

ITEM NO.3

COURT NO.10

SECTION XIV

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 (C) No(s).
28475-28476/2010

(Arising out of impugned final judgment and order dated 18/08/2010 in WP No. 11574/2009,01/09/2010 in WP No. 11574/2009,01/09/2010 in CM No. 11719/2010 passed by the High Court Of Delhi At New Delhi)

NATIONAL HIGHWAYS AUTH.OF INDIA

Petitioner(s)

VERSUS

M/S GEHDCL JTEG CONSORTIUM & ORS.

Respondent(s)

(with appln. (s) for permission to file additional documents and office report)

WITH

SLP(C) No. 15689/2011

(With Interim Relief and Office Report)

SLP(C) No. 15738/2011

(With appln.(s) for permission to file additional documents and Interim Relief and Office Report)

SLP(C) No. 15787/2011

(With Interim Relief)

SLP(C) No. 15875/2011

(With Interim Relief and Office Report)

Date : 17/03/2015 These petitions were called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE VIKRAMAJIT SEN

HON'BLE MR. JUSTICE ABHAY MANOHAR SAPRE

For Petitioner(s) Mrs. Gunjan S. Jain, Adv.
Mr. Mukesh kumar, Adv.
Mrs. Suchiti Chandra, Adv.
M/s. M. V. Kini & Associates, Adv.

For Respondent(s) Mr. Dhruv Mehta, Sr. Adv.
Mr. Arun Kathapalia, Adv.
Mr. D. Bharat Kumar, Adv.
Mr. Sayooj Mohandas M., Adv.

Mr. T. Baskar Gowtham, Adv.
Mr. Abhijit Sengupta, Adv.

Mr. Priyadarshni Gopal, Adv.
M/s. Law Associates, Adv.

Dr. (mrs.) Vipin Gupta, Adv.

Mr. M. Y. Deshmukh, Adv.
Mr. R.P. Goyal, Adv.

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

SLP(C) Nos. 28475-28476 of 2010 & SLP(C) No. 15738 of 2011

Leave granted.

The Appeals are disposed of in terms of the Signed Order.

SLP(C) Nos. 15689, 15787 & 15875 of 2011

Part heard.

List tomorrow i.e. on 18.03.2015.

(NEELAM GULATI)
COURT MASTER

(SAROJ SAINI)
COURT MASTER

(Signed Order in SLP(C) Nos. 28475-28476 of 2010 & SLP(C) No. 15738 of 2011 are placed on the file)

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL Nos.3045-46 OF 2015
(Arising out of SLP(C) Nos. 28475-28476 of 2010)

WITH

CIVIL APPEAL NO. 3055 OF 2015
(Arising out of SLP(C) No. 15738 of 2011)

NATIONAL HIGHWAYS AUTH.OF INDIA

Appellant(s)

VERSUS

M/S GEHDCL JTEG CONSORTIUM & ORS.

Respondent(s)

O R D E R

CIVIL APPEAL Nos. 3045-46 OF 2015
(Arising out of SLP(C) Nos. 28475-28476 of 2010)

Leave granted.

So far as the facts of the present case are concerned, the Respondents had incontrovertedly presented a non-responsive bid inasmuch as the General Power of Attorney filed by the Respondent on behalf of its J.V. partners was not found in accordance with the terms stipulated in the tender document. The Respondent however was not L-1. Acting on Clauses 20.20.6 and

20.20.7 of the tender documents, the appellant had forfeited the entire Bid Security, which in this case amounted to Rs.13.42 crores. The endeavour of the appellant is to locate power for this decision in Clause 2.20.6. However, we think that since the bid was found to be a non-responsive one, it falls strictly within Clause 2.20.7(a). Furthermore the learned Additional Solicitor General who had appeared on behalf of the Appellant had apprised the Court of the fact that the changed extant policy of the Appellant was that so far as a non-responsive bid was concerned only 5% of the security/earnest money would be forfeited. Taking this statement into perspective, the Division Bench in the Impugned Order had restricted the forfeiture to 5% of the Bid Security and had thereafter relegated the parties to civil proceedings. The Court was not dealing with a case where the party concerned was found as L1 and therefore wider damages may have resulted in the event of the non performances of the contract. The Division Bench had also correctly applied the exposition of the law laid down by the Constitution Bench of this Court in Fateh Chand vs. Balkishan Dass AIR 1963 SC 1405. Since we are concerned only with Clause 2.20.7(a), we find no error in the Impugned Judgment.

The Appeals are dismissed accordingly.

CIVIL APPEAL NO.3055 OF 2015
(Arising out of SLP(C) No. 15738 of 2011)

Leave granted.

In the facts of this case, admittedly the Respondents have performed the contract. Initially there appears to have been a dispute as to whether the Respondent's bid was responsive or not, bringing into play the legal capacity of the Appellant to forfeit 5% of the bid security. Inasmuch as there has been no challenge to the Award of the contract to the Respondents in terms of the Impugned Judgment, the entire issue has been rendered academic. Furthermore since the Division Bench has applied Fateh Chand vs. Balkishan Dass AIR 1963 SC 1405 and thus had found no legal propriety in the deduction of 5% of the Bid Security, this Appeal does not call any further consideration. However, learned Counsel for the Appellant has informed us that the Division Bench had imposed cost and has eloquently contended that these were not appropriate. In the facts and circumstances of the case, the Impugned Order is interfered by us only in respect of the costs, which we set aside.

The Appeal is disposed of with the aforesaid observation.

.....J

(VIKRAMAJIT SEN)

.....J

(ABHAY MANOHAR SAPRE)

NEW DELHI
MARCH 17, 2015