

NON – REPORTABLE

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. _____ OF 2023

(Arising out of Special Leave Petition (Civil) No. 8755 of 2018)

M/S HORBILL CONSULTANTS APPELLANT

VERSUS

STATE OF PUNJAB AND OTHERS RESPONDENTS

ORDER

SANJIV KHANNA, J.

Leave granted.

2. The civil writ petition filed by the appellant – M/s. Hornbill Consultants to enforce the right to carry on mining operations and, in the alternative, refund the amount paid, has been dismissed *vide* the impugned judgment, with liberty to the appellant to file a suit or take any other appropriate action for recovery of the amounts, in spite of the fact that the Division Bench of the Punjab and Haryana High Court has recorded as under:

“4. ...The provisional acceptance was issued on 05.07.2017 and under the terms and conditions the amounts were to be deposited by 5.00 P.M. on

10.07.2017 (the weekend had intervened as a result whereof the stipulated period of two days was extended up to 10.07.2017). The amounts were to be deposited in a designated account of the respondents at the Axis Bank. This was notified by a corrigendum dated 15.06.2017. The details regarding the account were also sent through the provisional acceptance dated 05.07.2017.

Two separate transactions of Rs.28.75 lakhs and Rs.9.60 lakhs were to be executed by way of transfers into the designated bank account of the petitioner from his other account. However, due to server problems in his bank, the transfers could not take place. The transfers could not take place even on 08.07.2017 and 09.07.2017 as the banks were closed on account of 8th July, 2017 being a second Saturday of the month and 09.07.2017 being a Sunday. The last date for deposit was 10.07.2017. On 10.07.2017, the said amounts of Rs.28.75 lakhs and Rs.9.60 lakhs were credited into the petitioner's account at 3.40 P.M. and 4.20 P.M., respectively. The cut off time for RTGS transfers was 3.30 P.M. and for NEFT was 4.30 P.M. Thus, the amounts could not be transferred to the respondents' designated account by 5.00 P.M. on 10.07.2017. The petitioner took permission on the telephone from the office of respondent No.2 for depositing the amounts by a demand draft. Accordingly, a demand draft of Rs.68,46,002/- was obtained by the petitioner in favour of the respondent concerned. The petitioner's bank has confirmed that the difficulty was on its part and not on the petitioner's part. This was recorded by the petitioner's e-mail dated 10.07.2017. The petitioner took the demand draft to respondent No.2 on 10.07.2017 but beyond the office hours. He, therefore, took it again to the respondents on 11.07.2017. The respondents retained the demand draft for three months.”

3. The appellant, pursuant to the E-auction Notice dated 13.06.2017, had submitted the highest bid of Rs.1,85,12,512/- for a mining lease of the Rurewal Mines, District Amritsar, Punjab, held on 05.07.2017. This bid was accepted by respondent no.2 –

Directorate of Mining, Industries and Commerce Department, Chandigarh, Punjab¹, *vide* letter dated 06.07.2017, written to General Manager-cum-Mining Officer, District Industries Centre, Amritsar, Punjab, with a copy to the appellant for information and necessary action. The appellant had deposited Rs.31,40,634/- as earnest money at the time of participating in the auction on 05.07.2017. As per condition nos. 24 and 25 of the E-auction Notice dated 13.06.2017, the appellant was required to deposit security at the rate of 25% of the annual contract amount within two days of the acceptance of the bid, failing which the earnest money was to be forfeited. There was also a stipulation that the appellant would be barred from taking part in bids for three years. On account of bank holidays, the last date of payment, which had to be made by e-transfer to the bank account of the respondents, was 10.07.2017.

4. We have already reproduced the facts as found by the High Court in the second paragraph of this order, which clearly show that on 10.07.2017 the appellant was successful in making two online deposits of Rs. 28.75 lakhs and Rs. 9.60 lakhs by way of Real-Time Gross Settlement² and National Electronic Funds Transfer³. However, the amount could not be transferred to the designated

¹ For short, 'Directorate of Mining'.

² For short, 'RTGS'.

³ For Short, 'NEFT'.

bank account of the respondents on account of a technical glitch in the bank servers. The appellant has placed on record the letter written by HDFC Bank Ltd. dated 11.07.2017 stating that further RTGS transaction for transfer of Rs. 68,46,002/- in favour of the respondents could not be made before the closure of banking/RTGS hours. The appellant had then spoken on telephone to the office of respondent no.2 – Directorate of Mining, and had got a demand draft of Rs. 68,46,002/- prepared on 10.07.2017 itself. This fact is undisputed and unchallenged. A photocopy of the demand draft has been placed on record and is also proved from the debit entries made in the bank account of the appellant. This demand draft was taken to the office of respondent no.2 – Directorate of Mining on 10.07.2017, but beyond office hours. However, it was given to the office of respondent no.2 – Directorate of Mining on 11.07.2017. The demand draft was retained by the respondents for over three months before it was returned. A speaking order dated 03.10.2017 was issued by respondent no.2 – Directorate of Mining stating that the appellant had defaulted in payment of its first instalment. Subsequently, a letter dated 10.10.2017 was sent by respondent no.2 – Directorate of Mining to the appellant informing that the earnest amount of Rs. 31,40,634/- had been forfeited as per condition no. 24 of the E-auction Notice

dated 13.06.2017 and the provisional approval granted to the appellant had been cancelled.

5. The impugned judgment records that upon termination of the contract, the respondents had re-auctioned the mining lease but the highest bid received was only Rs.45,00,000/- per annum. We may note here that the fresh auction was not at the risk of the appellant, there being no stipulation in this regard in the tender. The appellant had filed a writ seeking issue of *certiorari* to quash the speaking order dated 03.10.2017 and the letter dated 10.10.2017 cancelling the provisional acceptance granted in favour of the appellant and forfeiting the earnest money. *Mandamus* was also sought seeking direction to the respondents to grant approval of mining of Rurewal Mines, District Amritsar, Punjab, as per the bid given by the appellant on 05.07.2017. The respondents had opposed the said prayers and, therefore, are to be blamed for the loss. Had the respondents taken a pragmatic and reasonable view and stand, public exchequer would not have suffered any loss.
6. The last aspect which needs to be decided is whether the appellant should be asked to file a civil suit or take any other appropriate remedy for recovery of the amount forfeited.

7. In the present case, the writ petition filed on or around 23.10.2017 was dismissed by the Division Bench of the High Court on 16.02.2018. Thereafter, the appellant had filed the present special leave petition in which notice was issued on 16.04.2018. The matter has remained pending in the writ court and this Court for approximately the last six years.

8. It is, no doubt, correct that in contractual matters, the High Courts do not like to exercise extraordinary jurisdiction under Article 226 of the Constitution of India, even though this power is plenary in nature and not limited by any provision of the Constitution of India; as normally, when disputed questions of fact arise, adjudication in a civil court is more appropriate, just and fair. Nevertheless, this is not an absolute rule; more so in cases when the orders passed by the government authorities are arbitrary, unfair or unreasonable and where the facts are not in dispute and are easily ascertainable.⁴ We are, in view of the lapse of time, inclined to allow the appeal in order to prevent any further rounds of litigation between the parties when the facts on record are crystal clear and do not require a detailed

⁴ This is a matter of prudence and the courts, while exercising writ jurisdiction, normally do not entertain a dispute which would require adjudication of contesting questions and conflicting claims of parties which require determination of correct facts for due application of law. However, in the realm of legal theory and jurisprudence, a writ court exercising power under Article 226 of the Constitution of India can, if required, take oral evidence.

review. The aspect of arbitrary and erratic conduct on the part of the respondents has been addressed and elucidated earlier.

9. Keeping in view the aforesaid principles, and in the facts of the present case, we allow the present appeal, set aside the impugned judgment, and direct the respondents to refund Rs. 31,40,634/-, the earnest money deposited by the appellant. This payment should be made within a period of eight weeks from the date a copy of this order is received by respondent no.2 – Directorate of Mining. In case the refund/payment is made within the said period, no interest would be payable by the respondents to the appellant. However, in case the payment is made beyond the stipulated period, the respondents would be liable to pay interest at the rate of 8% per annum to the appellant from the date of this order till the date of payment. There shall be no order as to costs.

.....J.
(SANJIV KHANNA)

.....J.
(M.M. SUNDRESH)

**NEW DELHI;
MARCH 02, 2023.**