

**ORDER SHEET
IN THE HIGH COURT OF SINDH AT KARACHI**

Suit No.174 of 2022

M/s Bismillah Metal Impex (Pvt.) Ltd.

Versus

Port Qasim Authority & others

Date	Order with signature of Judge
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For hearing of CMA 1692/2022

Dated: 04.10.2023

Mr. Ali Abid Zuberi for plaintiff.

Mr. Ali T. Ebrahim for defendants.

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Muhammad Shafi Siddiqui, J.- This suit seeks a declaration that the impugned notice dated 16.12.2021 issued by Port Qasim Authority to the plaintiff who has failed to deposit the bid amount of Rs.100,056,000/- (One Hundred million fifty six thousand only) in favour of Port Qasim Authority, in relation to auctioned crafts (i) M.T. Chara and (ii) M.T. Gharo. Plaintiff in anticipation of an action under PPRA Rules 2004 (Rule-19) and forfeiture of security bond of the bidder/plaintiff filed this suit along with listed injunction application, which was heard and is being decided.

Brief facts are that the defendant No.1 issued an invitation to tender on 02.10.2021 thereby inviting bids/offers from interested firms for auction of six vessels/crafts, which the defendant considered to have reached beyond economical repair (BER). The invitation of bids for the subject crafts was on 'as is where is basis'. As per terms of bid the interested parties/firms were required to submit sealed bids for each individual craft/vessel along with pay order of an amount of Rs.2 Million (twenty lacs) as being "bid security" and bids were to be finalized by 27.10.2021. Plaintiff took part in auction of four vessels and succeeded in only two i.e. (i) M.T. Chara and (ii) M.T. Gharo. The offered rate of plaintiff was Rs.132 per KG steel vessel including taxes and in view of such offer, defendant No.1 on 11.11.2021 issued two separate

acceptance letters in respect of aforementioned vessels/crafts in favour of plaintiff, thereby informing, that its bids stand approved/accepted and directed the plaintiff to deposit bid amount within a period of 15 days from the date of above acceptance i.e. 11.11.2021.

It is plaintiff's case that it was a shocking acceptance to them as defendant No.1 has not been permitted to commence the process of dismantling the crafts and measure the actual steel. It is plaintiff's case that until and unless they are allowed to dismantle the vessel, the final amount in terms of the weight of the vessel's steel, cannot be adjudged to be payable to the defendant No.1.

Mr. Ali Zuberi argued that in terms of of clause 14 of the bid document, it requires plaintiff to deposit full and final amount to PQA craft, as approved by the competent authority, in 15 days' time of the issuance of acceptance letter, which in the instant case was issued on 11.11.2021. Per learned counsel the said clause of bid terms cannot be read in isolation as entire notice inviting tender is to be read, which describes that the offer of Rs.132 per KG is for ship steel and not the weight of the vessel hence without it being dismantled first and steel and other component be segregated, the question of payment does not arise.

Mr. Zuberi has also relied upon Clause 5 and 6 of the notice/bid document and the case of Muhammad Saeed¹ that deals with the universally accepted principle of interpretation of document, which provides application of literal meaning of the words and that the redundancy while interpreting a document should not be attributed to any part of a document or provision of a statute. Counsel has further relied upon the case of Universal Insurance Company². This judgment provides that when there is a doubt about meaning of a contract, the

¹ 2023 PLC (C.S) 849 (Muhammad Saeed v. State Life Insurance Corporation)

² 2021 CLD 1189 (Universal Insurance Company v. Karim Gul)

interpretation will be construed against a person who put them forward. Such known principle of interpretation of contract is recognized as *contra proferentem rule*. It is claimed by the learned counsel that since there is ambiguity in terms of Clause 5 and 6 as against rest of the terms of this invitation, therefore, it must be construed and read to be benefit of plaintiff rather than defendants.

On the other hand Mr. Ali Ebrahim has relied upon terms of the contract that six vessels were offered on 'as is and where is basis' and on successful acceptance of offer, the balance amount of bid, as offered by the plaintiff or by any other participant, is to be deposited within 15 days of the issuance of acceptance letter and in case of default, the acceptance letter was deemed to be withdrawn and the security bond of Rs.2 Million to be forfeited in favour of PQA. This concludes the attempt of interpreting the terms of bid that there is no issue of segregation of steel with other scrap of crafts; it is weighed as a whole and the offer was made as a whole (as is where is basis); hence there is neither any ambiguity nor the terms of the document could be construed, as attempted to be interpreted. He however submitted that in course of proceedings under Rule 19 *ibid* spirit has been and shall be followed.

I have heard the learned counsel appearing for the parties and perused material available on record.

Before the letter of 16.12.2021 could be adjudged contrary to the terms of tender, I have minutely perused the terms of the bid document itself to understand if any ambiguity is apparent, which requires proper interpretation of this invitation, cumulatively.

Six vessels/tugs/crafts were shown to have reached beyond economic repair and offers were invited from interested firms for their disposal on 'as is where is basis'. The document is understood with this commencing "frame" that the vessels/crafts/tugs were available for

auction on 'as is where is basis'. It is not that steel with other allied scrape are to be segregated. The security bond is supposed to be delivered by the participant to participate in the auction which is refundable only in case the participants were not successful whereas it is to be forfeited in case successful bidder fails to make further compliance of the terms such as clause 14. Heavy reliance was placed on terms 5 and 6 of the tender. All the relevant terms are thus reproduced as under:-

“5. Bid/offer shall be quoted in 1 Kg ship steel cost with GST/Tax of each and every Crafts individually.

6. The bidder shall quote the bid of individual crafts in 1 KG ship steel cost, with GST/Tax and it would be considered on individual basis. If the rate is feasible or beyond the reserved price of BER Crafts.

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14. The successful bidder will have to pay full and final amount of bid of the PQA Crafts as approved by the Competent Authority inclusive of all taxes in shape of Pay Order in favour of Port Qasim Authority within fifteen (15) working days of issuing of acceptance letter, in case of default, acceptance letter will be deemed to be withdrawn and the (Security Bond) of Rs.2,000,000/- (Rupees two millions only) will be forfeited in favour of PQA.”

An attempt has been made by Mr. Ali Zuberi that in fact the offer of Rs.132 per KG was for ship steel not the vessel/tug as a whole. This argument or attempt to interpret the document is misconceived in the sense that the successful bidder was required to deposit the balance amount within 15 days of the issuance of acceptance letter. In the instant case the letter of plaintiff being successful bidder was issued on 11.11.2021, therefore, the balance amount was to be made by 26.11.2021, notwithstanding the time frame for dismantling the crafts/ tugs provided in the later terms, which in fact meant for lifting the auctioned goods. The tender requires a successful bidder to dismantle the craft at PQA premises as allowed and/or at the allocated site by Operation/ Maintenance Department within a period of 60 days. This is altogether different and cannot be articulate with acceptance of offer

and payment of bid amount. Had it been a case of only steel component of the tug, this period of payment of 15 days in terms of Clause 14 would have been stretch down to 60 days or more as only then after dismantling the vessel the steel could have been weighed separately but that is not the case here. More importantly, the weight of the subject vessels is disclosed in the tender notice and each of the subject craft/tug, of plaintiff's participation, is of 379 tons in terms of weight and the amount is to be deposited within 15 days only then, the process of dismantling the crafts would have commenced, which is then likely to be completed within 60 days period. Clause 15 of the notice/bid document further provides that these crafts/tugs will be available on the spot entirely at the risk and cost of bidder from the time of approval of the bid which was accepted and the "crafts" as a whole must be removed/cleared within 60 days after making full and final payment of amount within 15 days of acceptance.

Above document is not a complicated document or a document which requires interpretation, as desired by Mr. Ali Zuberi. The tug/craft is to be weighed on 'as is where is basis' and there is no way that the drafts/tugs could be weighed in a way that steel and other part/components of the ship should be segregated first.

Upshot of above discussion is that the plaintiff has not been able to make out a prima facie case in its favour and so also the balance of inconvenience is also not in its favour whereas the irreparable loss would be suffered by defendant No.1 in case injunction as prayed is granted as entire process in respect of the subject vessels will become standstill. The listed injunction application (CMA No.1692/2022) as such is dismissed.

Judge