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Letter of Intent not a binding contract unless such an intention is evident from its terms

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The Supreme Court in South Eastern Coalfields Ltd & Others vs. M/s S Kumar's Associations AKM (JV)[1] ruled that a Letter of Intent ("LoI") is not a binding contract unless such an intention is evident from its terms.

The Supreme Court observed, "The judicial views before us leave little doubt over the proposition that an LoI merely indicates a party's intention to enter into a contract with the other party in future.12 No binding relationship between the parties at this stage emerges and the totality of the circumstances have to be considered in each case. It is no doubt possible to construe a letter of intent as a binding contract if such an intention is evident from its terms. But then the intention to do so must be clear and unambiguous as it takes a deviation from how normally a letter of intent has to be understood."

It referred to its decision in Dresser Rand S.A. vs. Bindal Agro Chem Ltd. & Anr[2] in which the contract was to come into force upon receipt of the LoI by the supplier. The Supreme Court, however, explained, "This Court did consider in Dresser Rand S.A. case that there are cases where a detailed contract is drawn up later on account of anxiety to start work on an urgent basis. In that case it was clearly stated that the contract will come into force upon receipt of letter by the supplier, and yet on a holistic analysis – it was held that the LoI could not be interpreted as a work order."

Factual matrix

The case arose out of an LoI issued by South Eastern Coalfields Ltd ("appellant company") to the respondent firm, M/s S Kumar's Associations AKM (JV) ("respondent firm"), awarding it a contract for a total work of over Rs 3.87 crore. In response, the respondent firm mobilised resources at the site, and on 28 October, 2009, the appellant company issued a letter of site handover/acceptance certificate, which was to be taken as the date of commencement of the work.

However, soon after, the work had to be suspended for reasons beyond the respondent firm's control. The contractual relationship then deteriorated, after which the appellant company issued a letter alleging breach of terms of contract. The appellant company issued show cause notices and also pointed out that the respondent firm had failed to submit the performance security deposit which was required to be submitted within 28 days from the date of the receipt of the LoI as per the terms of the tender.

On 15 December 2009, the respondent firm was issued another show cause notice intimating that the appellant company was left with no option except to terminate the work awarded to the respondent firm and get it executed by other contractor at the risk and cost of the respondent firm in terms of the General Terms & Conditions of the Notice Inviting Tenders ("NIT").

The respondent firm objected to this, stating that the work could not be executed at their risk and cost as the General Terms & Conditions were never part of the NIT but form the part of the contract which was never executed *inter se* the parties. In substance, the respondent objected to the invocation of the clause for the work to be carried out at their risk and cost. The final termination of work was carried out vide letter dated 15 April, 2010.

The work was awarded to another contracted at a higher price and on account thereof a letter dated 16 July 2010 was issued by the appellant company to the respondent firm seeking an amount of Rs.78,07,573/- being the differential in the contract value between the respondent firm and the new contractor.

The respondent firm then filed a writ petition in the Chhattisgarh high court, seeking quashing of the termination letter dated 15 April 2010 and the recovery order dated 16 July 2010.

The high court opined there was no subsisting contract *inter se* the parties to attract the general terms and conditions as applicable to the contract. Therefore, only the forfeiture of bid security was upheld while the endeavour of the appellant company to recover the additional amount in award of contract to another contractor as compared to the respondent firm was held not recoverable.

The apex court now upheld the high court judgment, opining that a concluded contract had not been arrived at *inter se* the parties, and therefore, dismissed the appeal.

[1] Civil Appeals No. 4358 of 2016

[2] (2006) 1 SCC 751