

**HIGH COURT OF MADHYA PRADESH: JABALPUR****(Division Bench)****Writ Petition No. 11068/2018**

SUNFLAG IRON &amp; STEEL CO. LTD. .... PETITIONER

Vs

STATE OF MADHYA PRADESH .... RESPONDENT

**CORAM :****Hon'ble Shri Justice Hemant Gupta, Chief Justice****Hon'ble Shri Justice Vijay Kumar Shukla, Judge****Appearance:**

Shri Naman Nagrath, Senior Counsel with Shri Akshay Sapre,  
Advocate for the petitioner.

Shri Ashish Anand Barnard, Deputy Advocate General for the  
respondent/State.

**Whether Approved for Reporting : Yes****Law Laid Down:**

- ✓ In absence of any averment by the petitioner in respect of completion of stage of third sub-menu (Attach Documents); the attaching documents and/or the bid acknowledgment not received from the system as per the tender conditions, it cannot be said that the decision to declare that the petitioner did not submit technical bid online lacks *bona fide*.
- ✓ The decision taken by the Technical Evaluation and Tender Approval Committee, which is a committee of experts cannot be interfered with while exercising writ jurisdiction of this Court, as this Court while exercising power of judicial review examines the decision making process and not the ultimate decision.

**Significant Paragraph Nos.: 4, 7, 10 to 15**

**ORDER****(18/05/2018)****Per : Hemant Gupta, Chief Justice:**

The challenge in the present writ petition is to the list of technically qualified bidders of Pratappura Iron Ore Block uploaded on 10.05.2018 wherein name of the petitioner does not find mention in the list of technically qualified bidders.

2. The respondent issued a Notice Inviting Tender on 16.01.2018 (Annexure P-3) inter alia for e-auction of Pratappura Iron Ore Block, District Jabalpur. The tender contemplates online auction for which the intending bidders have to upload technical bid with other supporting documents. The last date of submission of tender was 26.03.2018.

3. The stand of the petitioner is that all the documents were uploaded on 24.03.2018 and the hard-copies were submitted on 26.03.2018. In support of the contention that the documents were submitted, the petitioner relies upon screen-shot (Annexure P-5 at page 145) of uploaded documents and the screen-shot of final bid containing initial price offer (Annexure P-6 at page 146).

4. Since the online auction is to be conducted today, therefore, the learned counsel for the respondent produced the minutes of the sixth meeting of Technical Evaluation and Tender Approval Committee held on 07.05.2018 whereby tender of the petitioner was rejected on the ground that the petitioner did not submit technical bid online. The relevant minutes read as under:-

“5. The list of Bidders declared as Not Technically Qualified Bidders (and the reason thereof) by TETAC is as below. The same is also placed at *Annexure 2*.

S. No.	Bidder	Mineral Block	Reason for non-selection as TQB
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7.	Sunflag Iron & Steel Co. Ltd.	Pratappura	<p>Bidder did not submit technical bid online.</p> <p>Clause 13.1.2 of Tender document - <i>“The Technical Bid shall be submitted on the electronic platform and the duly executed original physical copies must be sent in an envelope with “Technical Bid for Pratappura Block” clearly written on it to the following address so that they are received on or prior to the Bid Due Date, failing which the Technical Bid shall be deemed to be not received”</i></p> <p>Clause 13.9.1 of Tender document - <i>“Technical Bids should be uploaded and the documents required to be submitted physically in original pursuant to Clause 13.1.2 must be received before the Bid Due Date. Technical Bids received by the State Government after the specified time on the Bid Due Date shall not be eligible for consideration and shall be summarily rejected.”</i></p>
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5. The argument of the learned counsel for the petitioner is that initial price offer could be submitted by a tenderer only if technical bids have been successfully uploaded. Since the initial price offer has been accepted, it presupposes the valid uploading of technical bid. It is also argued that the respondent has not communicated any reason as to why the technical bid of the petitioner is not acceptable, therefore, the petitioner be permitted to participate in online auction today.

6. We have heard the learned counsel for the parties and find no merit in the present petition.

7. Learned counsel for the respondent pointed out that preparation and submission of the bid has two stages. Stage-1 is “Technical Bid” and Stage-2 is “Electronic Auction – Final Price Offer. The petitioner has not completed Stage-1 itself, as the petitioner has completed two stages i.e. Bid Floor Manager and Upload Documents and not the third stage i.e. Attach Documents. The relevant conditions from Schedule-III of the Notice Inviting Tender, read as under:-

**Schedule-III: Technical details regarding online electronic auction**

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**3. Preparation and Submission of Bid**

The complete process of bid submission will be divided into 2 stages as follows:

**a. Stage 1: Technical Bid**

This stage will comprise (i) online submission of the Technical Bid and the initial price offer; and (ii) offline submission of certain original documents as detailed below.

**(i) Online submission of Technical Bid and initial price offer with supporting documents**

This stage shall be open to all Bidders who have purchased the Tender Document(s) for the specific mineral block(s).

In this process, the Bidder, after logging in to the above stated website, will have to click on the link “click for Auction”. In the next page, the Bidder shall have to go to the link “Stage 1 Technical cum IPO Submission”. Thereafter, the bidder will have a bouquet under “My Menu” having 3 (three) sub-menus-“Bid Floor Manager”, “Upload Documents” and “Attach Documents”.

**Bid Floor Manager**

Once the Bidder clicks on this sub-menu and then clicks on the menu “Live Auctions” on the next page, it will display a list of mine(s) for

which the bidder has paid the tender document fees. On clicking on any of these mine(s), the Bidder will be directed to a screen where it can fill up the technical bid template and save the data. The Bidder can edit such data as many times as it wishes.

After saving the Technical Bid, the link/button for Initial Price Offer shall get activated. The Bidder, on clicking this button, will be directed to a screen having a template where it can fill up its Initial Price Offer and click on the Final Submission button. The final submission shall be digitally signed by the Bidder using its registered digital signature. Any digital signature certificate other than the registered one shall not be acceptable for bid submission by the system.

The bidder may note that the “Initial Price Offer” button will be activated only after the Technical Bid has been saved.

#### **Upload Documents**

The Bidder shall also have to upload the supporting documents along with the Technical Bid, as required under the Tender Document. These supporting documents will need to be uploaded in pdf format only (the file size should be limited to 4 MB; in case of larger files, they may be split into multiple files with suitable nomenclature). Files in formats other than pdf shall not be accepted. For this, the bidder shall first click on the link “Upload documents” and upload the files in support of its Technical Bid.

#### **Attach Documents**

After uploading these documents, the bidder shall have to attach them with the specific tender for the concerned mine for which it is intending to submit the Technical Bid. It may be noted by the bidder that in case it intends to use the same supporting document for more than one mine, it does not need to upload the same document every time. The supporting document, once uploaded, can be attached with Technical Bid for multiple mineral block(s), if desired.

**The bidder should note that only a file which is “attached” with a specific mine(s) shall be considered during evaluation of the Technical Bid. Files which are not attached to any mine(s) shall not be considered for evaluation.**

***The Bidder should also note that a Bid will be considered as submitted if and only if the Bidder has submitted the Initial Price Offer. Only such Bids will be opened for which Initial Price Offer has***

*been submitted. It is further clarified that saving of Technical Bid without saving of the Initial Price Offer will be treated as non-submission of bid.*

Upon successful submission of Initial Price Offer, the Bidder shall receive a bid acknowledgment from the system automatically.

The Bidders may note that the Technical Bid and the Initial Price Offer submitted online as above will be encrypted by the MSTC's own software before storage in the database. This will be done to protect the sanctity and confidentiality of the Bids before the actual opening of the same.

The Bidder has an option to edit Technical Bid and initial price offer as many times as it wishes till the final submission.

(emphasis supplied)

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The bidders shall also note that online submission of *Technical Bid and the initial price offer* with supporting documents and offline submission of certain original documents shall be allowed only up to time and date as per Bid Due Date specified in Clause 11. Bidders in their own interest are advised to complete the entire process well in advance to avoid any last minute hiccup/technical problems. No complaints shall be entertained in this regard at any stage.

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**b. Stage 2: Electronic Auction – Final Price Offer**

**a. Intimation to Qualified Bidders**

Along with the above intimation, the Bidder shall also receive information regarding applicable Floor Price for second round of e-auction of the mineral block which is the highest initial price offer received from the Technically Qualified Bidders.

It is expressly clarified that Bidders should not expect to receive the information on the second highest IPO received from the Technically Qualified Bidders as a matter of usual course.

It shall be the sole responsibility of the Bidder to regularly check the MSTC website and log in to see whether it has qualified for a certain mineral block or not. MSTC will not be responsible for non-receipt of email by the Bidder and its consequences.”

8. The stand of the respondent is that the document at page 146 is only in respect of part of Bid Floor Manager, which is one of the three sub-menus under the heading “My Menu”. The petitioner had completed the second sub-menu of “Upload Documents” and not the third menu “Attach Documents”. Therefore, the petitioner has not completed the submission of technical bid online, which does not entitle the petitioner to participate in online auction process. It is further pointed out that as many as 33 bidders have been found to be technically qualified in the notice published on 10.05.2018, therefore, the contention of the petitioner is untenable as large number of bidders have completed the same online system of technical bids.

9. Learned counsel for the petitioner was asked time and again to disclose any assertion in the writ petition that the third sub-menu (Attach Documents) was completed by the petitioner. The only response to the said query of the Bench was that since the respondent has not communicated the reasons of rejection of their technical bid, therefore, the petitioner could not make averment in respect of completion of the said stage.

10. We do not find any merit in the arguments of the learned counsel for the petitioner. The third sub-menu of “Attach Documents” is part of the tender conditions. The petitioner has made omnibus statement that the conditions of the Notice Inviting Tender were complied with but in support of the said contention the petitioner has relied upon two screen-shots i.e. “Upload Documents” at page 145, which deals with the second stage of sub-menu whereas screen-shot at page 146 is to the effect that the final bid has been successfully submitted including the technical bid and initial price

offer. The said screen-shot (at page 146) is taken at 3.27 PM on 24.03.2018. Such screen-shot is, in fact, compliance of the first sub-menu of Bid Floor Manager as per the conditions mentioned above that is after saving the Technical Bid, the link/button for Initial Price Offer shall get activated. The Bidders are then required to fill up its Initial Price Offer and click on the Final Submission button by digitally signing the said stage. Therefore, the submission of Initial Price offer is the first stage of first sub menu. The second screen shot (at page 145) of “Upload Documents” shows that the documents have been uploaded on 23.03.2018 but the screen-shot has been taken at 2.19 PM on 12.05.2018.

**11.** A perusal of the tender conditions mentioned above shows that after accessing “My Menu”, three sub-menus will appear i.e. “Bid Floor Manager”, “Upload Documents” and “Attach Documents”. In the link “Bid Floor Manager”, the menu will display a list of mines for which the bidder has paid the tender document fee. On clicking on any of these mines, the bidder will be directed to a screen where it can fill up the technical bid template and save the data. After saving the technical bid, the link for initial price offer shall get activated. The final submission shall be digitally signed by the bidder using its registered digital signature.

**12.** The screen-shot (Annexure P-6) at page 146 is in respect of final bid successfully submitted, which shows submission of technical bid and initial price offer. The documents have been uploaded on 23.03.2018 though the screen-shot has been taken on 12.05.2018. However, neither there is any averment that the third sub-menu of “Attach Documents” was completed nor

is there any screen-shot of attaching documents produced. In fact, the third sub-menu contemplates that after submission of initial price offer, the bidder shall receive a bid acknowledgment from the system automatically. As per the petitioner, Annexure P-6 at page 146 is the acknowledgment but that is not contemplated by the tender document, as the acknowledgment has to be received, which obviously mean by email. The petitioner has not received any email that three sub-menus have been completed by the petitioner. Since the petitioner has not furnished the technical bid at the first stage itself, therefore, the bid of the petitioner has been rightly rejected on the ground that technical bid has not been received.

13. The sub menu, of uploading documents, is like a reservoir of documents, out of which the documents are required to be attached out of the documents uploaded. The files have to be attached before a bidder is permitted to participate in the bidding process. The instructions are clear and categorical when it is stated that after uploading of the documents, the bidder shall have to attach them with the specific tender for the concerned mine for which it is intending to submit the Technical Bid. It was also brought to the attention of the bidders that in case they intend to use the same supporting document for more than one mine, they do not need to upload the same document every time. The supporting document, once uploaded, can be attached with Technical Bid for multiple mineral block(s), if desired. It was specifically stated that *“the bidder should note that only a file which is “attached” with a specific mine(s) shall be considered during*

*evaluation of the Technical Bid. Files which are not attached to any mine(s) shall not be considered for evaluation”.*

14. The petitioner has failed to attach documents as required in the tender conditions. Similar condition stands satisfied by as many as 33 bidders. Therefore, the petitioner cannot be considered eligible for participation in the online tender process on account of its failure to comply with the tender conditions.

15. In view of the foregoing reasons, it cannot be said that the decision to declare that the petitioner did not submit technical bid online lacks *bona fide*. It is a decision taken by the Technical Evaluation and Tender Approval Committee, which is a committee of experts. Therefore, such decision taken by the experts cannot be interfered with while exercising writ jurisdiction of this Court, as this Court while exercising power of judicial review examines the decision making process and not the ultimate decision. In view thereof, we do not find any merit in the present petition. The same is **dismissed**.

**(HEMANT GUPTA)**  
**CHIEF JUSTICE**

**(VIJAY KUMAR SHUKLA)**  
**JUDGE**

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