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SUPREME COURT ON THE LEGALITY OF LETTER OF INTENT

A. Facts

1. In the case before Supreme Court (**SC**) in *South Eastern Coalfield Ltd. & Ors. versus S. Kumar Associates AKM (JV)*,¹ the Appellant, South Eastern Coalfield Ltd. (**SECL**), a public-sector company had floated tender for work and the Respondent, S. Kumar Associates (**S.Kumar**) was the successful bidder. Letter of Intent (**LoI**) was issued in 2009 by SECL awarding the contract for total work to be undertaken.
2. S.Kumar was called to deposit Performance Security Deposit (**PSD**) and sign Integrity Pact before entering into agreement with SECL. S.Kumar proceeded to work under the LoI but the work had to be suspended by the Respondent for reasons beyond its control.
3. SECL notified S.Kumar alleging breach of terms of contract, rules and regulations. SECL also notified S.Kumar of non-payment of PSD and issued show cause as to why penal action be not initiated for termination of work; blacklisting S.Kumar; terminating contract and awarding to another contractor in terms of the General Terms & Conditions (GTC) and Notice Inviting Tender (**NIT**) S.Kumar objected stating that GTC was not part of NIT and was not an executed contract. Subsequently, contract was awarded to another bidder.
4. S.Kumar filed writ petition² seeking to quash the termination letter. The Chhattisgarh High Court (**HC**) opined that there was no subsisting contract *inter se* the parties to attract a breach of terms of contract.
5. SECL filed Special Leave Petition against the HC order arguing that requirement of PSD was condition subsequent and by starting execution of work, there was acceptance of the award of work by S.Kumar.

B. Parties' Contentions

1. In the 2006 *Dresser Rand* case,³ the SC had recognized the well settled principles of law that an LoI merely indicates party's intention to enter into a contract with the other party in future and is not intended to bind either party ultimately to enter into a contract. It however further

¹ MANU/SC/0473/2021

² Articles 226 & 227 of the Constitution of India.

³ *Dresser Rand S.A v. Bindal Agro Chem Ltd. & Anr.* (2006) 1 SCC 751.

observed that it could not be disputed that a LoI may be construed as a letter of acceptance if such intention is evident from its terms.

2. It was observed in *Rajasthan Coop Dairy* case⁴ that where the parties to a transaction exchanged LoIs, the terms of such letters may have negative contractual intention but where the language does not have such intention, it is open to the courts to hold that the parties are bound by the document.
3. In *Bhushan Power & Steel Ltd. v. State of Odisha*,⁵ it was held that the nomenclature of the letter would not be the determinative factor but the substantive nature of the letter would determine whether it can be treated as an LoI which as per the legal dictionary means a preliminary understanding between the parties who intend to make a contract or join together in another action.

C. Analysis and Conclusion

The SC, after analyzing the rival contentions, held that:

1. *“(I)t cannot be said that a concluded contract had been arrived at inter se the parties.”*⁶
2. *“An LoI merely indicates a party’s intention to enter into a contract with the other party in future.”*⁷
3. No binding relationship between the parties at this stage emerges and the *totality of the circumstances* have to be considered in each case.
4. Whether a concluded contract had been arrived at *inter se* the parties is in turn dependent on the *“terms and conditions of the LoI”* and the *“conduct of the parties.”*⁸

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⁴ 5 (1996) 10 SC 405.

⁵ (2017) 2 SCC 125.

⁶ Para 18 of the SC Order.

⁷ At para 20 relying on *Rajasthan Coop. Dairy Federation Ltd. v. Maba Laxmi Mingrate Marketing Service (P) Ltd* (1996) 10 SCC 405.

⁸ Para 20 of the SC Order.