Montecarlo Limited Vs. NTPC Limited

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SooperKanoon Citation : sooperkanoon.com/1183166

Court : Delhi

Decided On : Sep-30-2016

Judge : Badar Durrez Ahmed &Amp; Ashutosh Kumar

Appeal No. : W.P.(C) No. 7726 of 2016 & CM No. 31901 of 2016

Appellant : Montecarlo Limited

Respondent : NTPC Limited

Judgement :

Ashutosh Kumar, J.

1. The petitioner, a company engaged in the business of mining of coal and lignite has questioned the communication dated 29.08.2016 issued by the Respondent, NTPC Limited, intimating that the technocommercial proposal of the petitioner for operation and development of Dulanga Coal mine in the state of Odisha was not acceptable in terms of clause 6.3.2 of the Invitation to Bid (hereinafter referred to as ITB);which in effect disqualifies the petitioner from participating in the price bids opening and the reverse auction qua the bid for development and operation of the aforementioned Coal Block, as unreasonable, arbitrary, contrary to the terms of the tender papers and therefore unsustainable.

2. The respondent, NTPC Ltd, had issued separate invitation for bids for development and operation of three coal mines viz. Dulanga Coal Block, Chatti

Bariatu and Talaipalli in the state of Odisha. Online bids were invited on Single Stage Two Envelope Bidding basis (Envelope-1:- Techno-Commercial Bid and Envelope-II: - Price Bid) with Reverse Auction.

3. The issue in controversy between the parties is as to whether the proposal/bid of the petitioner was responsive to the qualifying requirements (hereinafter called "QR") set out in the tender documents. The dispute, in the present case, hinges on the interpretation of the requirement of a bidder of having experience in "Drilling" for removal of overburden and coal, which the petitioner claims to be possessing but the respondent, NTPC Limited, insists on the experience of "drilling for the purposes of blasting" and not drilling in a generic sense as the essential condition for meeting the QR for acceptance of the first stage of techno commercial bid.

4. It is submitted that after certain clarificatory communication between the petitioner and the respondent, the project proposal of the petitioner for Dulanga Coal Block was submitted on 26.04.2016 and 27.04.2016 on the respondent's website. The techno commercial bid of the petitioner was rejected by the respondent by the impugned communication dated 29.08.2016.

5. It would be necessary to cull out the relevant provisions of the tender documents (ITB) for appreciating the contention of the parties:-

6.3 TECHNO-COMMERCIAL PROPOSAL PHASE This phase shall be conducted in the following steps:

6.3.1 PRELIMINARY EXAMINATION OF TECHNOCOMMERCIAL PROPOSALS

(a) OWNER will examine the Project Proposals to determine whether they are complete, whether required securities have been furnished, whether the documents have been properly signed and whether the bids are generally in order.

(b) Prior to the detailed evaluation, OWNER will initially determine whether each Techno Commercial Proposal is of acceptable quality, is generally complete and is substantially responsive to the bidding documents. For purposes of this determination, a substantially responsive Proposal is one that conforms to all the terms, conditions and specifications of the bidding documents without material deviations, objections, conditionalities or reservations. A material deviation, objection, conditionality or reservation is one (i) that affects in any substantial way the scope, quality or performance of the contract; (ii) that limits ill any substantial way, inconsistent with the bidding documents, the Owner's rights or the successful Bidder's obligations under the contract; or (iii) whose rectification would unfairly affect the competitive position of other Bidders who are presenting substantially responsive Proposals.

(c) OWNER's determination of a Techno Commercial Proposal's responsiveness is to be based on the contents of the Techno Commercial Proposal itself without recourse to extrinsic evidence. If a Techno Commercial Proposal is not substantially responsive, it will be rejected by OWNER, and may not subsequently be made responsive by the Bidder by correction of the nonconformity.

6.3.2 EVALUATION OF RESPONSIVE TECHNOCOMMERCIAL PROPOSAL

The responsive Techno-Commercial Proposal shall be evaluated as under:

6.3.2.1 EVALUATION OF QUALIFICATION PROPOSALS

The Qualification Proposals shall be evaluated in detail as specified in Chapter 9 to determine fulfilment of Qualification Requirements specified in Chapter 7 of this RFP Document.

6.3.2.2 EVALUATION OF TECHNICAL PROPOSALS

The Technical! Proposals shall be evaluated further in. detail as specified in Chapter 9 to determine compliance with the Technical Proposals requirements.

6.3.4 CLARIFICATION MEETING:

The Owner, if required shall hold discussions or clarification meeting with only those bidders who have been considered qualified and whose Techno Commercial Proposal have been found to be responsive . However, it will not be construed from inviting/holding of these post bid discussions that the bidder has been considered eligible for opening of their Price Proposal

6.3.5 The responsive Techno-Commercial Proposal which meets the Qualifying Requirements specified in Chapter 7 and Technical Requirements specified in Chapter 8 of RFP Documents shall be considered for Price Proposal Phase of the Bidding Process. The Bidders who meets Qualifying Requirements Specified in Chapter 7 and Technical requirements specified in Chapter 8 of RFP Documents shall be termed as Shortlisted Bidders.

7.0 In addition to the satisfactory fulfilment of the requirements stipulated under section ITS, the following shall also apply:

7.1 TECHNICAL CRITERIA

7 .1.1 The Bidder should have, in the preceding 7 (seven) years reckoned from the date of opening of the Techno-commercial Bids developed and operated single coal I lignite mine having coal/lignite reserves of atleast 150 million tonnes and annual capacity of at least 6 MTPA and produced at least 2 million tonnes of coal/lignite from such mine. OR

7 .1.2 The Bidder should have, in the preceding 7 (seven) years reckoned from the date of opening of the Techno-commercial Bids, operated and produced:

a) At least 23 Million SCM of aggregated volume of overburden and/ or coal/ lignite from a maximum of seven open cast mines of Coal I Lignite, in any year.

b) At least 11.5 Million SCM of composite volume of overburden and coal/lignite from single open cast mine in any year, out of which at least 3 million tonnes shall be coal I lignite.

The qualifying works at clause 7.1.2(a) can be from same mine or different mines including the mine considered to meet qualifying requirement at clause 7.1.2(b).

NOTES:

i. The word "operated" means that the Bidder should have performed the necessary activities of drilling, excavation, hauling etc. on its own or through sub-contracting.

ii. The word "developed" means that the Bidder should have performed the necessary activities of Land Acquisition I assisted in Land Acquisition, Statutory clearances/assisted in Statutory clearances and carried out 'Infrastructure development' on its own or through subcontracting.

9. EVALUATION METHODOLOGY FOR TECHNO COMMERCIAL PROPOSAL (QUALIFICATION PROPOSAL AND TECHNICAL PROPOSAL)

9.1 Evaluation of Qualification Proposal: The Techno-Commercial Proposal shall be scrutinized to establish "responsiveness" as per Clause 6.3.1.

The Responsive Techno-Commercial Proposal shall be evaluated in detail to determine their fulfilment of Qualifying requirements specified in Chapter 7 of this RFP document. During the bid evaluation, NTPC may, at its discretion, ask the Bidder for a clarification of its Qualification; Proposal including documentary evidence pertaining to only the reference mines declared in the Qualification Proposal for the purpose of meeting Qualifying Requirement specified in Chapter 7 of this RFP document. The request for clarification and the response shall be in writing and no change in the substance of the TECHNO-COMMERCIAL Proposal including substitution of reference mines in the Qualification Proposal by new/additional mines for conforming to Qualifying Requirement shall be sought, offered or permitted.

The Qualification Proposals which meets the qualification criteria shall be considered for Technical Proposal Evaluation Phase of the Bidding Process. The Bidders who meet the qualification criteria shall be termed as Qualified Bidders.

9.2 Evaluation of Technical Proposal: The Technical Proposals shall be evaluated to determine their compliance with the Technical Proposal Requirements. For this purpose, NTPC shall use the supporting documents and/or information available with or obtained by NTPC.

9.2.1 During evaluation NTPC may seek clarification from the Bidders, may conduct discussions with the Bidders, and may ask the bidder to make Technical presentation.

Technical proposal shall include details as has been sought vide Chapter 8.

9.2.2 The Technical Proposals without sufficient information as per the terms of Chapter 8 of this document shall be deemed "Non Responsive Technical Proposal".

9.2.3 The Responsive Technical Proposals meeting the requirements to the satisfaction of Owner shall be considered for further detailed Technical Evaluation.

9.3 Detailed Evaluation of Technical Proposals submitted by the Bidder.

9.3.1 The purpose of technical evaluation is to check responsive and assess the compliance with the requirements of NTPC.

9.3.2 To ensure effective evaluation of Technical Proposals the Bidders shall provide the necessary details as specified in Clause 8.4. The Technical evaluation will be for evaluating whether the Technical Proposal of the Bidder meets the following criteria.

(a) Time Schedule to Achieve First Year Coal Production Target - NTPC shall evaluate the PERT chart submitted by the Bidder, to determine its completeness; reasonableness; and achievability.

(b) Adequacy of the Equipment Plan- The Bidder shall submit an equipment plan giving details of the equipment that shall be used by the Mine Operator to provide Mining Services which shall be not less than the Minimum Equipment to be deployed as specified by NTPC at Schedule 6 of Project Agreement. NTPC shall evaluate the adequacy of equipment to meet the criteria imposed by NTPC in terms of quantity of production, quality of coal produced etc.

(c) Development and Operational Philosophy - NTPC shall evaluate the feasibility of the development and operational philosophy being proposed by the Bidder for the Site.

(d) Staffing - NTPC shall evaluate the staffing plan being proposed by the Bidder to determine its ability to meet the requirements for NTPC's project.

(e) Mine Infrastructure Facilities - NTPC shall evaluate the proposed site facilities being proposed by the Bidder to determine their ability to support the proposed fleet of mining equipment and accommodate the, projected staffing levels. This assessment shall include Bidder's plan for workshop, warehouse and office complex.

(f) Maintenance of Major Mining Equipment- NTPC shall evaluate the proposed program of the Bidder for maintenance of the mining equipments to determine its ability to meet the production requirements for the Dulanga Block.

(g) Control of Coal Quality - NTPC shall evaluate the proposed program of the Bidder in respect of quality control of delivered coal to ensure that the quality of dispatched coal meets the specification~ set by NTPC.

(h) Coal handling, crushing - NTPC shall evaluate the proposed equipment and program for the crushing and handling of coal to meet NTPC's production and delivery requirements.

(i) Environmental Compliance - NTPC shall evaluate the proposed environmental program to determine its compliance with key requirements of the approved Mining Plan.

(j) Safety - NTPC shall evaluate the proposed Safety Program to determine its ability to achieve satisfactory levels of safety for the Project.

(k) Training - NTPC shall evaluate Bidder's training plan and overall philosophy to determine its ability to meet the requirements of NTPC.

(I) Site Security and Control of Coal Theft- NTPC shall evaluate the proposed program for security of the Site and the control of coal theft to determine whether it meets the requirements of NTPC.

(m) Land Acquisition and Construction of RandR Colony - NTPC shall evaluate

Bidder's proposed program for Land acquisition and Construction of RandR Colony to determine its ability and commitment to meet the requirements of NTPC. (emphasis provided)

6. The petitioner, in its project proposal uploaded on 26.04.2016 gave reference of three mines in support of its claim in terms of clause 7.1.2 (b) of the ITB, towards meeting the QR. The three mines referred to in the proposal were (i) Mata No Madh, Lignite Mine, Kutch, GMDC (Mine 1); (ii) Juna Kundada OCP of Western Coalfield Limited (Mine 2); (iii) Khadia OCP, Northern Coalfield Limited (Mine 3). Out of the said mines, the data with respect to Mine Nos.2 and 3 did not meet the QR as it did not relate to operation and production of 11.5 million BCM of composite volume of overburden and coal/lignite from single open cast mine in any year, out of which at least 3 million tonnes was to be coal/lignite. Thus, only Mine No.1 (Mata No Madh) was considered as the reference mine for evaluation of the proposal for Dulanga Coal Block of the petitioner.

7. With respect to Mine No.1, the petitioner, while declaring the scope of work done in the aforesaid mine had furnished the following details:-

Sl. No.	Particulars	Mine 1 (Lignite Project, Mata No Madh, Kutch)
10.	Brief description of scope of work	Turnkey mining Contract involving overburden/ inter burden removal, excavation and/or loading of lignite from mines face and ancillary activities.
11.	Drilling	Yes/No
	Carried out Drilling on our own or through subcontracting	Our own/subcontracting
	Excavation	Yes/No

	Carried out Excavation on our own or through subcontracting	Our own/subcontracting
	Hauling	Yes/No
	Carried out Excavation on our own or through subcontracting	Our own/subcontracting

8. Thus, the petitioner had initially given the information that it had not carried out drilling in the aforesaid mine (Mata No Madh). However, despite this, the respondent vide letter dated 17.05.2016 sought certain clarification regarding QR and other aspects. The communication dated 17.05.2016 is as hereunder:-
Ref: 01/ CS-7014-602(R1)-9-PAA Dated: 17.05.2016

To,

M/s. Montecarlo Limited,

706, Ship Building, Near Municipal Market,

C.G. Road, Navrangpura, Ahmedabad-380 009, Gujarat, India

Kind Attn. Sh. Shekhar Shanna, Sr. General Manager

Sub: Development and Operation of Dulanga Coal Block as per IFB No. 40051319; Bid Doc. No.CS-7014-802(R1)-9

Dear Sir,

1.0 This has reference to your Project Proposal (Techno-Commercial Bid) against IFB No.40051319 for the subject package. You are requested to furnish the following information with respect to the details/documents furnished in the bid for qualification requirement data:

(i) Against QR requirement of Clause 7.1.2 of ITB:

It is observed in the Contract Agreement dtd. 11.02.2014 submitted by the bidder in support of meeting qualifying requirement for Lignite project Mata No Madh, Kutch, Gujrat that the necessary activity of drilling as per stipulations of QR (sr.no. i of Notes) is not mentioned. The same may please be clarified with supporting documents.

(ii) Against QR requirement of Clause 7.2 of ITB:

Details of Other non cash expenses in Million for calculating Annual Cash Accrual for three year viz. 2013-14, 2014-15 and 2015-16

2.0 It is requested that the requisite information along with necessary documents be furnished to us at the earliest, preferably by 24.05.2016.

3.0 It may please be noted that seeking the above clarifications should not be construed that the bid submitted by you is considered techno commercially responsive and/or meeting the Qualification requirements (QR).

Thanking you,

Yours faithfully,

For and on behalf of NTPC Ltd.,

(S.N. Mallick)

AGM (CS - IV)

9. As against the aforesaid clarification, the petitioner responded by attaching various certificates including the certificate from Gujarat Mineral Development Corporation, mentioning the scope of the turnkey project which included activities of mine planning, quality control, drilling etc. Copy of the reply dated 21.05.2016 along with the certificate granted by GMDC is being reproduced below:-

No.: ML(C)/CO/9000/CLT/2016-2017/208 Date: 21.05.2016

To,

AGM (CS - IV)

M/s NTPC Ltd.

Engineering Office Complex,

Plot No.A-8A, Sector 24,

Post Box No. 13

NOIDA (UP) 201301.

Sub: Development and Operation of Dulanga Coal Block as per IFB No.40051319; Bid Doc. No.CS-7015-602(R1)-9.

Ref: Your Letter No.CS-7015-602(R1)-9-PRA dated 17.05.2016.

Dear Sir,

This has reference to your above referred letter dated 17.05.2016 regarding QR Requirement.

A) Para 1.0 (i) of your above letter against QR of Clause 7.1.2 of ITB: We are attaching the followings:

a) A certificate from GMDC (client of our Lignite Project at Mata No Math) Vide No.GMDC/MMLG/298/2016-17 dated 18.05.2016 mentioning our scope on this Turnkey Project which includes activities of Mine Planning, Quality Control, Drilling, Ripping, Dust suppression, Nala Diversion, preparation of Garland drain, dewatering of Monsoon and seepage water, preparation and monitoring of haul road for better hauling as required to complete the mining process.

b) Certificates from Northern Coalfields Ltd. (NCL) and Western Coalfields Ltd. (WCL) are also attached herewith mentioning drilling as part of the Mining Process of these projects as ready reference:

i) NCL Certificate No.GM/KSL/2016/460 dated 31.03.2016

ii) NCL Certificate No.GM/KSL/25 dated 24.04.2016

iii)NCL Certificate No.GM/KHD/OS/2016/43 dated 23.04.2015

iv)WCL Certificate No.WCL/MA/MGR/JKOC/2015/400 dated 04.12.2015

v) WCL Certificate No.WCL/MA/MGR/JKOC/2015/27 dated 14.04.2016

Further, as you are kindly aware that Indian Lignite deposits occur in the Tertiary sediments in southern and western parts of peninsular shield particularly in Tamilnadu, Rajasthan and Gujarat. The Overburden and interburden comprises of Clay, Claystone, mudstone and as well as lignite [Geologically younger sediments (Formations) then occurrences of Coal] which can be excavated by hydraulic Shovel dumper combination. As such, in lignite deposits of Tamilnadu, Gujarat and Rajasthan, Blast hole drilling is normally not required.

B) Para 1.0 (ii) of your above letter against QR of Clause 7.2 of ITB:

We are attaching the following:

a) Financial certificate of last 3 years

We hope that the above submission clarifies your points on QR requirement;

If your require further clarification/information in this regard, kindly inform us. We shall be pleased to provide the same at your convenience.

Thanking you and assuring you of our best services always.

Yours faithfully,

For and on behalf of

M/s. Montecarlo Ltd.

Encl: As above.

GMDC/MMLG/298/2016-17 Dated: 18.05.2016

TO WHOM IT MAY CONCERN

This is to certify that the Turnkey Mining Contract Involving Overburden/ Inter burden removal, Excavation and/or Loading of Lignite from mining face and ancillary activities at Lignite Project, Mata No Madh Vide Tender Notice No.(RI)/LP/01/13-14 dated 30.08.2013, has been awarded to M/s. Montecarlo Limited, having registered office at 7th Floor, Shilp Building, Nr. Municipal Market, C.G. Road, Navrangpura, Ahmedabad-380009, Gujarat, INDIA.

Name of Work: Turnkey Mining contract Involving Overburden/Inter burden removal, Excavation and/or Loading of Lignite from mines face and ancillary activities at Lignite project, Mata No Madh.

Name of Contractor : M/s Montecarlo Limited

LOI No : GMDC/LP/13306/13-14 Dated: 15.01.2014

Estimated Cost/Contract Value : 663.04 Cr.

Awarded Quantity : Over Burden (1109.00) Lac

CUM Lignite (148.00) Lac MJ Contract Period

: 28.01.2014 to 27.01.2019

The scope of Project is to carry out mining operation on Turnkey basis comprising of removal of over burden, inter burden and lignite and/or loading from mines faces using hydraulic showel and dumper combination and other activities like Mine planning, Quality control, Drilling, Ripping, Dust suppression, Nala Diversion, preparation of Garland drain, dewatering of Monsoon and seepage water, preparation and monitoring of haul road for better hauling etc as required to complete the mining process.

Quantities Executed (year-wise) by M/s Montecarlo Limited are shown below:

Sl. N o	Period	Over Burden Removal (Cum.)	Lignite Dispatched (MT)	Total Work Done Amount (Rs.)
1.	28.01.2014 TO 31.03.2014	1824,674.03	7,64,791.18	33,59,23,240.00
2.	01.04.2014 TO 31.03.2015	1,37,54,520.76	32,10,961.46	135,57,06,364.00
3.	01.04.2015 TO 31.03.2016	1,45,66,445.22	13,68,861.67	55,38,07,353.00

M/s Montecarlo Limited successfully carried out Dewatering of Mine. Yearwise details are shown for dewatering by deploying high capacities of Diesel and Electrical operated pump:

Sr. No.	Period	Dewatering in Lac m3
1	01.04.2015 TO 31.03.2016	65.0

This certificate is issued as per their request vide letter no.ML(P)/mn/4190/cit/2016-17/020 date 18.05.2016 for applying tender.
Thanking you,

For GMDC Ltd.

General Manager (P)

Lignite Project, Mata No Madh

10. The certificate of GMDC, as is noticed, clearly spells out that no blasting was done in the turnkey project in Mata No Madh mines. The respondent, thus, found that the proposal of the petitioner did not meet the QR as it did not have the

necessary experience of drilling for blasting purposes and, therefore, rejected the proposal.

11. Mr Rajiv Nayar, learned senior advocate appearing for the petitioner submitted that no reason was assigned for rejecting the proposal and it was only after the filing of the present writ petition that the response of the respondent was forthcoming.

12. It was further argued that in the tender document, the QR was of the experience of a bidder in only drilling, excavation and hauling etc and not blasting or drilling for blasting purposes.

13. The scope of work for Dulanga Mines project, which was taken into account by the respondent in evaluating the technical proposal of the petitioner as being non-responsive, in it having necessary experience for development and operation of Dulanga Coal mine, was not part of the tender document and hence it was absolutely incorrect for the respondent to have shut out the petitioner at the threshold stage on the ground of not meeting the qualifying requirement for eligibility. It was clarified by the petitioner, it is argued, in the communication dated 21.05.2016 referred to above, that Indian Lignite deposits occur in tertiary sediments in southern and western parts of peninsular shield, particularly, in Tamil Nadu, Rajasthan and Gujarat where the overburden and interburden comprises Clay, Claystone, mudstone as well as lignite which is a sediment of lesser antiquity and the same can be excavated by hydraulic Shovel dumper combination. It was emphasized that in lignite deposits of Tamilnadu, Gujarat and Rajasthan, blast hole drilling is normally not required. Since the petitioner was informed for the first time that drilling was part of the scope of work in Dulanga Coal mine, any information/experience regarding the same, or the lack of it could not have been treated as a necessary experience of the petitioner towards meeting the QR.

14. It was submitted that on 21.06.2016, a team of the respondent had visited the office of GMDC, where and when the team was made to understand that it was only rarely that overburden was encountered in a lignite mine and the process of removing the same was to drill bore holes, which were then filled with water overnight to soften the hard strata and then ripped by Ripper Dozer. Many a times,

the team was made to understand, overburden and lignite in the reference mine would be so soft that blasting may not be required. It was in this context that the certificate issued by GMDC reported that no blasting was done in the Mata No Madh, (reference mine).

15. On the contrary, Mr Vikas Singh, learned senior advocate appearing for the respondent countered the claim of the petitioner and submitted that the writ petition is liable to be dismissed, in the first instance, as the petitioner has purposely withheld the information that while giving the details of the reference mine of Mata No Madh, it had denied the factum of having experience in drilling. It was only a fair stand of the respondent in seeking clarification from the petitioner about its drilling and perhaps blasting experience.

16. It was further submitted by the respondent that as a necessary qualifying requirement, experience in drilling was a must. The drilling in this context cannot be understood to be for the purposes of drilling bore holes only for putting water into it overnight for softening harder strata of overburden or lignite but drilling for the purposes of blasting as blast hole drills are necessarily to be deployed by the mine operator for blast hole drilling. Clause 5 of Schedule II of the scope of work for the Dulanga Coal Block gives the description of mining services to be followed in any project agreement for the development and operation of Dulanga Coal Block.

5. MINE OPERATIONS

5.1. The Mine Operator shall construct and operate the Site in accordance with the following scope:

(a) Plan the mine (Site), its development and construction.

(b) Strip OB and store such OB on dumps.

(c) Mine and extract coal in accordance with the requirements of Owner.

(d) Make provisions for HEMM, other mining machinery and its effective Maintenance.

(e) Implement, and comply with EMP and environmental clearances;

(f) Construction, maintenance and operation of mine dewatering plant, sump, and garland drains with de-silting provisions

(g) Construct and maintain all access ways and haul roads

(h) Arrangement and use of explosives, as per Indian Explosives Act.

(i) Drilling and blasting

(j) Construction and maintenance of workshops, stores etc as per the requirement.

(k) Construction, Operation and maintenance of complete power supply system.

(l) Mine illumination as per prevalent laws

(m) Arrangement of petrol/diesel, oil and lubricants.

(n) (if applicable) control any spontaneous combustion on Site

(o) Conduct advance infill drilling.

(p) OB dump management including rehandling of internal dump as per Environmental Clearance

(q) Progressive mine closure with effective land reclamation plan in accordance with approved mine closure plan. The Mine Operator shall submit to the Owner the annual financial statement of cost incurred towards Progressive mine closure activities duly certified by National Environmental Engineering Research Institute (NEERI) or Central Mine Planning and Design Institute Limited (CMPDIL) or any other institute as may be notified by the Government for these purpose to an acceptable level by the Coal Controller.

(r) POL Store shed

(s) Development of Power Supply Distribution System beyond 33KV switchgear breaker terminals of Darlipalli STPP for various equipments/facilities included in

Mine Operator's scope.

5.9 Blasting

Blasting shall be required for coal and selectively for overburden with the objective of achieving good fragmentation so that the excavators can operate at high levels of efficiency.

5.10 Overburden and Inter burden Removal

The terms overburden and interburden are each included in the term overburden below unless noted otherwise. The Mine Operator shall ensure the following in respect of Overburden removal: (emphasis provided)

Schedule 3 Proposed size of equipment deployment by the Mine Operator

The equipment size (column (iii)) is to be filled by the Mine Operator.

Task	Major Equipment	Equipment
(i)	(ii)	(iii)
Overburden removal	Front shovel and/or backhoe	
Interburden and coal/waste band removal	Front shovel, Surface Miner and/or backhoe	
Overburden and interburden hauling	Haul trucks	
Coal haulage	Haul trucks	
Operations support	Track dozers	

Dust control	Water Sprinklers	
Road maintenance	Motor graders	
Blast hole drilling	Blasthole drills	

5.7.2 Drilling and Blasting
Crawler-mounted pneumatically operated down the hole drilling rigs with hole diameter of about 250 mm and those rigs are capable to meet the future requirement of 8 m/hr will be deployed for OB. R.B.H. drills will be used for drilling about 160 mm diameter holes in coal.

After shot holes are drilled into the horizontal bench cut by the shovel, the faces are blasted using explosives and detonators. Coal is also extracted after blasting off the coal faces.

Drilling and Blasting would be required both in OB and Coal benches before excavation by shovel. Except for coal benched which will be mined by CSMs. Heavy ANFO type/Slurry Emulsion is proposed to be used based on the daily requirement. However, flexibility may have to be provided for usage of suitable alternative/available explosives as per the requirement.

17. The mining plan also emphasizes the deployment of drills of requisite size and numbers for operations directed towards excavation of overburden and coal.

18. The technical committee, on the basis of the data furnished by the petitioner in its proposal regarding the experience in Mata No Madh (as this mine only met the qualifying requirements under the tender document) came to the conclusion that the petitioner did not have the necessary qualification/wherewithal for operating Dulanga Coal Mine.

19. In the counter affidavit, an effort has been made to compare the drilling experience of the petitioner at Mata No Madh (reference mine) and the drills which would be required at Dulanga Coal Block.

Sl No.	Parameter	As seen/observed at Mata No Madh	Expected at Dulanga
1	Size	50 mm (approx)	160mm-250mm
2	Numbers	One	Ten
3	Depth of holes	0.5-2.0 meters	Upto 10 meters
4	Mounting	Tyre Mounted, Diesel operated	Crawler mounted, diesel/electrically operated
5	Drilling Pattern	No specific pattern seen	Specific pattern is required to be formulated based on type of strata and desired fragmentation. This dictates the type and quantity of explosive to be used.

20. On a careful analysis of the experience of the petitioner in the reference mine (Mata No Madh) and what would be expected of the bidder in operating and developing Dulanga Coal Block, it becomes evident that the experience of the petitioner is substantially inadequate.

21. It is true that in the Notes to the QR, there is no specific use of the words drilling for the purposes of blasting but the experience of drilling has to be seen in the correct perspective and context and not in a generic way. Deep/heavy drilling would be required in development of a coal project and unless a prospective

awardee of the contract has the necessary wherewithal namely purpose specific vehicles for mounting the drilling machine and other equipments along with experience in blasting, the technical requirement would not and cannot in this case be said to have been fulfilled.

22. In the scheme of the detailed evaluation of the techno commercial proposal as set forth in clause no.9.3.2(b), a bidder is required to give an equipment plan giving details of the equipment that shall be used by the bidder to provide mining services which shall not be less than a minimum equipment to be deployed as specified by the respondent at Schedule 6 of the Project Agreement. The aforesaid condition further delineates that the respondent shall evaluate the adequacy of equipment to meet the criteria imposed by the employer in terms of the quantity of production, quality of coal produced, etc.

23. Similarly, in the project agreement and scope of work for the Dulanga Coal Block, details of the equipments including blast hole drills, to be deployed by the mine operator, has been specifically given.

24. We had called for the concerned file for satisfying ourselves as to whether the decision making process when the proposal of the petitioner was rejected, was fair and impartial qua the petitioner. We could find no anomaly or unfairness in the evaluation and on the score of eligibility of experience in drilling and blasting, another bidder also was rejected. We have also noticed that a legal opinion was sought before rejecting the proposal of the petitioner and another on this aspect (drilling and blasting) of eligibility and that even after the rejection of the petitioner and another, there are still many bidders in the fray.

25. It is beyond doubt that Courts would not, by way of judicial review, sit in appeal over the administrative decision and hold that such decision should have been otherwise in the given facts and circumstances for it would have the effect of usurping the discretion of a public authority which is vested with the powers to take a decision; more so when this Court does not find anything to tag such decision as capricious, uninformed or impractical. A coal block/mine, if not developed and operated properly, would result in loss of public revenue and would not be in the interest of anyone. The decision of rejecting the proposal of the petitioner,

therefore, passes the litmus test of legal reasonableness and cannot be subjected to any interference on the slender ground of non use of the word blasting along with drilling in the QR of the tender document. The project agreement regarding Dulanga Coal Block was known to the petitioner and the argument about the petitioner being taken unawares regarding QR of drilling for blasting", is not tenable.

26. The Supreme Court in Tata Cellular vs. Union of India: (1994) 6 SCC 651 has listed the principles to be followed while deciding the issue of acceptance of a tender. What has been emphasized upon by the Supreme Court in the aforesaid judgment is that judicial restraint should be exercised while dealing with administrative decisions because a Court does not sit in appeal over such decisions but merely reviews the manner in which the decision has been taken. We have noticed that even though, in the first instance, the petitioner while explaining the scope of work in the reference mine (Mata No Madh) did not speak about its expertise/experience in drilling, clarification was sought from the respondent regarding such drilling experience. Had the respondent not been fair, the petitioner would have lost at that stage itself. The clarification sent by the petitioner was further reviewed by the technical committee and even the expert legal opinion was obtained. This clearly establishes that the decision arrived at by the respondent was wellinformed and was in consonance with the purpose of evaluation of the proposal given by the petitioner.

27. We deem it appropriate to add that the decision to accept a tender and award the contract is actually gone through a process of consideration at various levels/tiers and it would only be reasonable and fair that such decision be of the experts in the field. In the present case, the feasibility and viability of full operation and development of a coal block has been gone into by the technical evaluation committee of the respondent, for rejecting the proposal/bid of the petitioner.

28. In Poddar Steel Corporation vs. Ganesh Engineering Works: (1991) 3 SCC 273, the Supreme Court has clarified that as a matter of general proposition, it cannot be held that an authority inviting tenders is bound to give effect to every term mentioned in the notice in meticulous detail or in a literal sense. In the facts

of the present case, even though the word blasting has not been specifically used while defining the term "operated" in the Notes to the QR, nonetheless it would fall within the category of an essential condition of eligibility and not merely as ancillary or subsidiary to the main object which is sought to be achieved, by the condition of having experience in drilling for blasting in the tender paper; the object being full operation and development of the coal block. In appropriate cases, for defining the object of the tender, an authority can interpret a condition and it would be unnecessary to insist upon the strict/literal compliance/adherence to the conditions stipulated in the tender papers as long as the evaluation is fair and not arbitrary or capricious.

29. It would be apposite to refer to two paragraphs from the judgment rendered by the Supreme Court in Michigan Rubber (India) Ltd vs. State of Karnataka and Ors: (2012) 8 SCC 216 wherein, after analyzing several judgments of the Supreme Court on the issue of acceptance of tender and grant of contract, has been summarized.

23. From the above decisions, the following principles emerge: (a) the basic requirement of Article 14 is fairness in action by the State, and non-arbitrariness in essence and substance is the heartbeat of fair play. These actions are amenable to the judicial review only to the extent that the State must act validly for a discernible reason and not whimsically for any ulterior purpose. If the State acts within the bounds of reasonableness, it would be legitimate to take into consideration the national priorities;

(b) fixation of a value of the tender is entirely within the purview of the executive and courts hardly have any role to play in this process except for striking down such action of the executive as is proved to be arbitrary or unreasonable. If the Government acts in conformity with certain healthy standards and norms such as awarding of contracts by inviting tenders, in those circumstances, the interference by Courts is very limited;

(c) In the matter of formulating conditions of a tender document and awarding a contract, greater latitude is required to be conceded to the State authorities unless the action of tendering authority is found to be malicious and a misuse of its statutory powers, interference by Courts is not warranted;

(d) Certain preconditions or qualifications for tenders have to be laid down to ensure that the contractor has the capacity and the resources to successfully execute the work; and

(e) If the State or its instrumentalities act reasonably, fairly and in public interest in awarding contract, here again, interference by Court is very restrictive since no person can claim fundamental right to carry on business with the Government.

24. Therefore, a Court before interfering in tender or contractual matters, in exercise of power of judicial review, should pose to itself the following questions:

(i) Whether the process adopted or decision made by the authority is mala fide or intended to favour someone; or whether the process adopted or decision made is so arbitrary and irrational that the court can say: the decision is such that no responsible authority acting reasonably and in accordance with relevant law could have reached ; and

(ii) Whether the public interest is affected. If the answers to the above questions are in negative, then there should be no interference under Article 226. (emphasis provided)

30. Tested on the aforesaid propositions, we are firmly of the view that the decision arrived at by the respondent is neither malafide nor intended to favour anybody and the decision making process is not at all arbitrary or irrational. That apart, the aforesaid decision of the respondent in rejecting the proposal of the petitioner as being technically unresponsive does not adversely affect public interest; rather it is in accord with the public interest that a coal mine is fully operated and developed by the most suitable awardee of a contract, to be chosen from a number of proposers, who are still in the contest, thereby obviating the chances of lack of competition.

31. We are, therefore, satisfied that no unfair treatment was given to the petitioner and that the decision was also in conformity with the larger public interest of selecting the most suitable proposer/mine operator on the basis of competitive

bidding as six others are still left from amongst whom the respondent may chose the most suitable mine operator.

32. For the reasons aforestated, we do not find it appropriate to interfere with the decision of the respondent in rejecting the proposal of the petitioner.

33. The writ petition is, thus, dismissed but, without costs.