

**Before the Appellate Tribunal for Electricity
(Appellate Jurisdiction)**

Appeal No. 108 of 2009

Dated: 21st July, 2009

**Present: Hon'ble Mr. Justice M. Karpaga Vinayagam, Chairperson
Hon'ble Mr. Mahesh B. Lal, Technical Member**

IN THE MATTER OF:

**Saturn India Natural Resources Pvt. Ltd.
C-8/8-23, Vasant Kunj
New Delhi – 110 070**

..... Appellants

Versus

**Petroleum and Natural Gas Regulatory Board
1st Floor, World Trade Centre
Babar Road
New Delhi – 110 001**

..... Respondents

**Counsel for the Appellants(s) : Mr. Mahabir Singh, Sr. Adv.
Mr. Rakesh Dahiya**

**Counsel for the Respondent(s) : Ms. Shashi Kiran, Advocate
Ms. Divya Roy, Advocate**

Per Hon'ble Mr. Justice M. Karpaga Vinayagam, Chairperson

JUDGMENT

1. Saturn India Natural Resources Pvt. Ltd. is the Appellant herein.
2. Aggrieved by the Order dated 25/6/09 passed by the Petroleum & Natural Gas Regulatory Board (PNGRB), the Respondent herein, rejecting and returning the Appellant's bid document submitted before

the PNGRB, on the ground that it was presented after the due time, the Appellant has filed this Appeal.

The short facts of the case are as follows:

3. The Petroleum Board, the Respondent herein, on 25/2/09 issued and invited tenders for grant of authorization for laying, building or operating city gas (CGD) networks in the geographical areas of various cities including Chandigarh. As per the bid document, the closing date and time of the bid document was 25/2/09 at 11.00 a.m. The Appellant company, intending to bid, purchased the tender form for Chandigarh by depositing the required amount with the Respondent Board.

4. After completion of all formalities, the Appellant company sent its representative on 25/6/09 being the last date, along with the bid document and other records for submission of the bid to the office of the Petroleum Board located at Babar Road, New Delhi. The representative of the Appellant, reached the Office of the Respondent Board at 11 a.m., and submitted and handed over the bid document to the P.A. to the Secretary of the Respondent Board at about 11.04 a.m. As the bid was presented beyond the time, the representative of the company was asked to write on the bid envelope that the same was

submitted at 11.04 a.m. Accordingly, he had written the same. The Officer of the Board also made an entry in the envelope that he received the bid at 11.04 a.m.

5. At about 2.00 pm the representative of the Appellant was informed by the Secretary of the Respondent Board through a written communication that the bid document was being returned as it was presented beyond the due time mentioned in the bid document.

6. As soon as the above incidents were informed by the representative of the Appellant to its Directors, one of the Directors came to the Board Office on the same day, and gave a written representation addressed to the Chairperson of the Respondent Board requesting for reconsideration for acceptance of the bid stating that the Appellant's representative had reached the Respondent's Office at 11 am itself. After receipt of the said representation, the same was reconsidered on the same day i.e. on 25/6/09 and the request for reconsideration was summarily rejected. This Order dated 25/6/09 by the Board is the subject matter of this Appeal.

7. Shri Mahabir Singh, the Ld. Senior Counsel for the Appellant would make the following contentions:

“A representative of the Appellant reached the Office of the Respondent Board at 10.55 am itself and tried to put the bid in the tender box, but the bulky bid documents could not get into the tender box as its mouth of the tender box was very narrow. Therefore, the representative approached the Receptionist at about 10.58 a.m. for submitting the bid document and told her about his difficulty. When the Receptionist informed the same to the Secretary through intercom and an Officer of the Respondent Board came to the reception at 11.02 a.m. and told the representative of the Appellant that he cannot accept the bid as the submission time for the same, namely 11 a.m. was already over. After some arguments, the Officer of the Respondent Board said he was ready to accept the bid on the condition that the representative of the Appellant has to write on the cover of the bid that the same was submitted at 11.04 a.m. Accordingly, the representative made an endorsement in the envelope and thereafter, it was received. Only after 2.00 p.m., the representative of the Appellant received a letter signed by the Secretary of the Board stating that the bid cannot be accepted as the same was received after the due date and time.

Thereafter, a representative informed the Directors of the Appellant of these happenings. Thereafter, one of the Directors of the Appellant came to the Board Office and gave a letter to the Chairperson of the Respondent Board requesting for reconsideration of their decision since the representative of the Appellant reached the Office of the Board at 11.00 a.m. itself and only at the insistence of the Officer concerned, he wrote in the bid cover that the same was handed over at 11.04 a.m. As such, the delay was caused due to the conduct of the officers of the Board and not because of any delay on the part of the representative of the Appellant.”

8. On these facts, the Learned Senior Counsel for the Appellant vehemently contended that the Board has not accepted the Appellant’s bid over an alleged delay of four minutes even though the representative of the Appellant reached the Office on time. Even assuming that there was some delay of 4 minutes, which was inconsequential since the bid was to be opened only at 2 p.m., the said delay was caused only due to the conduct of the Officers of the Respondent Board, which was aimed at depriving the Appellant company from participating in the tender process in order to help the other giant bidders, therefore, the order impugned rejecting the bid

document may be set aside and the Appellant may be allowed to participate in the bidding process.

9. Refuting the contentions urged by the Learned Senior Counsel for the Appellant, the Learned Counsel for the Respondent would strenuously contend as follows:

a. The representative of the Appellant company came to the Board office only after 11 am and not at 11 am as stated by the Appellant. Since the tender box was removed exactly at 11.00 a.m. sharp, the representative of the Appellant company approached the PA to Secretary and handed over the bid documents to the Officers of the Board at 11.04 a.m., and the same was received only at that time. The endorsement to the said effect was made in the bid document envelope by both the representative of the Appellant and the Officer of the Board. Thereafter, the bid document was handed over to the Contract Evaluation Committee who examined the case of the Appellant and recommended its rejection on file on the ground that it was belatedly presented and accordingly, it was rejected. Thereafter, another letter was received by the Board for reconsideration from the Appellant company, and this also was considered by the Board and after

examining the same again by Member (Infrastructure) and Member (Legal) and also the Chairperson of the Respondent Board, the same was rejected through the letter impugned. Hence, there is no illegality in the Order impugned.

10. The main point projected in the reply by the Learned Counsel for the Respondent Board opposing the contentions urged by the Learned Senior Counsel for the Appellant is that both in the bid document as well as in the special instructions to the bidders, it has been clearly indicated that the bid document shall be summarily rejected after the same was submitted after the due time and as such, rejection of the bid is perfectly valid.

11. We have carefully considered the submissions of the Learned Counsel of the rival parties and perused the documents submitted by both the parties.

12. Even at the outset, it shall be stated, as pointed out by the Ld. Counsel for the Respondent that both the bid document as well as the instructions to the bidders would categorically prescribe the condition

that the bid document cannot be accepted by the Board after the due time, namely 11.00 a.m.

13. In the bid document, it is clearly stated that the bid closing date is 25th June 2009 and the closing time is 11.00 a.m. The conditions contained in both the bid document as well as in the instructions to the bidders would reveal that the bid document cannot be received after the due date and time. The bid condition No. 9 of the Application-cum-Bid document would provide as follows:

“No.9: Application-cum-Bid not received by the due date and time will be rejected and representatives of such entities shall not be allowed to attend the bidding process.”

14. There is a specific clause incorporated in the instructions to the bidders relating to the late receipt of the Application-cum-bids under Clause 3.3 and the same is as follows:

“Clause 3.3: Late receipt of the Application-cum-bids:

Any Application-cum-bid received after the deadline for submission of Application-cum-bids indicated in the

“Invitation for Application-cum-bid” or any other date extended in writing by the PNGRB shall be rejected.”

15. Both these documents as referred to above would clearly envisage the condition that the Board shall reject the Application of the bid, if the bid is received after the deadline for submission of Application of bids. As pointed out by the Ld. Counsel of the Board, the circular issued by the Ministry of Finance dated 30/11/07 and the circular dated 2/3/09 clearly mandate that the bid has to be returned to the bidder, whenever the bid was presented beyond time. Therefore, the question is as to when the bid documents were presented to the Office of the Respondent Board. We are not concerned with the question as to whether the representative of the Appellant company reached the Board Office at 11 am or not. We are only concerned with the question as to when the documents were handed over by the representative of the Appellant company to the Board and when those bid documents were received by the Respondent Board.

16. In this case, it is not denied that the endorsement was made by the Appellant’s representative himself in the envelope to the effect that it was handed over by the representative of the Appellant at 11.04 a.m.

and a similar endorsement has been made by the Officer of the Respondent Board to the effect that the bid of the Appellant was received at 11.04 a.m. Thereafter, these documents were placed before Contract Evaluation Committee which in turn decided to reject the same as it was presented beyond the prescribed time. Similarly, the letter thereupon presented by the Director of the Appellant company for reconsideration also was placed before the Chairperson of the Board, who in turn forwarded to the other Members of the Board to examine and send a report. Accordingly, the Members of the Board after examining the same took a decision to reject the request of the Appellant for reconsideration on the ground that the Board cannot accept those bid documents as per the bid conditions, as the same were submitted by the Appellant only after the due time, namely 11 a.m. As a matter of fact, there was no discretion for the Board to extend the time for any reason whatsoever, as referred to in the bid documents and circulars.

17. It is strangely contended by the Learned Senior Counsel for the Appellant that in the letter requesting for reconsideration, the Appellant made a specific complaint against the Officer of the Respondent Board, that the endorsement was made by the representative of the Appellant

company, to the effect that the bid document was handed over at 11.04 am only under the insistence of the Officer of the Board, and not under own volition, but the Chairperson of the Respondent Board, without enquiring into the said complaint under Section 12 of the Act, hastened to reject the request of the Appellant as if it was presented beyond the time prescribed.

18. We feel that this argument has no substance as the original hand written letter submitted by the Appellant for reconsideration which has been produced before this Tribunal, does not indicate any such allegation. It is worthwhile in this context to refer to the actual wordings contained in the said letter. The same is reproduced below:

“25.6.2009

To

The Chairman
PNGRB
WTC, New Delhi.

Without prejudice

Ref: Chandigarh CGD Bid.

Sir,

We would like to bring to your express attention that we had reached your Office at 11.00 am today for submission of the bid.

Your Office recorded this time of 11.03 a.m. and at 2.00 p.m. communicated non-acceptance. Your good-self is aware of the IST conditions due to travel. Our sincere apologies for three minutes & request to accept our bid.

Regards,

Yours truly,

Sd/-
For Saturn India Natural Resources Ltd.”

19. A reading of the above letter in the handwriting of one of the Directors of the Appellant company does not indicate any complaint having been made regarding misconduct on the part of the officer of the Board. On the other hand, it is clearly admitted in the letter, that the delay of three minutes was due to the ‘IST conditions and travel’, and for the three minutes delay, the Director of the Appellant has tendered apologies. As such, the said letter does not substantiate the claim made by the Ld. Senior Counsel for the Appellant that he complained about the conduct of the officer of the Board. On the contrary, the Appellant itself admitted in the said letter that there was some delay in submitting the bid for which an apology was tendered.

20. In view of the above factual situation, and in the light of the specific bar put on the Board for receiving the bids after the due time is over, it cannot be held that the Board has committed any illegality. As a matter of fact, the records produced by the Learned Counsel for the Board would clearly reveal that the letters submitted by the Appellant company on both the occasions to the Board were duly considered both by the Committee as well as the Members of the Board and a correct decision has been taken by the Respondent Board in rejecting the bid of the Appellant. Hence, we find no merits in the Appeal.

21. Before parting with this Order, we have to necessarily point out that the allegations made in the Appeal by the Appellant to the effect that the officers of the Board deliberately delayed receipt of the bid by the Appellant in order to deprive the Appellant company from participating in the tender so as to avoid fair competition between the companies, and to give benefit to the other competitors like the other giant companies, is without any basis and in our view, the same are highly unwarranted.

22. We feel that these sort of allegations leveled by the Appellant company as against the Board which is a statutory authority ought not

to have been made. Raising legal points in order to assail the Order impugned in the Appeal is permissible in law. But in order to assail the said Order, the Appellant should not have indulged in mudslinging, that too against the authority who is exercising the statutory powers conferred under the Act enacted by the Parliament. We earnestly hope that the Appellant will not repeat this in the future.

23. In view of the foregoing, the Appeal is dismissed as devoid of merits. No costs.

(Mahesh B. Lal)
Technical Member

(Justice M.Karpaga Vinayagam)
Chairperson

Dated: 21st July, 2009

REPORTABLE / NON-REPORTABLE