



2025 INSC 1085

Reportable

**IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION**

CIVIL APPEAL NO. of 2025
(Arising out of SLP (C) No.1940/2025)

Maha Mineral Mining & Benefication
Pvt. Ltd. ... Appellant (s)

Versus

Madhya Pradesh Power Generating
Co. Ltd. & Anr. ... Respondent(s)

JUDGMENT

1. Leave granted.

Factual Matrix

2. In response to Notice Inviting Tender¹ dated 17.05.2024, issued by the 1st respondent for the purpose of run-of-mine (ROM) coal beneficiation and managing logistics from Western Coalfields Ltd.² (Nagpur area) sources for Shree Singaji Thermal Power

Project, Khandwa (Madhya Pradesh), the appellant and two

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NITIN TALREJA
Date: 2024.09.09
16:29:01 IST
Reason:

¹ ID 2024_MPPGC_341576_1, hereinafter referred to as "NIT".

² Hereinafter "WCL".

others, namely the 2nd respondent³ and one M/s NN Global Mercantile Pvt. Ltd. had submitted their bid.

3. As NN Global Mercantile Pvt. Ltd. could not furnish earnest money deposit, only the appellant and the 2nd respondent remained in the fray. On 04.07.2024, the Tender Evaluation Committee⁴ while referring to Clause 5(D)⁵ of the NIT rejected the appellant's technical bid holding as follows –

*“As per Clause No. 5(D) “Past experience criteria” of NIT, bidder is allowed to use past experience of their previous Consortium or JV (proportionate to its share in that consortium **if defined in the Consortium Agreement,***

³ Rukhmai Infrastructure Pvt. Ltd.

⁴ Hereinafter referred to as “The Committee”.

⁵ Clause 5(D): ***“Past Experience:*** Copies of successfully executed orders (including part executed) in the name of bidder for same or similar work {similar work means coal lifting from mines of CIL subsidiaries or SCCL area, coal beneficiation (through wet process), movement of washed coal by road from washery to railway siding and movement of washed coal through Railways with experience in liaisoning with Railways/ CIL subsidiaries or SCCL area, i.e., arranging rakes, dispatches coal from own or leased Private siding or Goods shed Railways siding by loading of washed coal into railway wagons through own arrangement with monitoring the rake movement etc. up to the destination Power house}. ***Bidder is allowed to use past experience of their previous Consortium or JV (proportionate to its share in that consortium if defined in the Consortium Agreement, otherwise, lead partner if not defined in the Consortium) to meet out the past experience criteria of the tender.*** The order copies should indicate the above work for 4 Lakh MT (4,00,000 MT) quantity or more in state Owned Power Generating Companies or Other Captive Power Utilities of PSU or NTPC or Govt. Industries / Departments or Semi Govt. Industries / Departments or PSUs or Nodal Agency of any PSUs in India executed in last five years ending with initial date of opening of bid are to be uploaded. This order execution should be within a period of twelve (12) months. It may be through single or multiple orders (in parallel), but in case of multiple orders; these should be within a single span of time period of twelve (12) months.

1. The ***work execution certificate by the customers*** along-with self-attested un-priced copies of aforesaid work order(s) should be submitted.
2. For ***Past performance certificates*** - If worked with MPEB/ MPSEB/ MPPGCL in past for similar work, then it is mandatory to provide Satisfactory Performance Certificate for the same. Failing this, the offer shall not be considered.” (emphasis supplied)

otherwise, lead partner if not defined in the Consortium) to meet out the past experience criteria of the tender.

The firm has used the credentials of their consortium M/s Hind-Maha-Mineral LLP for meeting out the past experience criteria. However, Agreement of the Consortium/JV is not submitted to substantiate the share of the bidder in that consortium. Bidder is disqualified due to non-submission of credentials as per Clause No. (5)D of the NIT.”

4. Appellant challenged the decision of the Committee before the High Court of Madhya Pradesh.⁶ Appellant contended neither Clause 5(D) nor any terms of the NIT expressly required a bidder who was relying on past-experience of a previous consortium or joint venture⁷ to produce the JV agreement itself to demonstrate its proportionate share in the consortium. In terms of Clause 5(D) it had submitted a work execution certificate from Maharashtra State Mining Corporation⁸ which *inter alia* stated that the appellant was 45% Joint Venture/Consortium Partner of M/s. Hind Maha Mineral LLP *vide* the JV agreement dated 02.12.2019 and had executed similar work in respect of WCL command for the period 05.03.2021 to 05.03.2024. It was

⁶ Writ Petition No. 18286/2024.

⁷ Hereinafter referred to as “JV”.

⁸ Hereinafter referred to as “MSMC”.

further clarified the JV agreement had been submitted before MSMC.

5. In case of doubt, 1st respondent could have verified the correctness of the certificate from MSMC or called upon the appellant to furnish the JV agreement. On the contrary, the 1st respondent arbitrarily rejected the technical bid on the ground the JV agreement had not been furnished.
6. 1st respondent contradicted such stance and contended in the event any bidder was seeking to rely on past-experience of a previous consortium/JV, submission of the JV agreement was implicit in Clause 5(D) of the NIT. Further, Clause 8.1 provided that if the bidder did not submit the desired documents as per NIT at the time of submission of the bid, he shall not be allowed to submit documents subsequently and its bid is liable to be rejected on account of incomplete documents. Clause 8.1 of the NIT unequivocally states that –

*“Instructions regarding **shortfall documents**:-*

(i) The bidders not submitting all the desired documents as per NIT/Tender Document at the time of submitting bids, shall not be allowed to submit documents subsequently and their bids shall be rejected on account of incomplete documents. Thus, no "shortfall window" for

submission of shortfall documents shall be created by MPPGCL in the e-tender.

(ii) Accordingly, Clause No. 1.15 (VII) "Verification of credentials/PQR" of the Standard Bid Document (SBD) so far as it relates to "Shortfall of document" window shall not be applicable.

(iii) Any condition elsewhere mentioned in the NIT/Tender Document for submission of Shortfall Document shall not be applicable.

(iv) However, techno-commercial clarifications (if required) shall be obtained through e-mail/physical form from the bidders" (emphasis supplied)

The said clause is further fortified by circular no. F-3/25/2015/13/10⁹ issued by the Government of Madhya Pradesh on 29.11.2023.

7. Appellant was fully aware of the requirement to furnish the JV agreement to demonstrate its proportionate share in the consortium in order to rely on the past-experience of such previous consortium/JV. In fact after the closing date, by email dated 05.07.2024, the appellant purportedly submitted a JV

⁹ Circular dated 29.11.2023: "It has come to the notice of the department that bidders are being allowed to participate in the bid process with incomplete documents. Bidders are allowed to submit the balance documents in due course of time and meanwhile some of the bidders back out of the bidding process, allowing a few number of bidders to participate in the bidding process and quote non-competitive rates which results in financial loss to the Power Companies. **It has therefore been decided that bidders not submitting all the desired documents as per NIT/Tender document at the time of submitting bids, should not be allowed to submit documents subsequently and their bids should be rejected on account of incomplete documents.** If required, even fresh bid can be called to get competitive rates.

As directed, it is request to please ensure the bidding process to make it more transparent and fair." (emphasis supplied)

agreement dated 06.09.2019, which however did not correspond to the JV agreement dated 02.12.2019 referred to in the certificate issued by the MSMC. Be that as it may, such subsequent submission of document was impermissible as per Clause 8.1 of the NIT read with circular dated 29.11.2023 and the technical bid was rightly rejected for submission of incomplete document.

8. During the pendency of the writ petition, 2nd respondent was declared as the successful bidder and was impleaded in the proceedings. During hearing, the JV agreement dated 02.12.2019 was placed on record. Written submissions were also submitted on behalf of the parties.

Findings of the High Court

9. By the impugned judgement and order, the High Court upheld the decision of the Committee holding as follows:-

“22. Due to non-filing of Joint Venture agreement by the Petitioner, the Impugned Order rejecting the bid of the petitioner has to be seen wherein at the outset it has been stated that your bid for the above tender has been rejected during Technical evaluation by the duly constituted committee for the reason Bidder is disqualified due to non submission of credentials as per Clause No. (5)D of the NIT.” It is evident that the Petitioner has not filed the Joint Venture agreement. The Petitioner is disqualified for the reason of non compliance with the

requirements in terms of Clause (5)D. The reason is also assigned by the Respondent No.1 in their reply as to why the petitioner was disqualified. If the petitioner is relying on the Joint Venture Agreement dated 02.12.2019 then it was the duty of Petitioner to file the same while submitting the bid. The NIT condition no. (8)1(i) and (8)(1)(iii), specifically prohibit the submission of the document/shortfall document at a later stage. As per the NIT conditions, a bidder is supposed to upload all the requisite documents at the time of submission of the bid. It is evident that the earlier practice of allowing bidders to fulfil the shortfall in documents left a scope for unfair practices in the bidding process and therefore, the said practice of allowing documents at a later stage has been discontinued in view of the past experience, as is evident from the letter 29.11.2023 of the GoMP, Energy Department. **The Petitioner in the present case relied on the experience certificate issued by the Maharashtra State Mining Corporation dated 14.06.2024 wherein date of the Joint Venture agreement is mentioned as 02.12.2019. However, surprisingly the Petitioner neither filed the said document of JV on record at the time of submission of bid nor at the time of filing of the petition. Even the document of JV agreement, which the Petitioner has filed along with the Email sent to Respondent No.1, is dated September, 2019 and not 02.12.2019. The Petitioner has not filed the said JV Agreement from its own. It is apparent that there is a suppression of the JV Agreement dated 02.12.2019 by the Petitioner and hence, on this count of concealment of JV agreement dated 02.12.2019 the instant petition fails.** The Petitioner has not given any satisfactory response in the petition or even otherwise for not submitting the document in alternate. Thus, the Petitioner cannot put forward its claim before demonstrating its bonafides that could have been done by duly submitting all the documents and by not engaging in active suppression and concealment....." (emphasis supplied)

10. Thereafter, referring to the written submissions made by the 2nd respondent in light of Clauses 3.12, 3.13 and 8.5 of the JV agreement, the Bench further held:-

“24. The additional submissions of the Respondent No.2 have force and it is evident that in any case, even if the above-mentioned documents were provided by the Petitioner would have been disqualified as its washeries had been committed to Maharashtra State Mining Corporation Ltd. alone in terms with the Joint Venture Agreement dated 02.12.2019. Even the experience Certificate issued by Maharashtra State Mining Corporation Ltd. to the Petitioner categorically mentions the Joint Venture Agreement dated 02.12.2019.” (emphasis supplied)

11. In view of the aforesaid findings, the Division Bench dismissed the writ petition, giving rise to the present appeal.

12. Heard Mr. Narender Hooda, learned senior counsel for the appellant, Mr. Bijender Chahar, learned senior counsel for 1st respondent, and Mr. Shyam Divan and Mr. Balbir Singh, learned senior counsel for 2nd respondent.

Analysis

13. It appears the High Court had not only upheld the disqualification of the appellant by the Tender Evaluation Committee for non-compliance of Clause 5(D) of the NIT but also went a step further and held, even if the JV agreement had been

submitted, the appellant would have stood disqualified since its washeries had been exclusively committed to MSMC.

(I) Appellant's disqualification under Clause 5(D) of the NIT

- 14.** First, let us consider whether the decision of the High Court to uphold the appellant's disqualification under Clause 5(D) for not furnishing JV agreement is justified or not?
- 15.** Clause 5(D) of the NIT required the bidders to furnish documents relating to past-experience in similar work. The clause further provided that "*bidder is allowed to use past experience of their previous Consortium or JV (proportionate to its share in that consortium if defined in the Consortium Agreement, otherwise, lead partner if not defined in the Consortium) to meet out the past experience criteria of the tender.*" Sub-clause 1 and 2 of the said clause stated the following documents are to be submitted:-

*"1. The **work execution certificate by the customers** along-with self-attested un-priced copies of aforesaid work order(s) should be submitted.*

*2. For **Past performance certificates - If worked with MPEB/ MPSEB/ MPPGCL** in past for similar work, then it is mandatory to provide Satisfactory Performance Certificate for the same. Failing this, the offer shall not be considered."* (emphasis supplied)

Appellants had submitted a work execution certificate from MSMC along with its bid to support its past-experience as a 45% proportionate member of a consortium/JV for similar work executed at WCL in the last five years. The relevant portion of the certificate reads as follows:-

*“.....this is to certify that as part of the aforementioned contract agreement, **M/s Maha Mineral Mining & Beneficiation Private Limited being the 45% Joint Venture/Consortium Partner of M/s. Hind Maha Mineral LLP vide the JV agreement dated 02.12.2019** (submitted to this office by M/s Hind Maha Mineral LLP) has executed the said work in respect of WCL command for the period 05.03.2021 to 05.03.2024. The details are as follows:*

- a. Quantity of RoM Coal Lifted: 1,41,55,130.40 MT*
- b. Quantity of RoM coal washed: 1,17,95,440.46 MT*
- c. Quantity of washed coal supplied to Mahagenco TPSs: 1,17,47,501.99 MT*
- d. Approximate value of the work executed: Rs. 465 crores.” (emphasis supplied)*

- 16.** The aforesaid certificate clearly demonstrates that the appellant had 45% share in a JV consortium namely M/s Hind Maha Mineral LLP and had successfully executed work of similar nature as required by Clause 5(D) of the NIT.
- 17.** The Committee refused to rely on such certificate holding as follows :-

“(v) As per tender condition no documents other than Consortium/JV Agreement can be permitted to meet out

the above criteria as per the NIT. Thus, the certificate submitted by M/s Maha Mineral Mining and Benefication Private Limited cannot be considered as valid document for the same.”

18. Though the submission of a JV agreement has not been expressly stated in the aforesaid clause, the respondents argue that the proportionate share of a bidder in a consortium/JV can only be established through production of the JV agreement itself and the words used in the contract/tender document must be read in a purposive manner so that no part of the document is rendered superfluous. Respondents further contend appellant had submitted its bid on the last day and it was open to the appellant during the previous calls to seek clarification whether submission of JV agreement was mandatory. Appellant did not do so and intentionally suppressed the JV agreement while submitting its bid to avoid disclosure of inconvenient clauses in the JV agreement. This is evident from the appellant's conduct as it had after submission of bid, emailed a purported JV agreement dated 06.09.2019, whereas the JV agreement mentioned in the certificate was a different one. Be that as it may, the subsequent submission of

a JV agreement could not have been considered in light of Clause 8.1 read with circular dated 29.11.2023.

19. We are unable to accept such arguments for the following reasons:-

- (i) Clause 5(D) merely states the appellant would be entitled to use the past-experience of a previous consortium/JV in the event its proportionate share is defined in the JV agreement failing which the past-experience shall be attributed to the lead partner. The clause does not mandate the submission of the JV agreement itself to satisfy such criteria. Appellant had relied on the work execution certificate issued by MSMC which in no uncertain terms states the appellant had 45% share in the JV consortium named M/s Hind Maha Mineral LLP and successfully executed similar work of a volume larger than required under the clause. The certificate also mentioned the JV agreement had been submitted and was in the custody of MSMC.
- (ii) It is nobody's case that the 1st respondent had doubted the authenticity of the certificate but had disqualified the

appellant on the ground that Clause 5(D) mandated furnishing of the JV agreement alone and nothing else to prove proportionate share in a previous JV in order to use such experience.

- (iii) Conditions in a NIT must be clear and unambiguous. In the event the tendering authority insisted on furnishing of the JV agreement alone and no other document as proof of the proportionate share of the bidder to avail previous JV experience as prior qualification, it should have been spelt out clearly in the NIT. Having not done so, the 1st respondent cannot thrust the responsibility on the appellant to seek clarification and submit such document. As Clause 5(D) does not require submission of JV agreement itself to establish proportionate share in the JV whose past-experience the bidder is seeking to use, non-submission of such JV cannot be a ground to disqualify the bidder for submission of incomplete documents in terms of Clause 8.1 of NIT. Admittedly, the appellant had submitted the work execution certificate, as required under clause 5(D), which also unequivocally sets out its

proportionate share in the JV agreement whose prior experience it had relied on.

(iv) Though it is argued Clause 8.1 as well as circular dated 29.11.2023 put an embargo on 1st respondent to rely on documents furnished after submission of bid, nothing prevented 1st Respondent to seek clarification with regard to the proportionate share of the appellant in the previous JV as disclosed in the work execution certificate. It may be apposite to note Clause 8.8¹⁰ of the NIT, couched in a non-obstante clause, reserved the right of the 1st respondent to seek additional information to satisfy itself with regard to the eligibility of any bidder. 1st respondent failed to exercise such discretion by fortifying itself through calling for the JV agreement, which, when placed before this Court, unequivocally endorsed the contents of the certificate submitted by the Appellant.

¹⁰ Clause 8.8: “*Notwithstanding anything stated above, MPPGCL reserves the right to assess the creditability, capability and capacity to perform the contract. Should the circumstances warrant such an assessment in its overall interest, bidder shall furnish additional documents to substantiate its claim. MPPGCL also reserves the right to seek such additional information as it may deem fit to satisfy itself of the eligibility of the bidder.*” (emphasis supplied)

(v) The other argument advanced by the respondents is that the appellant had acted with *mala fide* intention by suppressing the JV agreement and subsequently furnishing different versions of the said agreement at various stages i.e., before the 1st Respondent, in the Special Leave Petition and finally, by way of additional documents respectively. This argument is unacceptable as neither Clause 5(D) required submission of JV agreement to prove proportionate share nor was the appellant called upon to submit such document. Moreover, the proportionate share of the appellant in the consortium as reflected in all the documents, i.e., the JV agreement submitted before the 1st Respondent, annexed to the SLP and the agreement with additional documents, is the same and consistent with the work execution certificate submitted in the bid. For these reasons, we are not in agreement with the argument that the appellant had intentionally suppressed the JV agreement or had approached the Court with unclean hands.

(vi) Finally, submission of the 2nd Respondent regarding a pending civil dispute between the consortium partners of M/s Hind Maha Mineral LLP is also of little consequence. Such dispute has no impact on the proportionate share of the appellant in the JV agreement and the work executed by the appellant as a part of the consortium for MSMC as disclosed in the work execution certificate.

20. In these circumstances, we are inclined to hold the 1st respondent acted contrary to the terms of the NIT and unfairly rejected the appellant's bid for non-production of JV agreement although Clause 5(D) did not prescribe production of such agreement as mandatory to rely on past-experience of such consortium in which the bidder had a defined proportionate share.

21. Accordingly, decision of the Committee, upheld by the High Court as per Clause 5(D) is liable to be set aside.

(II) Appellant's disqualification under Clause 5(B) of the NIT

22. However, the High Court went a step further, traversing beyond the reasons given by the Committee and held the Appellant

would otherwise be disqualified under Clause 5(B) of the NIT.

Clause 5(B) reads as follows –

“Details of Washery:

Bidder should have its own Washery with wet beneficiation technology either of Heavy Media Cyclone or Heavy Media Bath or Wet Jig. The Bidder should have a minimum spare washing capacity using wet technology of 50% of annual tendered quantity, i.e., 5 Lakh Metric Tonnes (LMT), in area nearby to mines of WCL configured in the tender. Total distance from mine(s) to offered washery (ies) and offered washery (ies) to Railway siding shall not be more than 100 KM.”

(emphasis supplied)

23. To arrive at such a finding the High Court relied on written arguments submitted by the 2nd respondent and held as per Clauses 3.12, 3.13 and 8.5 of the JV agreement the appellant's washeries were committed to MSMC and could not have been used for the present tender. Mr. Hooda rightly contends the issue was raised for the first time in the written submissions and his client did not get the opportunity to controvert the same. Referring to a chart placed before us,¹¹ he vehemently argues the appellant's *Gondegaon* washery had a spare capacity of 1.5 MMTPA¹² which was much higher than the required spare

¹¹ Annexure P-34 in the Appellant's Rejoinder to the Counter Affidavit filed by the 2nd Respondent.

¹² Million Metric Tonnes Per Annum.

capacity under Clause 5(B) of the NIT. He further contends a request¹³ had been made to MSMC to shift their operation to other washeries in terms of Clause 6¹⁴ of the contract agreement executed between MSMC and the consortium, and the *Gondagaon Washery* was available for execution of the work under the present NIT.

24. We are of the considered view the aforesaid issue is a contentious one and ought not to have been decided by the High Court without giving opportunity to the appellant to controvert the same. High Court also lost sight of the fact that the Committee had not adverted to this issue and it was impermissible for it to travel beyond the reasons given by the Committee and disqualify the appellant. It is also relevant to note that allotment of work order to 2nd respondent has been made subject to the outcome of this proceeding.

¹³ Letter dated 14.06.2024, annexed as P-36 in the Appellant's Rejoinder to the Counter Affidavit filed by the 2nd Respondent.

¹⁴ Clause 6: "ACCEPTED RATES:- Accepted Rates for beneficiation of raw coal as below (exclusive of GST). **If any change in washery/railway siding is request by CONTRACTOR (LLP), then it should not put extra financial burden on MSMC.....**" (emphasis supplied).

25. For these reasons, we remand the matter for a fresh consideration whether appellant had requisite spare washing capacity as per Clause 5(B) of the NIT and the validity of the work order in favour of the 2nd respondent in light of such decision. The High Court shall decide the matter as expeditiously as possible preferably within two months from the date of communication of this order.

26. The impugned judgment and order of the High Court is set aside and the appeal is partly allowed.

....., J
(SURYA KANT)

....., J
(JOYMALYA BAGCHI)

**New Delhi,
September 09, 2025.**