

THE HIGH COURT OF SIKKIM : GANGTOK
(Civil Extraordinary Jurisdiction)

SINGLE BENCH : THE HON'BLE MRS. JUSTICE MEENAKSHI MADAN RAI, JUDGE

WP(C) No.36 of 2023

Petitioner : M/s Winner and Fuerzaa (JV)

versus

Respondent : The Chief Engineer, BRO

Petition under Article 226 of the Constitution of India

Appearance

Mr. Lahang Limboo and Ms. Kinjung Ongmu Lepcha, Advocates for the Petitioner.

Ms. Sangita Pradhan, Deputy Solicitor General of India for the Respondent.

Date of Hearing : 28-10-2025
Date of Judgment : 28-10-2025
Date of Uploading : 29-10-2025

JUDGMENT (ORAL)

Meenakshi Madan Rai, J.

1. In the instant Writ Petition, the prayer of the Petitioner is as follows;

"Under the circumstances, it is, respectfully prayed that this Hon'ble Court may kindly be pleased to issue a writ/order or direction to quash/set aside the impugned letters/orders dated 05.09.2023 and 18.09.2023 issued by the respondent disqualifying the petitioner and thereafter allow the petitioner to participate in the Financial BID to be opened on 22.09.2023 and/or in the alternative direct the respondent to also open the financial BID submitted by the petitioner on 22.09.2023 and that the result of the petitioner's BID to be decided with the outcome of this writ petition and/or pass any other direction/s, relief/s, orders/s that may be deemed fit and proper in the circumstances of this case."

2. The letter dated 05-09-2023 (Annexure – P15) referred to in the prayer extracted (*supra*), details *inter alia* the Firms which qualified and the Firms which disqualified for further participation in price/commercial/financial bid in the tendering process, for construction/improvement of road, Singtam-Dikchu, from CL-9 to

NHDL specifications, through EPC mode between 10.00 (0.00) to KM 32.700 (Existing) (KM 32.110 proposed) (Net design length 22.110) under 87 RCC/764 BRTF under project Swastik in Sikkim State Job No.D-BR-I/01/SWT/2022-23. The name of the Petitioner appears at serial No. (g) of the said letter informing the Petitioner that they have disqualified.

3. Letter dated 18-09-2023 (Annexure – P20) also referred to in the prayer of the Petitioner extracted hereinabove, is addressed to the Petitioner by the Respondent, informing the Petitioner *inter alia* as follows;

"3. Your firm, M/s Winner & Fuerzaa (JV) has been disqualified by the Technical Evaluation Committee and also by the Screening Committee for non submission of Audited Annual Reports for the last 5 (five) financial years by the other member of Joint Venture (M/s Fuerzaa Projects LLP) in accordance to Clause No.2.2.2.8 (i) mentioned at Page No. 27 of RFP. The other member of Joint Venture has submitted Audited/provisional Annual Report for FY 2021-22 and 2022-23 only and failed to submit the report for remaining three years i.e. for FY 2018-19, 2019-20, 2020-21 even after asking for shortfall documents through Defence e-procurement portal. The Annexure-III of Appx-IA of RFP for Financial Capacity of the Bidder, submitted alongwith technical bid by other member of JV (M/s Fuerzaa Projects LLP) duly showing the certified balance sheet for FY 2021-22 and provisional balance sheet for FY 2022-23 (Page No.277) is as under:-

....." [emphasis supplied]

4. It is admitted by Learned Counsel for the Petitioner that the Petitioner failed to submit the Audited Annual Report of the M/s Fuerzaa Projects LLP, a part of the Petitioner's joint venture in terms of Clause 2.2.2.8 (i) as required by the Respondent. It is argued that this circumstance did not translate into the Petitioner not being financially viable to compete in the bid and they ought to have been allowed to participate.

5. Learned Deputy Solicitor General submits that the rejection of the Petitioner's bid was on their failure to qualify in the

basic criteria as laid down in bidding document i.e., Clause 2.2.2.8 (i) and hence the rejection in terms of the letter dated 18-09-2023.

6. Having heard the rival contentions of Learned Counsel and perused the pleadings and documents, it is evident that the entire dispute between the Petitioner with the Respondent is on account of the rejection of the Petitioner's participation in the tendering process of the works i.e., construction/improvement of road Singtam-Dikchu from CL-9 to NHDL specifications through EPC mode between 10.00 (0.00) to KM 32.700 (Existing) (KM 32.110 proposed) (Net design length 22.110) under 87 RCC/764 BRTF under project Swastik in Sikkim State Job No.D-BR-I/01/SWT/2022-23.

7. The Petitioner is a joint venture undertaking company comprising of M/s Winner Constructions Private Limited and M/s Fuerzaa Projects LLP. M/s Winner Constructions Private Limited was incorporated under the Companies Act, 1956 (No.1 of 1956), on 13-05-1991, with its registered office at Karol Bagh, New Delhi and commenced its business from 30-05-1991 as Class-I(AAA) (Composite) category Government contractor. They had successfully executed and completed several Government contract works.

(i) M/s Fuerzaa Projects LLP was incorporated pursuant to Section 12(1) of the Limited Liability Partnership Act, 2008, under the Ministry of Corporate Affairs, Government of India, with its registered office at Hyderabad, Telangana. The company commenced its business from 15-07-2021 and at the time of the issuance of the bid was only two years in the said business.

(ii) The Respondent on 27-02-2023 advertised the bid for "*construction/improvement of road Singtam-Dikchu from CL-9 to*

NHDL specifications through EPC mode between 10.00 (0.00) to KM 32.700 (Existing) (KM 32.110 proposed) (Net design length 22.110) under 87 RCC/764 BRTF under project Swastik in Sikkim State Job No.D-BR-I/01/SWT/2022-23". The Petitioner in response to the bid submitted its techno-commercial bid online on 01-05-2023 in two parts i.e., bid for lead member of the joint venture M/s Winner Constructions Private Limited as part one and M/s Fuerzaa Projects LLP in second part. The Respondent on receipt of the bid sought for technical clarification and submissions of shortfall documents which were accordingly submitted by the Petitioner. However, the Petitioner was disqualified on grounds given in the correspondence dated 05-09-2023 and 18-09-2023.

8. Having heard Learned Counsel for the parties and having perused the documents on record, the only question for consideration is whether the prayer in the Writ Petition can sustain? In that context, it is relevant to notice that one of the conditions of the bid has been specified in Clause 2.2.2.8 (i) which reads as follows;

"2.2.2.8 Submission in support of financial capacity:-
(i) The Technical Bid must be accompanied by the Audited Annual Reports of the Bidder (of each Member in case of a Joint Venture) for the last 5 (five) financial years, preceding the year in which the bid is submitted."

(i) M/s Fuerzaa Projects LLP was incorporated in the joint venture and commenced its business thereto only from 15-07-2021, the bid for the project was dated 27-02-2023 (Annexure – P11). It is an admitted position that in view of the said circumstances, the requirement with regard to the said Clause (*supra*) was not fulfilled as M/s Fuerzaa Projects LLP had completed only two years as a Government contractor consequent upon which

details of the said Clause, which required that technical bid must be accompanied by the Audited Annual Reports of the bidder of each member in case of a joint venture for the last five financial years preceding the year of bid submission could not be fulfilled. In such circumstances, it is not comprehensible as to why the Petitioner would insist that they are still eligible to compete in the bid when they do not fulfill the requisites of the condition laid down in the bid. Over and above this circumstance, it is an admitted position that the contract has already been awarded and this position has not been challenged herein by the Petitioner rendering the Petition infructuous on this ground alone.

9. In light of the foregoing discussions, I am of the considered view that there is no merit in the Petition which thereby deserves to be and is accordingly dismissed.

(Meenakshi Madan Rai)
Judge
28-10-2025

Approved for reporting : **Yes**