allow the first respondent-M/s MEP Infrastructure Developers Pvt. Ltd. to hand over the draft for Rs. Fifty two crore twenty lakhs in favour of "Hooghly River Bridge Commissioners" and keep the affidavit of undertaking on record.

Place these special leave petitions for admission on 06.08.2013. The same may be disposed of at the stage of admission itself.

| (S.K. Rakheja)  
|Court Master

| |(Indu Bala Kapur)  
| |Court Master

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