

राजस्थान लोक उपापन में पारदर्शिता अधिनियम 2012 एवं नियम 2013 (बिन्दु संख्या 83)  
के अन्तर्गत दायर अपील संख्या 17/2017-18

M/s GIEPL-HSEPL (Joint Venture), Jhansi

बनाम

(उपापन संस्था) अतिरिक्त मुख्य अभियन्ता, जल संसाधन संभाग, जयपुर

अतिरिक्त मुख्य अभियन्ता, जल संसाधन संभाग, जयपुर के द्वारा Planning, Investigation, Design, Drawing and Construction of Isarda Dam across Banas river for Drinking Water near Village Banetha, District Tonk, Rajasthan on Engineering Procurement and Construction Basis (Single Responsibility Turn-Key Project) including its Operation & Maintenance for five years निविदा क्रमांक 5/2017-18 दिनांक 04.09.2017 द्वारा आमन्त्रित की गई।

उपापन नियम 3 के तहत निविदा की तकनीकी बिड में मूल्यांकन समिति द्वारा लिये गये निर्णय दिनांक 05.01.2018 के विरुद्ध M/s GIEPL-HSEPL (JV), Jhansi द्वारा राजस्थान लोक उपापन में पारदर्शिता अधिनियम 2012 एवं नियम 2013 के अन्तर्गत अद्योहस्ताक्षरकर्ता (प्रथम अपील प्राधिकारी मुख्य अभियन्ता, जल संसाधन, राजस्थान, जयपुर) के समक्ष दिनांक 08.01.2018 को अपील दायर की एवं नियमानुसार डिमाण्ड ड्राफ्ट नम्बर 834650 दिनांक 06.01.2018 राशि रुपये 2,500/- फीस जमा करवाई गई।

अपील को अपील संख्या 17/2017-18 पर दर्ज कर अतिरिक्त मुख्य अभियन्ता, जल संसाधन संभाग, जयपुर (उपापन संस्था) तथा M/s GIEPL-HSEPL (JV), Jhansi (अपीलार्थी) को इस संबंध में अपना पक्ष रखने के लिये नोटिस संख्या एफ. 2(25)एस/आई/सेल/17/161 दिनांक 09.01.2018 जारी कर दिनांक 10.01.2018 को अद्योहस्ताक्षरकर्ता के समक्ष अपील की सुनवाई में उपस्थित होने का समय नियत किया गया एवं इसके अतिरिक्त प्रभावित पक्ष M/s Om Metals Infra Projects Ltd.- M/s Om Metals-SPML Pvt. Ltd. (JV) को भी उपस्थित होने के निर्देश प्रदान किये गये।

निर्धारित दिनांक 10.01.2018 को अपीलार्थी की तरफ से श्री विशन सिंह उपस्थित हुए एवं उपापन संस्था की ओर से श्री रवि सोलंकी, अतिरिक्त मुख्य अभियन्ता, जल संसाधन संभाग, जयपुर उपस्थित हुए। इसके अतिरिक्त निविदा में अन्य प्रतिभागी संस्था (प्रभावित पक्ष) M/s Om Metals Infra Projects Ltd.- M/s Om Metals-SPML Pvt. Ltd. (JV) के प्रतिनिधि श्री विकास कोठारी मार्फत अधिवक्ता स्वदीप सिंह होरा उपस्थित हुए। अपीलार्थी की तरफ से अपनी लिखित अपील के साथ-साथ अपना विस्तृत मौखिक पक्ष रखा गया। उपापन संस्था की तरफ से अतिरिक्त मुख्य अभियन्ता, जल संसाधन संभाग, जयपुर द्वारा अपील में उठाये गये बिन्दुओं एवं निविदा के संबंध में अपना मौखिक पक्ष रखा। इसके अतिरिक्त M/s Om Metals Infra Projects Ltd.- M/s Om Metals-SPML Pvt. Ltd. (JV) द्वारा

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इस प्रकरण में पक्षकार बनाने हेतु अपना लिखित आवेदन प्रस्तुत किया गया एवं अपना लिखित प्रतिवेदन भी प्रस्तुत किया तथा मौखिक बहस भी की गई।

अपीलार्थी की तरफ से अपील में उठाये गये बिन्दु निम्नानुसार हैं :-

This is an appeal against the above tender under clause 3.10.14 for your consideration for the following facts:-

1. That we have submitted our bid in the name of "GIEPL-HSEPL (JV)" and the bid security has been drawn in the name of M/s Ghanaram Infra Engineers Pvt. Ltd. whereas we have intended to form a Joint Venture. As the Joint Venture documents could not be legally constituted, we have deposited the security bid in the name of Ghanaram Infra Engineers Pvt. Ltd.
2. That the Joint Venture Agreement is under execution as per law and will be submitted before the Department before awarding the contract, if we happened to be the lowest tenderer and our offer is accepted.
3. We undertake and assure that the bid security will be deposited in the name of Joint Venture before receiving the acceptance letter or tender-issuing acceptance from the Deptt.
4. Necessary Affidavit in this regard is filed herewith.

The appellant has prayed to consider the matter sympathetically as bid security could not be deposited in the name of JV because the legal proceeding of constitution of Joint Venture is in progress.

इस निविदा में अन्य प्रतिभागी M/s Om Metals Infra Projects Ltd.- M/s Om Metals-SPML Pvt. Ltd. (JV) के द्वारा अपना पक्ष अपने अधिवक्ता श्री स्वदीप सिंह होरा द्वारा लिखित अभ्यावेदन एवं मौखिक तौर पर रखा गया। इस संस्था द्वारा अपना यह पक्ष रखा गया कि अपीलार्थी संस्था द्वारा अपनी निविदा के साथ जो Joint Venture Agreement संलग्न किया गया है वो विधिक है। अतः अपीलार्थी संस्था को बिड सिक्यूरिटी Joint Venture के नाम से जमा करानी थी ना कि Lead-Partner के नाम से। अपने पक्ष में M/s Om Metals Infra Projects Ltd.- M/s Om Metals-SPML Pvt. Ltd. (JV) के द्वारा माननीय उच्चतम न्यायालय एवं उच्च न्यायालय के निर्णयों का भी उल्लेख किया गया था।

उपापन संस्था का कथन:-

उपापन संस्था की ओर से उपस्थित श्री रवि सोलंकी अतिरिक्त मुख्य अभियन्ता, जल संसाधन संभाग, जयपुर द्वारा यह अवगत कराया गया कि उनके द्वारा इस Joint Venture Agreement को एक विधिक दस्तावेज माना गया एवं निविदा प्रपत्र के Clause 3.10.14 की अनुपालना में बिड सिक्यूरिटी Joint Venture के नाम से नहीं होने के कारण से फर्म M/s GIEPL-HSEPL (JV), Jhansi की वित्तीय बिड नहीं खोली गई।

प्रथम अपील अधिकारी का निर्णय:-

I have gone through the appeal filed by the appellant and also papers submitted by M/s Om Metals Infra Projects Ltd.- M/s Om Metals-SPML Pvt. Ltd. (JV). I have heard the appellant, M/s Om Metals Infra Projects Ltd.- M/s Om Metals-SPML Pvt. Ltd. (JV) and Additional Chief Engineer Water Resource Zone, Jaipur in this case carefully. I have carefully perused all records available and other relevant documents.

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The basic issue in this appeal is whether the agreement signed between GIEPL and HSEPL (JV) on dated 30.11.2017 can be considered as formation of Joint Venture or not. The appellant contested that it is not a legally constituted JV and legal proceeding of constitution for JV is in progress. Given the argument they plead that the bid security by the lead bidder is in order and shall be accepted and cannot be made ground for disqualifying them technically. M/s Om Metals Infra Projects Ltd.- M/s Om Metals-SPML Pvt. Ltd. (JV) on the other hand contested that JVs could be incorporated as well as unincorporated and the agreement signed and submitted by the appellant is a legally constituted JV. Additional Chief Engineer Water Resource Zone, Jaipur has stated that the Bid Evaluation Committee is of the view that legal constitution of JV is completed on signing of the agreement.

I have gone through the legal literature available on this issue which states that JV could be created by registration under Companies Act, 2013 and a partnership firm can also be created under the Partnership Act, 1932 or limited liability partnership can be created under Limited Liability Partnership Act, 2008. There is also possibility of having unincorporated JV through signing of an agreement.

I asked Additional Chief Engineer Water Resource Zone, Jaipur to send details regarding type of JV formed in case of Dholpur Lift Irrigation cum Drinking Water Project and in whose name bid security was given in that case. The reply given by him has carefully been perused and is kept on this file for record. The reports sent by him indicates that in that case also the JV was unincorporated and on the basis of agreement like the one signed by the appellant in this case, JV has been able to get bank account opened, get a PAN and GST registration number enabling them to execute the contract without any problem. Also in case of Dholpur Lift Irrigation cum Drinking Water Project bid security was given in joint name and not in name of lead partner only. The appellant case falls under unincorporated JV category.

In view of the above it is clear that a JV can be constituted without registration under Companies Act, 2013, Partnership Act, 1932 or Limited Liability Partnership Act, 2008 and by way of signing an agreement. The appellant has also not been able to show any document by which their claim that the legal proceeding for constitution of JV is in progress could be substantiated.

In view of the above I am of the opinion that the agreement signed by the appellant has already led to constitution of legal JV and therefore the bid security in this case should have been submitted in the name of JV instead of lead partner. In view of this I am of the opinion that there is no reason to interfere with the decision taken by the Bid Evaluation Committee. The appeal is accordingly dismissed.

Date: 29.1.18

*Handwritten signature*  
 M. R. Doodi 29.1.18  
 (First Appellate Authority)  
 Water Resource Department  
 Rajasthan, Jaipur