

Appellate Tribunal for Electricity
(Appellate Jurisdiction)

Appeal No.243 of 2013

Dated: 19th November, 2014

Present: Hon'ble Mr. Justice M. Karpaga Vinayagam, Chairperson
Hon'ble Mr. Nayan Mani Borah, Technical Member (P&NG)

IN THE MATTER OF:-

LMJ Energy Infralogistic Ltd.
LMJ House,
9, Hanuman Road,
New delhi-110001

.... Appellant (s)

Versus

Petroleum & Natural Gas Regulatory Board
1st Floor, World Trade Center,
Babar Road,
New Delhi-110001

... Respondent (s)

Counsel for the Appellant(s) : Mr. Abhas Kumar
Ms. Divya Ray
Mr. Jayant Mehta
Mr. Rajiv Ranjan

Counsel for the Respondent(s) : Mr. Harsh Peechara,
Ms. Sonali Malhotra and
Mr. Rakesh Dewan for PNGRB

JUDGMENT

Per Hon'ble Mr. Nayan Mani Borah, Technical Member (Petroleum & Natural Gas)

1. LMJ Energy Infralogistic Ltd. (referred hereafter as LMJ Energy) is the Appellant herein.
2. Petroleum & Natural Gas Regulatory Board (PNGRB, referred hereafter as Petroleum Board) is the Respondent.

3. Aggrieved by the Impugned Order comprising of the Respondent's Letter Nos. Infra/CGD/BID/R-3/1/GA/Asansol-Durgapur/01/2013 dated 31.07.2013 and Infra/CGD/BID/R-3/6/GA/Ludhiana/01/2013 dated 31.07.2013, the Appellant has filed this Appeal. Vide above Impugned Order, the Respondent rejected the Bids of the Appellant for the City Gas Distribution Networks for the Geographical Areas (GA's) of Durgapur-Asansol and Ludhiana.
4. The short facts are as follows:-
- (a) The Appellant is a company that deals with business in the Infrastructure sector.
 - (b) The Respondent Board is vested with the statutory function and power of, inter-alia, authorizing entities to lay, build, operate or expand city or local natural gas distribution network. The Petroleum Board is also empowered to regulate, by regulations, the access to city or local natural gas distribution network so as to ensure fair trade and competition amongst entities as per pipeline access code.
 - (c) On or about 14.03.2008, the Petroleum Board framed the Petroleum and Natural Gas Regulatory Board (Authorizing Entities to lay, build, operate or expand city or Local Natural Gas Distribution Networks) Regulations, 2008.

- (d) The Respondent Board invited bids vide its Notice dated 23.07.2010 as a part of the Third Round of Bidding for grant of authorization for laying, building, operating etc. for the city gas distribution network in respect of the GAs of Asansol-Durgapur and Ludhiana amongst others. The Appellant purchased the bid documents for three GAs including Ludhiana and Asansol-Durgapur.
- (e) The bid submission/evaluation is structured as per following stages:-
- Part-I { (Technical Bid)
 { (Feasibility Report)
 - Part-II (Financial Bid)
- (f) The Appellant submitted its bids for GAs (i) Ludhiana and (ii) Asansol-Durgapur in time.
- (g) After a lapse of about two years, the technical bid of the Appellant was rejected by the Respondent Petroleum Board on the ground of allegedly not meeting specified net worth criteria.
- (h) Various explanations and clarifications offered by the Appellant to try to establish that there was no deficiency in terms of net worth in its bid and, hence, the same should be considered as a technically valid bid were rejected by the Respondent.
- (i) Appellant is aggrieved by the Impugned Order passed by the Petroleum Board rejecting the technical bid.

- (j) Hence, the present Appeal.
 - (k) M/s Jay Madhod Energy Pvt. Ltd., filed an application for impleadment on the ground that it is a proper and necessary party as it has a substantial right and interest in the bid. The application for impleadment was allowed.
 - (l) The impleadment supports the position that the Appellant is an ineligible bidder as it fails to meet the requisite minimum net worth criterion.
5. The Appellant has made the following submissions in the present Appeal:
- (a) The requisite net worth of a bidder to be considered as a technically qualified bidder for the GAs of Asansol-Durgapur and Ludhiana was Rs.100 crores each which was categorically specified in the bid document.
 - (b) The bid document, inter alia, stated:

QUOTE:-

"Combined net worth (equity share capital plus free reserves, but excluding revaluation reserves) to be adequately represented by cash funds which shall be available as bridge finance and as promoters equity/contribution in the project certified by a chartered Accountant based on the latest financial position of the entity and its promoters. The promoters undertaking, in the form of letter of comfort, stating that promoter's financial contribution in the project shall be converted in the equity share capital within three months of the date of grant of authorization must accompany the Application."

UNQUOTE

- (c) The bid document further states in clause 1.4.2.1 of the "Instructions to the Bidders": -

QUOTE:-

"The Financial bid of an entity shall be opened only if adequate net worth is available in line with the above criteria."

UNQUOTE

- (d) The Appellant's bid incorporated a net worth of Rs.130.97 crore which was higher than the minimum eligibility criterion of a net worth of Rs.100 Crores.
- (e) The Appellant was informed by the Petroleum Board vide letter dated 20.06.2011 that its bid for CGD network for Ludhiana GA was proposed to be rejected owing to inadequate net worth. The aforesaid letter mentioned various grounds that were proposed to set off certain amounts which would reduce the bid's net worth from Rs.130.97 crore to Rs.98.51 crores.
- (f) Vide its letter dated 24.06.2011 to the Respondent Board, the Appellant submitted clarifications as to why the reductions in net worth proposed were not logical. In particular, the proposed reductions under Loan Redemption Reserves (Item Nos. 2(b), 2(c) and 2(e) of the Respondent's letter dated 20.06.2011 refer)

totaling an amount of Rs.28.48 crore was challenged by the Appellant.

- (g) The above clarifications were given in line with the provisions of the Companies Act, 1956 as also the relevant PNGRB Regulations, 2008.
- (h) Despite Appellant's submitting further clarifications vide letter dated 17.08.2011 and also reiterating that net worth submitted by it were sufficient to meet the bid cut-off criterion, the Respondent vide Impugned Letters dated 31.07.2013 informed that the Appellant's bids for GAs Asansol-Durgapur and Ludhiana were found to be technically not qualified owing to inadequate network.
- (i) The Appellant was denied an opportunity for hearing it sought to present its case before the entire Petroleum Board. The Respondent has rejected the bids of the Appellant in total disregard of the principles of natural justice and the CVC guidelines mandating transparency, and fair and equitable treatment of all the bidders.
- (j) The rejection of the bid, *prima facie*, appears to be arbitrary and the Impugned Orders are not reasoned orders. The Impugned Orders provide no intelligible reasons for rejection of the Appellant's bid.

- (k) The Respondent Board gave no response whatsoever to a number of communications sent by the Appellant providing clarifications in regard to net worth nor was the Appellant allowed an opportunity of hearing to present its case before the Petroleum Board. The Impugned Orders do not contain any legal or accounting basis on which the clarifications provided by the Appellant were disregarded.
- (l) The Impugned Orders do not even clarify whether the clarifications and documents provided by the Appellant in support of its net worth value were considered by the Petroleum Board at all.
- (m) As far as the Impleadment Application for intervention in the present Appeal is concerned, the Applicant has no locus for the same.
- (n) Just by the virtue of becoming a technically qualified bidder, the Intervener cannot claim to have become a necessary nor a proper party in the present Appeal at this stage since the Financial Bids are not yet opened.
- (o) In the light of the foregoing, the Appeal of the Appellant may be allowed and the Respondent may be directed to consider the bids of the Appellant for the GAs of Durgapur-Asansol and Ludhiana.

6. We have heard the learned counsel for the Appellant, Respondent and the Impleader. Opportunity for filing written submissions was given and has been availed of by the learned counsel of all the parties.
7. The Respondent has made the following submissions:-
- (a) The bid in question is a two staged process with the technical bid and feasibility report comprising the first stage and the financial bid forming the second stage.
 - (b) The bid document clearly states that the Respondent Petroleum Board would scrutinize only those bids which fulfill the specified eligibility criteria.
 - (c) The said Application-cum-Bid document clearly states the eligibility criterion of a minimum combined net worth requirement for every bidder for GAs of Ludhiana and Asansol-Durgapur as Rs.100 crore (Rupees one hundred crore).
 - (d) The bid document, inter alia, clearly states that the calculation of the combined net worth of a bidder shall be performed as per methodology in Schedule K of the PNGRB Authorization Regulations.
 - (e) It is an admitted fact that the Application-cum-Bid document clearly mentions that if any bidder fails to meet the bid eligibility

criteria, then that bid shall be liable to be rejected and a communication shall be sent and financial bid shall not be opened for that bidder.

- (f) After perusal of Applicant's technical bid etc., the Respondent wrote to the Applicant informing that loan redemption reserves are to be deducted from the net worth since these reserves are set out to meet a specified liability and thus are not available for distribution to the entity's equity shareholders.
- (g) The above calculation of "networth" resorted to by the Respondent is strictly as per the procedure Regulation 5(6)(E) and Schedule 'K' of the PNGRB Authorisation Regulations as specified in the bid document.
- (h) The networth details of the additional entities proposed for consideration by the Applicant vide its letter dated 24.6.2011 cannot be entertained since this would tantamount to post-tender modification.
- (i) The allegation of the Appellant that its bid has been rejected arbitrarily is incorrect and without any basis. Further, the Respondent's finding that the bids are not acceptable is based on careful perusal and consideration of all relevant documentary evidence including technical bid and subsequent letters dated 08.06.2011 and 24.06.2011.

- (j) Contrary to the Appellant's assertion, the Impugned Orders are reasoned orders. In paragraph 2, and under Remarks section of the Table in the Impugned Orders, the Respondent has provided the relevant reasons for bid rejection and reduction in networth.
 - (k) In the light of the foregoing, the present Appeal may be dismissed with costs.
8. The Learned Counsel for the Impleader, Jay Madhod Energy Pvt. Ltd. besides stating that his client is supporting the Respondent, has pleaded :
- (a) As per bid stipulations clearly spelt out in the said tender document, the Petroleum Board is not even under any obligation of sending any information to any bidder in respect of an unsuccessful bidder.
 - (b) The Impugned Orders are only administrative orders, and while taking an administrative decision, no reasons are required to be given. No separate reasons are required to be given since the Respondent has rightly rejected the Appellant's bid since it fails to meet the specified minimum eligible networth criteria.
9. On the basis of the aforesaid pleadings and rival contentions urged by the parties, in our opinion, the following questions arise for consideration:

- (a) **Whether the Impugned Orders have been passed by the Respondent, Petroleum Board in violation of the principles of natural justice to the extent that no legitimate opportunity was provided to the Appellant to submit its clarification/representation as regards the concerns raised by the Petroleum Board about the bid not meeting the minimum eligibility criteria specified for net worth.**
- (b) **If the answer to the question (a) above is in the negative, and the Appellant had indeed submitted its representation/clarification/explanation as to how its bid satisfies the minimum eligibility criteria for net worth, whether the same has been duly taken into consideration or not by the Petroleum Board in its bid evaluation process.**
- (c) **Whether the Impugned Orders are unreasoned orders as claimed by the Appellant.**

10. We will now proceed to examine in seriatim the aforesaid three issues for consideration to arrive at our findings.

11. As regards the first question, we note that the sequence and the procedure of the two-stage bid evaluation process was adequately stated in the tender document and the validity of the same was never questioned by the Appellant. Clause 1.4.3 of the Application-cum-Bid

document states that any bid failing to meet the requirements of any criteria specified under clause 1.4.1 and 1.4.2 is liable to be rejected and a communication in this regard shall be sent and the financial bid shall not be opened for that rejected bidder.

12. The said clause 1.4.3 implies that the Respondent is under no obligation to send any information to any bidder in respect of an unsuccessful bidder. It is an admitted fact that during bid evaluation stage, the Petroleum Board did provide two opportunities to the Appellant to give additional information/clarification with respect to the bids submitted (Respondent's letters to the Appellant dated 16.05.2011 and 20.06.2011 refer).
13. The last paragraphs of the Petroleum Board's above communications state:
 - (i) Ref Letter No. PNGRB/CGD/Bid/3/LMJ dated 16.05.2011

"3. The above may be furnished latest by 1200 hrs at 23.05.2011. Please note that failure to do so may result in rejection of bid."
 - (ii) Ref Letter No. PNGRB/CGD/Bid/3/LMJ dated 20.06.2011: -

"4. You may submit your response to the above by 27.06.2011."
14. The above communications from the Respondent Board demonstrate that the Appellant was unequivocally provided with opportunity to give

additional information/clarification related to its bids. It is further noted that the various terms and conditions framed in the Application-cum-Tender document do not have a provision to facilitate/allow any hearing, per se, to any unsuccessful bidder.

15. In the light of the above perusal, we are of the opinion that the answer to the first question (Question-A) is in the negative. Adequate and legitimate opportunity was provided by the Respondent to the Applicant to supplement its bid with additional information and clarification. The procedure adopted by the Respondent in carrying out bid evaluation was never under any challenge prior to bid opening date, and we do not perceive any violation of principles of natural justice as alleged by the Appellant.
16. As regards the second question (Question-B), the Appellant has pleaded that the Respondent has totally ignored the actual figures furnished as well as completely rejected to consider the clarifications submitted by the Appellant with respect to its net worth. On perusal of all relevant pleadings and written submissions by the parties, we are of the opinion that this allegation of the Appellant does not stand on merit. The Respondent Petroleum Board did take into due consideration all the relevant information and clarifications submitted by the Appellant with regard to its networth claimed. The fact of the matter is that the Petroleum Board cannot be faulted on the count of a

misconceived grievance and the Petroleum Board actually found the contentions raised by the Appellant in support of its networth figures not technically acceptable.

17. We note the Petroleum Board's assertion that the networth computations undertaken by it are exactly in accordance with the steps and procedures stipulated in the Application-cum-Tender document. At no stage prior to bid opening, were the pre-defined steps and procedures for a bidder's networth computations under any challenge.
18. We further agree with the Respondent's contention that the networth details of the two new group companies, viz. LMJ Services Ltd. And LMJ Overseas Ltd., submitted by the Appellant subsequently vide its letter dated 24.06.2011 cannot be incorporated into the bidder's net worth computation against the said bid since that would tantamount to modification of the bid which is not permissible. The Application-cum-Tender document clearly states vide clause 2.8.3.1 that modification of the bid is not permitted after the deadline for bid submission which was 18.02.2011 in the instant case.
19. Accordingly, we are of the opinion that the answer to question "B" is in the affirmation which implies that the Appellant was not illegally deprived from an opportunity of having its informations and clarifications duly taken into consideration by the Respondent in the

bid evaluation process with special reference to the bidder's net worth computations. Just because the Appellant's contentions in the bid and follow-up clarifications with respect to the bidder's net worth computations were rejected by the Respondent it cannot be attributed to the misplaced allegation that the same were, per se, totally ignored and not given due weightage by the Respondent thereby causing a violation of principle of natural justice.

20. As regards the third question (Question-C) before us, the Respondent in the Impugned Orders (Letters) vide para 2 made it amply clear that the bids were found wanting since the combined net worth of the bidder and its partners/promoters worked out to only Rs.98.15 crores as per details shown vide a tabulation against the minimum net worth eligibility criterion of Rs.100 Crores.
21. Further, in the Remarks column of the said tabulation given in the Impugned Order (Letters), individual Partner/Promoter-wise, Revised Networth considered by the Petroleum Board as per Regulations, and the corresponding grounds as to why certain amounts are not admissible in net worth computations have been clearly spelt out.
22. The last para (i.e. para 3) of the Impugned Orders (Letters) categorically states that the Appellant's bids are found to be technically not qualified since its bids do not meet the minimum eligibility criteria under Regulation 5 (6) (e) of the PNGRB (Authorizing

Entities to Lay, Build, Operate or Expand City or Local Natural Gas Distribution Networks) Regulations, 2008.

23. We are thus of the opinion that the submission of the Appellant that the Impugned Orders are unreasoned is misconceived and, hence, this submission does not deserve acceptance.

24. Summary of Our Findings:

(i) In the light of our detailed discussions made above, it has to be held that the Respondent Petroleum Board has undertaken the bid evaluation process including bidder's net worth computation in a fair, transparent manner as stipulated in the Application-cum-Bid document.

(ii) The Appellant was duly provided with legitimate opportunity by the Respondent to provide additional information and clarifications in support of its net worth submissions.

(iii) The additional informations and clarifications submitted were duly considered but the Appellant's contentions were found to be not acceptable by the Petroleum Board going by the stipulations of Application-cum-bid document.

(iv) The grounds of bid rejection were clearly spelt out by the Petroleum Board in its Impugned Orders.

- (v) The submissions made by the Appellant that in the process of its bid evaluation, the Respondent had violated principles of natural justice, and that the Impugned Orders are unreasoned, have been found to be misconceived. These submissions by the Appellant are, therefore, found to be void of any merit and, hence, are not acceptable in our opinion.
- (vi) In the light of the foregoing, we find no legal or technical infirmity with the Impugned Orders in the instant case. The Appeal is, accordingly, dismissed. However, there is no order as to costs.

(Nayan Mani Borah)
Technical Member (P&NG)
Dated: 19th November, 2014

(Justice M. Karpaga Vinayagam)
Chairperson

√Reportable/~~Non-Reportable~~