

**LETTER OF INTENT MERELY INDICATES A PARTY'S INTENTION TO ENTER INTO A CONTRACT AND CANNOT BE CONSTRUED AS A BINDING CONTRACT.**

**INTRODUCTION:**

*The Apex Court in its recent decision in **South Eastern Coalfields Ltd. and Ors. Vs M/s. S. Kumar's Associates AKM (JV)**<sup>1</sup> held that a letter of intent merely indicates a party's intention to enter into a contract with the other party in future **unless** it is possible to construe it as a binding contract and such an intention is evident from the terms of the letter of intent.*

**FACTS:**

The Appellant No.1 had floated a tender for excavation and related work.

Bids were received and the Respondent was the successful bidder.

In view thereof, a Letter of Intent ("LoI") was issued bearing No. 2415 dated 5<sup>th</sup> October, 2009 awarding the contract for a total work of Rs. 3,87,40,000/- in favour of the Respondent.

The LoI was subject to certain conditions to be fulfilled by the Respondent, pursuant to which a work order would be issued and the parties would enter into an agreement.

In pursuance thereof, the Respondent mobilized resources at the site in terms of the LoI.

On 28<sup>th</sup> October, 2009, the Appellant No. 1 issued a letter of site handover/acceptance certificate, which was to be considered as the date of commencement of the work.

Thereafter, the Respondent apparently faced difficulties and addressed a letter to the Appellants dated 5<sup>th</sup> December, 2009, to that effect. In view of the aforesaid, the work had to

be suspended by the Respondent for reasons beyond its control.

On 9<sup>th</sup> December, 2009, the Appellants issued a letter alleging breach of terms of contract and stipulated the rules and regulations that would be applicable to the Respondent.

Vide a show cause notice dated 15<sup>th</sup> December, 2009, the Appellants intimated to the Respondent that they were left with no choice but to terminate the work awarded to the Respondent and get the work executed by another contractor at the risk and cost of the Respondent.

It appears that there was no response to the said notice by the Respondent and therefore on 23<sup>rd</sup> December, 2009, once again, a notice of termination was issued by the Appellants.

The Respondent objected to the notice dated 23<sup>rd</sup> December, 2009, stating that the work could not be executed at their risk and cost as no contract was ever executed inter se the parties.

The final notice of termination of work was issued by the Appellants vide letter dated 15<sup>th</sup> April, 2010.

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<sup>1</sup> 2021 SCC OnLine SC 486

Thereafter, the work was awarded to another contractor at a higher price.

Vide letter ("recovery order") dated 16<sup>th</sup> July, 2010, the Appellants sought an amount of Rs.78,07,573/-, from the Respondent, being the difference in the contract value of the Respondent and the new contractor.

The Respondent approached the Chhattisgarh High Court by filing a Writ Petition under Articles 226 and 227 of the Constitution of India seeking to quash the termination letter dated 15<sup>th</sup> April, 2010, and the recovery order dated 16<sup>th</sup> July, 2010.

By an order dated 7<sup>th</sup> November, 2012 ("impugned order"), the Chhattisgarh High Court held that there was no subsisting contract *inter se* the parties as the contract was subject to fulfilment of certain conditions by the Respondent.

The Appellants preferred a Special Leave Petition against the order dated 7<sup>th</sup> November, 2012.

### **ISSUES FOR CONSIDERATION:**

The issues for consideration before the Apex Court were *inter alia* as follows:

- (a) Whether on the basis of a LoI a concluded contract had been arrived at *inter se* the parties?
- (b) Whether mobilization at site by the Respondent would amount to a concluded contract *inter se* the parties?

### **SUBMISSIONS ON BEHALF OF THE APPELLANTS:**

The Appellants submitted that by execution of the work on 28<sup>th</sup> October, 2009, there was acceptance of the award of the work by the Respondent. It was further submitted that the conditions contained to the LoI were not a pre condition to the contract but a condition subsequent to the execution of the contract.

It was stated that the Respondent vide letter dated 5<sup>th</sup> December, 2009, acknowledged that it had carried out considerable amount of excavation and, thus, it is the Respondent's own case that they had carried out substantive work after mobilization of the resources immediately after the issuance of LoI.

It was further stated that the absence of formal execution of the contract did not make a difference to the claim of the Appellants arising from the breach of contract.

The Appellants relied on *Jawahar Lal Burman vs Union of India*<sup>2</sup> to show that that once the tender was accepted, it was alleged to have concluded the contract as well as on *Dresser Rand S.A. vs Bindal Agro Chem Ltd. & Anr*<sup>3</sup>, to show that the contract was to come into force upon receipt of the LoI.

### **SUBMISSIONS ON BEHALF OF THE RESPONDENT:**

The Respondent, sought to emphasize the aspect discussed in paragraph 39 of *Jawahar Lal Burman vs Union of India*, in which the Apex Court opined on what an LoI was.

It was not the nomenclature of the letter that would be the determinative factor but the substantive nature of the letter which would

<sup>2</sup> (1962) 3 SCR 769

<sup>3</sup> (2006) 1 SCC 751

determine whether it can be treated as a 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. In *Dresser Rand S.A. vs Bindal Agro Chem Ltd. & Anr.*, referred to by the Appellant, the LoI was held to amount to only an intention to enter into a contract which would take place after all other formalities are completed.

The contracts that was to be executed was to incorporate all the terms *inter se* the parties.

It was contended by the Respondent that after acceptance of the tender, a work order had not been issued as the conditions to the LoI had not been fulfilled.

The LoI was also referred to in the aforesaid context to show that none of the conditions were fulfilled except mobilization of the resources and commencement of the work and that by itself could not be said to be a concluded contract.

The Respondent submitted that on seeing the ground realities, the Respondent found that it was not feasible to execute the contract and thus walked away from it, the consequence of which could only be the forfeiture of the bid security amount as directed by the impugned order. The Respondent had also not been paid by the Appellant for whatever it had done.

### **JUDGMENT:**

The Apex Court concluded that on considering the matter it could not be said that a concluded contract had been arrived at *inter se* the parties.

None of the conditions were fulfilled except that the Respondent mobilized the equipment at site, handing over of the site and the date of commencement of work was fixed vide letter dated 28<sup>th</sup> October, 2009.

Consequently, the work order was not issued nor was the contract executed.

Thus, the moot point was whether mobilization at site by the Respondent would amount to a concluded contract *inter se* the parties. The Apex Court answered this in the negative.

On the next issue, the Apex Court stated that the issue whether a concluded contract had been arrived at *inter se* the parties is in turn dependent on the LoI and the conduct of the parties.

The Apex Court observed that judicial views left little doubt over the proposition that a LoI merely indicates a party's intention to enter into a contract with the other party in future.

The Apex Court held that no binding relationship between the parties emerges and the totality of the circumstances have to be considered in each case. It was not possible to construe a LoI as a binding contract unless an intention was evident from the terms of a LoI and such intention to do so must be clear and unambiguous as it takes a deviation from how normally a LoI has to be understood.

The appeal was accordingly dismissed.

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*The content of this article is intended to provide a general guide to the subject matter. Specialist advice should be sought about your specific circumstances.*